

June 5, 1998

WHS 98-02

TO: County Agricultural Commissioners

SUBJECT: CHANGES IN PESTICIDE RESPIRATOR DESIGNATIONS

The National Institute for Occupational Safety and Health (NIOSH) has modified their regulations concerning respirators. The changes affect respirators used for protection from airborne pesticide particulate matter (spray, mist, dust) hazards.

Previously, respirators approved for protection against airborne particulate matter hazards were approved under Part 11 of 30 CFR (Code of Federal Regulations). These respirators are identified by a TC-21 or TC-23 designation. As of July 10, 1998, respirator manufacturers will cease manufacture of these respirators. Both TC-21 and TC-23 respirators may be used until supplies are exhausted.

Respirators approved under the new Part 84 of 42 CFR may be identified by a TC-84A designation. These respirators offer improved filtering capabilities and NIOSH encourages users to switch to the newer types. There are three categories, N (not oil-resistant), R (oil-resistant), and P (oil-proof). In addition, for each category, there are three levels of filtration efficiency, 95%, 99%, and 99.97%. The latter is referred to as level "100." Oil can be defined as an organic long chain hydrocarbon of high molecular weight, high boiling point, and low volatility that might accumulate on the filter surface.

Another change concerns the traditional TC-23C "pesticide" respirator. The TC-23C respirator combines a particulate matter-removing element with an organic vapor-removing element. Under the Part 84 regulations, TC-23C respirators will no longer be certified or manufactured as specifically for use in pesticide applications. The focus of the new regulations addresses the specific physical hazard present in the air (dust, mist, vapor) rather than attempting to cover all pesticides with a generic "pesticide" respirator.

Registrants of pesticide products (with labeling containing respiratory protection requirements) will be updating their labels to incorporate this change. However, it may take some time for the changes in labeling to reach the application worksite. In the interim, the following table may assist in selection of respirators with the new designations.

Label directions:	Equivalent Part 84 designation	Recommended use:
"Wear a dust/mist filtering respirator (MSHA/NIOSH approval prefix TC-21C)." 	N (95, 99 or 100)	Spray, dust, or mist hazard from water-based formulations mixed with water, granular formulations, dusts. (no oil)
	R (95, 99, or 100)	Spray, dust, or mist hazard as above but containing oil. (replace after 8 hours)
	P (95, 99, or 100)	Spray, dust, or mist hazard as above but containing oil. (replace according to manufacturer's recommendations)
"Wear a respirator with either a organic vapor-removing cartridge with a prefilter approved for pesticides (MSHA/NIOSH approval number prefix TC-23C), or a canister approved for pesticides (MSHA/NIOSH approval number prefix TC-14G)." 	N, P, or R element plus organic vapor-removing element	One or more of above particulate matter hazards plus an organic vapor hazard.

County Agricultural Commissioners
June 5, 1998
Page 3

U.S. EPA has determined that substitution of a Part 84 respirator for a Part 11 respirator is not considered use of a pesticide inconsistent with the product label. DPR concurs with this determination.

Respirator users should be encouraged to discuss this issue with their safety equipment supplier. If uncertain about the most appropriate selection of respirator type, selection of a P95 or P100 respirator will assure the highest levels of filtration efficiency against particulate matter and oil inhalation hazards.

If you have any questions, feel free to contact Harvard Fong, industrial hygienist in the Worker Health and Safety Branch, at (916) 445-4211. Harvard may be available to meet with interested counties for respiratory protection training including these recent changes.

If you have any questions regarding compliance with the changes in pesticide respirator designations, please contact your Senior Use Specialist.

Sincerely,

[Original signed by John S. Sanders and Charles M. Andrews]

John S. Sanders, Chief
Worker Health and Safety Branch
(916) 445-4260

Charles M. Andrews, Chief
Enforcement Branch
(916) 445-3853

Attachment

cc: Mr. Dennis Gibbons
Mr. Harvard Fong
Mr. Bob Chavez

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 156

[OPPTS-00238; FRL-5785-2]

Labeling Requirements for Pesticides; Respirator Compliance Policy Statement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Policy statement.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) has developed changes to the regulations at 42 CFR part 84 that set forth certification standards for non-powered air-purifying particulate respirators. EPA has determined that all 42 CFR part 84 respirators meet or exceed all 30 CFR part 11 respirator (hereinafter part 11 and part 84 respirators) requirements, and that respirators certified under part 84 will be considered the equivalent of a respirator certified under part 11. EPA will allow pesticide handlers to use either part 11 or part 84 respirators to satisfy non-powered, air-purifying respirator requirements for pesticide applications. The Agency will publish an amendment to 40 CFR 156.212 to reflect the NIOSH changes in particulate respirator designations and a Pesticide Registration (PR) Notice to direct registrants on how to modify product labels.

EFFECTIVE DATE: This document is immediately effective.

