

INITIAL STATEMENT OF REASONS AND PUBLIC REPORT  
DEPARTMENT OF PESTICIDE REGULATION

Title 3. California Code of Regulations  
Amend Sections 6000, 6720, 6738, and 6793, and Adopt Section 6739  
Pertaining to Respiratory Protection

This is the Initial Statement of Reasons required by Government Code section 11346.2 and the public report specified in section 6110 of Title 3, California Code of Regulations (3 CCR). Section 6110 meets the requirements of Title 14 CCR section 15252 and Public Resources Code section 21080.5 pertaining to certified state regulatory programs under the California Environmental Quality Act.

SUMMARY OF PROPOSED ACTION / PESTICIDE REGULATORY PROGRAM  
ACTIVITIES AFFECTED

The Department of Pesticide Regulation (DPR) proposes to amend 3 CCR sections 6000, 6720, 6738, and 6793, and adopt section 6739. The pesticide regulatory program activities that will be affected by the proposal are those pertaining to pesticide worker safety. In summary, the proposed action would revise the written respiratory protection program that employers must establish when employees are required by pesticide label, restricted materials permit, regulation, or employer to use respirators in the workplace.

SPECIFIC PURPOSE AND FACTUAL BASIS

DPR's mission is to protect public health and the environment from adverse effects of pesticide use. The Food and Agricultural Code (FAC) requires that DPR adopt regulations that provide for safe working conditions for persons handling pesticides and working in and about pesticide-treated areas, including regulations on the subject of respirators and other protective devices.

DPR's current respiratory protection regulations were patterned after the U.S. Department of Labor (DOL) Occupational Safety Health Administration's former regulations. These DPR regulations are contained in section 6738(h) and consist of a two-page, eight-point list of requirements with which an employer shall comply.

Within the last few years, both DOL, and subsequently the California Department of Industrial Relation's (DIR's) Division of Occupational Safety and Health (Cal/OSHA) have revised their respiratory protection regulations. Although considered protective, DPR needs to revise its respiratory protection regulations to maintain a respiratory program that is consistent with Cal/OSHA. Also, DPR recognizes that its compliance and protection would be increased from improved clarity.

In summary, existing section 6738(h) states that the employer shall assure that:

- (1) Employees use approved respiratory protective equipment when pesticide product labeling or regulations require respiratory protection or when respiratory protection is needed to

maintain employee exposure below an applicable exposure standard found in Title 8 CCR, section 5155.

- (2) Respiratory protection required by regulation or labeling is currently approved by the National Institute for Occupational Safety and Health (NIOSH) and/or the Mine Safety and Health Administration for the specific chemical and exposure condition.
- (3) Written operating procedures for selecting, fitting, cleaning and sanitizing, inspecting, and maintaining respiratory protective equipment are adopted.
- (4) Employees with facial hair that prevents an adequate seal are provided a respirator that does not rely on a face-to-face piece seal for proper operation.
- (5) Respirators maintained for stand-by or emergency use are inspected monthly or before use if occasions for possible use are more than one month apart and records are maintained of the inspections.
- (6) Employees are informed, prior to beginning work, that certain medical conditions may interfere with wearing a respirator while engaged in potential pesticide exposure situations. A statement shall be on file for each employee assigned to work that requires wearing a respirator stating that to the best of his/her knowledge, there is no medical conditions which would interfere with wearing a respirator while engaged in potential pesticide exposure situations. If there is such a condition, a statement of approval from a physician is required.
- (7) Compressed air used in self-contained breathing apparatus (SCBA) or for air-line type respirators meets or exceeds the requirements for Grade D breathing air.
- (8) Air purifying elements or entire respirator, if disposable, are replaced according to pesticide product labeling directions or respiratory equipment manufacturer recommendations.

The DIR regulations pertaining to respiratory protection are contained in 8 CCR, section 5144. These regulations consist of over 20 pages of text. Section 5144 is directly based on DOL's regulation found in the Code of Federal Regulations, Title 29, section 1910.134, Respiratory Protection. DPR believes that since section 5144 was meant to cover a majority of industries, its scope must be broad and encompassing. However, DPR's jurisdiction is confined only to the users of pesticides. Therefore, DPR is proposing to design regulations that are specific to the handling of pesticides. Hazardous conditions incidental to pesticide handling (e.g., entrance into a confined space environment for the purpose of making a pesticide application) are still rightly within the jurisdiction of DIR. Additionally, some of the principals of respiratory protection

found in section 5144 (selection and use of a respirator based on the chemical and physical properties of the air contaminant, the levels of exposure, etc.) are already mandated by the U.S. Environmental Protection Agency-approved label requirements. The additional language in section 5144 not pertinent to pesticides is not included in the proposed regulations.

Work sites where pesticides are handled are unique in comparison to other types of workplaces, thus the respiratory protection program should be designed to reflect these unique settings. The selection and use of respiratory protection is regulated through pesticide labeling. DOL's and DIR's programs require the employer to select and require the use of respirators based on the hazards at the work site. Based on the differences in these programs, DPR believes it is appropriate to design a separate respiratory protection program that is equivalent to the appropriate subsections of section 5144. It should be stressed that only sections deemed either duplicative to federal label requirements or nonapplicable to pesticide handling (e.g., firefighting, high altitude oxygen adjustments) have been actually deleted.

The proposed action would add the following definitions to section 6000: "air-purifying respirator," "atmosphere-supplying respirator," "filter or air purifying element," "filtering facepiece," "immediately dangerous to life or health," "physician or other licensed health care professional," "qualitative fit test," and "quantitative fit test." These definitions are needed to clarify the proposed regulatory action in section 6739.

The proposed action would amend section 6720(c) (Safety of Employed Persons). When antimicrobial agents, used only as sanitizers, disinfectants, medical sterilants, or pool and spa chemicals are handled, the employer is exempt from complying with the provisions of section 6720(c), provided the employer instead complies with any applicable requirements in corresponding provisions of 8 CCR. Section 6720 contains a list of these 3 CCR sections and the corresponding 8 CCR sections. The proposed action would strike the reference to any 3 CCR references made where there are no corresponding references to 8 CCR, as well as reference the appropriate 8 CCR sections for sections 6738 and 6739. Subsection (d) would also be amended to include correct references to subsection (h) and proposed section 6739.

The proposed action would delete section 6738(h) since proposed section 6739, if adopted, would contain DPR's regulations pertaining to respiratory protection. Existing subsection (i) would then be designated as new subsection (h). An informational note for section 6738(e) would also be deleted. An editorial correction is proposed in subsection (g)(2). This information pertaining to Grade D breathing air is now cited as proposed subsection (k)(1).

DPR's proposed new section 6739 is very similar to the existing DIR regulations in 8 CCR section 5144, but it has been crafted with language designed to meet the needs of California employers who must establish respiratory protection programs for the safety and protection of their employees that work with pesticides. The proposed action is intended to

provide clarity to the regulations currently in effect, as well as provide consistency with section 5144. As some employers have employees that fall under both Cal/OSHA and DPR requirements, it probably is desirable from the employer's viewpoints to have substantially the same requirement.

Currently section 6738(h) requires the employer to be responsible for the use of all respiratory protective equipment. Proposed section 6739(a) would require a more extensive written respiratory protection program that describes work site specific procedures for selecting, fit testing, using, cleaning, inspecting, storing, repairing. It also describes the procedures for employee medical evaluation, training, handling emergencies, and regularly evaluating the respiratory protection program. Proposed section 6739(a) also requires a respirator "program administrator" to administer the respiratory protection program and conduct the required evaluations of program effectiveness.

Proposed section 6739(b) addresses the voluntary use of respirators. If there is no regulatory reason to wear respiratory protection and an employee requests to wear a respirator, whether it is his own or one provided by the employer as requested, the employer must ensure that use in itself will not pose a hazard. If the employer determines use is permissible, this action would require the employer to implement the provision of a written respiratory protection program (except when filtering facepieces are used). This will ensure that the employee is aware of the limitations when wearing a respirator.