FOR FURTHER INFORMATION CONTACT: Yvette Hellyer, Toxics and Pesticides Enforcement Division (2245A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202-564-4033, E-mail: hellyer.yvette@epa.gov; or, Judy Smith, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 703-305-5621, E-mail: smith.judy@epa.gov.

I. Background

On July 10, 1995, NIOSH modified its existing regulation, 30 CFR part 11, and changed the certification standards for non-powered, air-purifying particulate filters. The NIOSH change was made to update and upgrade certification tests developed in the 1930's by the Bureau of Mines. The new regulation, 42 CFR part 84, requires that respirators certified under 42 CFR part 84 undergo a different test using a more penetrating particle size than in the past and takes into account the presence of oil in the contaminant.

The NIOSH certification changes require that manufacture and certification of part 11 respirators cease on July 10, 1998; however, distributors and other respiratory protection product sellers can continue to sell their existing supplies. In terms of additional NIOSH certification changes, canister type respirators that are certified for use with pesticides will not be made after July 10, 1998.

Combination respirators, those certified for use for paints and pesticides, will also not be made after July 10, 1998. Certification requirements for all other respirator types, such as powered air-purifying respirators (PAPR) were transferred from 30 CFR part 11 to 42 CFR part 84 without change.

To minimize the impact of the manufacturing transition from part 11 to part 84 respirators, all particulate respirator manufacturers now sell part 84 respirators and are now phasing out part 11 respirators. Manufacturers cannot precisely estimate when the existing supply of part 11 respirators will be exhausted, but a general consensus in the industry estimates this will occur in 3 years.

II. NIOSH Certification Changes and EPA Determination

NIOSH certifies part 84 respirators using a more rigorous testing method, and EPA has determined that part 84 respirators provide at least as much protection to pesticide-handlers, applicators, and users as part 11 respirators. As a result, a pesticide user may substitute a part 84 non-powered, air-purifying particulate respirator for a part 11 respirator even though the pesticide product label requires use of a part 11 respirator, and EPA will not initiate an enforcement action for misuse of the product. This substitution will only be allowed until the pesticide product label change from part 11 to part 84 respirator requirements have been completed. Following the pesticide product label change to part 84 respirators, this substitution will no longer apply.

III. Information for Registrants

EPA plans to require label changes for pesticide products because of the NIOSH certification changes, and this will impact pesticide registrants. EPA will issue a Pesticide Registration (PR) Notice that will call for registrants to add 42 CFR part 84 language to the existing respirator language (30 CFR part 11) on current product labels. The Agency also intends to amend 40 CFR 156.212 to incorporate the new NIOSH designations for dust/mist filtering respirators and organic vapor-removing cartridge respirators. The revised rule will affect the pesticide product labels with part 11 respirator requirements, i.e., those requiring either a Mine Safety and Health Administration (MSHA)/NIOSH-approved dust filtering respirator (known as a TC-21C) or a MSHA/NIOSH-approved organic vapor removing cartridge respirator with a prefilter approved for pesticides (MSHA/NIOSH approval number prefix TC-23C), and will require the addition of 42 CFR part 84 language to the product label.

IV. Information for Pesticide Applicators

Given that both part 11 or part 84 respirators meet respiratory protection requirements for pesticide products, the Agency is confident that allowing pesticide handlers to use part 84 respirators will assure applicators of an adequate supply of acceptable respirators.

V. Compliance and Enforcement

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) section 12(a)(2)(G) states that it is unlawful "to use any registered pesticide in a manner inconsistent with its labeling." EPA has determined that both part 11 or part 84 respirators will provide adequate protection for users. Therefore, EPA

considers the part 84 respirator to be the equivalent of part 11 respirators for the purpose of complying with the label of pesticide products for application-related activities. EPA will not consider the substitution of a part 84 for a part 11 respirator a misuse. Furthermore, EPA requires pesticide handlers, applicators, and users to comply with all the requirements of 40 CFR 170.240 regardless of whether the respirator is part 11 or part 84.

VI. Conclusion

EPA recognizes that part 84 respirators offer applicators equivalent levels of respiratory protection, and the supply of part 11 respirators will be exhausted in the next 1 to 3 years. EPA also recognizes that pesticide handlers must have an adequate supply of respirators that provide adequate respiratory protection during application. Effective immediately, EPA will not find misuse violations against applicators who use either part 11 or part 84 respirators to satisfy existing product labels that require part 11 respirators.

VII. Regulatory Assessment Requirements

This action does not impose any requirements. As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). For the same reason, it does not require any action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4), Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). In addition, since this type of action does not require any proposal, no action is needed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, as that term is defined in 5 U.S.C. 804(3).

List of Subjects in Part 156

Environmental protection, Labeling, Occupational safety and health, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: 4/24/98

June Bartlett

Director, Toxics and Pesticides Enforcement Division, Office of Regulatory Enforcement and Policy Assurance.

[FR Doc. 98-????? Filed ??-??-98; 8:45 am]

BILLING CODE 6560-50-F