Although Immediately Dangerous to Life or Health (IDLH) atmospheres are addressed by product labeling and are regulated under the jurisdiction of DIR, proposed section 6739(c) would identify fumigant-confined structures as an IDLH atmosphere unless proven not to be by appropriate measuring devices. This ensures that appropriate respiratory protection (self contained breathing apparatus) is worn in situations where air concentrations of a hazardous fumigant gas cannot be ascertained without entry into the structure. This action proposes to include specific respirator requirements for employee use in IDLH settings.

Proposed section 6739(d) would require the employer to identify a physician or other professional licensed health provider (PLHCP) to perform a medical evaluation prior to requiring an employee to use a respirator. The medical evaluation begins with the employee confidentially completing a medical questionnaire as proposed in section 6739(q), or providing employees with an initial medical examination that covers the same material. The PLHCP determines if a medical examination is necessary and if the employee is physically fit to wear respiratory protection. The employer is required to obtain a written recommendation from the PLHCP regarding an employee's ability to use a respirator. Currently, a medical evaluation by a PLHCP may not be required. This requirement is the most significant amendment. However, this requirement harmonizes the medical evaluation with CAL/OSHA and as some employers have employees that fall under both Cal/OSHA and DPR requirements, it probably is desirable from

the employer's viewpoints to have substantially the same requirement.

Proposed sections 6739(e) and (f) address fit testing and facepiece seal checks. Although DPR's current respirator regulations specify respirators be properly fitted and tested, these additional detailed requirements may ensure more uniform and periodic testing specific to respiratory protection. The proposed sections also describe what employees must do if they detect breakthrough or facepiece leakage.

Proposed section 6739(g) would require detailed precautions to be taken including the number of people necessary, means of communication, specific rescue training, notification of the employer, respiratory equipment, and means to retrieve the employee(s) that enters an IDLH atmosphere.

Proposed sections 6739(h) and (j) provide greater specificity as to the requirements for the maintenance and repair of respiratory protective devices, detailing the source for cleaning and disinfecting information, the appropriate conditions of storage, the minimum elements of equipment inspections, and the repair/removal-from-service requirements for defective or otherwise failed respirators. Section 6739(j) also clarifies differences in SCBA recharge thresholds for routine versus emergency use equipment. DPR has determined that if the pressure in the air cylinder is at least 80 percent of the manufacturer's recommended pressure level before using, this provides an adequate margin of safety for routine use by pesticide handlers.

Proposed section 6739(i) specifies where emergency respirators should be stored, both for general purposes (at the work site) and for specific conditions (away from the source of potential respiratory hazard the equipment it supposed to protect against). This action is consistent with 8 CCR section 5144(h).

Proposed section 6739(k) expands current section 6738(h)(7) pertaining to breathing air suppliers. It incorporates both the most recent breathing air specifications and the federal requirements concerning air cylinder maintenance. This action is consistent with 8 CCR section 5144(i).

Proposed section 6739(l) stipulates that the NIOSH identification and information on respiratory protective devices not be removed or made illegible. This ensures that the appropriate respiratory protection is correctly selected. This action is consistent with 8 CCR section 5144(j).

Employers are required to train employees who handle pesticides. Section 6724 addresses training requirements on various kinds of personal protective equipment. Proposed section 6739(m) would require employers to provide additional training to ensure each employee can demonstrate knowledge and skills specific to the use of respiratory protection in their workplace.

Proposed section 6739(n) improves the clarity from current section 6738(h) on the requirements for program evaluation and provides for employee input for program improvement and evolution.

The chemical-removing cartridges/canisters used for some air-purifying respirators have a finite capacity to remove contaminants from the air. The traditional pesticide respirator uses these cartridges or canisters. The length-of-service of these elements is always a concern. Proposed section 6739(o) would require an employer to use an established hierarchy for determining the end-of-service. The hierarchy is: (1) breakthrough or leaks; (2) end-of-service life indicator; (3) end of workday (for disposable respirators); (4) label directions; (5) recommendations from the respirator manufacturer; and (6) end-of-the-day's work period.

Proposed subsection (p) would require the employer to retain written information regarding medical recommendations, fit testing, and the respirator program for review by affected employees and to the CAC or persons designated by the Director for examination and copying. This would allow for confirmation of compliance with the documentation requirements of this regulation.

Proposed subsection (q) contains the medical evaluation questions that shall be completed by all employees whose work activities require the wearing of respiratory protection. The employer must allow the employee to answer the questionnaire during normal working hours, or at a time and place that is convenient. In order to maintain confidentiality, the employer or supervisor must not look at or review the answers, and must tell the employee how to deliver or send this questionnaire to the health care professional who will review it. The questionnaire must be administered in a manner that ensures that the employee understands. This medical evaluation questionnaire is much more detailed than the present questionnaire in section 6738(h)(6)(A) and can potentially capture significant health information critical to the safe use of respiratory protection. Additionally, unlike the present self-assessed medical evaluation, the proposed form must be reviewed by a physician or other licensed health care provider. This ensures professional evaluation of the potential risks of respiratory protection to the user.

Proposed subsection (r) would require the employer to provide the employee with information on precautions that should be taken to ensure that the respirator, when used under voluntary basis, does not present a hazard to the employee.

Proposed subsection (s) would require the employer to obtain a physician's or other licensed health care professional's report of evaluation and approval for respirator use before work requiring respirator use is allowed.

An informational note is proposed to be added to clarify that employers requiring employees to enter oxygen deficient atmospheres shall conform to respiratory protection requirements in 8 CCR, section 5144.

Additionally, DPR proposes to make necessary changes to section references in section 6793 as a result of proposed amendments in section 6738.

#### CONSULTATION WITH OTHER AGENCIES

DPR regularly consults with other agencies during the development of proposed regulations. Pursuant to FAC sections 12980 and 12981, it is the joint and mutual responsibility of DPR and the Office of Environmental Health Hazard Assessment to develop regulations relating to pesticides and worker safety. Also in carrying out these provisions, the University of California and DIR are consulted. As specified in FAC section 11454.2, and the February 6, 1992, Memorandum of Agreement which was developed as provided in section 11454.2, DPR will notify the California Department of Food and Agriculture of the development of regulations and request comments relating to pesticides and worker safety prior to the issuance of a notice of proposed rulemaking.

#### ALTERNATIVES TO THE PROPOSED REGULATORY ACTION (GOVERNMENT CODE SECTION 11346.2(b))

DPR has not identified any feasible alternatives to the proposed regulatory action that would lessen any possible adverse economic impacts, including any impacts on small businesses, and invites the submission of suggested alternatives.

As discussed in the Notice of Proposed Regulatory Action that was published in the *California Regulatory Notice Register*, DPR has determined that the adoption of this regulation will not have a significant cost impact on private persons or businesses.

#### IDENTIFICATION OF ANY SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECT THAT CAN REASONABLY BE EXPECTED TO OCCUR FROM IMPLEMENTING THE PROPOSAL

The proposed action would revise the written respiratory protection program that employers must establish when employees are required by pesticide label, restricted materials permit, regulation, or employer to use respirators in the workplace. DPR's review of the proposed action showed that no significant adverse effect to California's environment can reasonably be expected to occur from implementing the proposal. Therefore, no alternatives or mitigation measures are proposed to lessen any significant adverse effects on the environment.

EFFORTS TO AVOID UNNECESSARY DUPLICATION WITH FEDERAL REGULATIONS

The proposed regulatory action does not duplicate or conflict with federal regulations because there are no federal regulations contained within the Code of Federal Regulations that address this issue.

DOCUMENTS RELIED UPON

1. Code of Federal Regulations, Title 29, Section 1910.134, Respiratory Protection.
2. California Code of Regulations, Title 8, Section 5144.
3. Assessment of the Economic Impacts of the Proposed DPR Regulation: Revision of Existing Regulation Pertaining to the Respiratory Protection. California Environmental Protection Agency, Air Resources Board, Agency-Wide Economic Analysis Unit. June 4, 2004.