



Department of Pesticide Regulation



Paul Helliker
Director

Arnold Schwarzenegger
Governor

November 26, 2003

WHS 03-09

TO: COUNTY AGRICULTURAL COMMISSIONERS

SUBJECT: DRAFT RESPIRATORY PROTECTION REGULATIONS

Within the last few years, both the U.S. Department of Labor's Occupational Safety and Health Administration, and subsequently California Department of Industrial Relation's (DIR) Division of Occupational Safety and Health (Cal/OSHA) have revised their respiratory protection regulations. The Department of Pesticide Regulation (DPR) is proposing to revise its respiratory protection program (amend sections 6720 and 6738, and adopt section 6739) to be consistent with Cal/OSHA's respiratory protection program. These proposed changes would also provide greater clarity, remove ambiguity, and update certain provisions to reflect the latest in respiratory protection technology regarding respiratory hazards.

In March and October 2002, DPR met with the Worker Safety Regulation Work Group to discuss and obtain input on the draft regulations. The Work Group is comprised of representatives from DPR, Office of Environmental Health Hazard Assessment, DIR, University of California, Davis, California Department of Food and Agriculture, and the County Agricultural Commissioners and Sealers Association (CACASA). We also provided a brief overview of this regulation proposal in the DPR Monthly Reports to county agricultural commissioners in October 2002 and April 2003.

I am interested in obtaining input from you prior to noticing this regulation for public comment. Enclosed for your review is the draft text of the proposed regulations and Initial Statement of Reasons.

We believe this proposal's most significant impact to employers is the requirement that a medical evaluation must be conducted to determine the employee's ability to use a respirator prior to use. The employer would select a physician or other licensed health care professional to perform the medical evaluation using the medical questionnaire completed by the employee, or conduct a medical examination that obtains the same information as the medical questionnaire. This is a departure from present regulations that only requires employees to self-assess their medical condition. Physicians or health care professionals are required to review the questionnaire if the employee identified a medical condition in the self-assessment. Such self-assessments may be biased and may not capture health problems that could have negative consequences during respirator use.



County Agriculture Commissioners
November 26, 2003
Page 2

Before we finalize these draft regulations for public comment, we request your review and comments by December 31, 2003. Please direct any comments or questions you have to Mr. Harvard Fong, Senior Industrial Hygienist from my staff at (916) 445-4211, or by e-mail at hfong@cdpr.ca.gov.

Sincerely,

*[original signed by Joe Frank,
for C. Andrews]*

Charles M. Andrews, Chief
Worker Health and Safety Branch
(916) 445-4222

Enclosures

cc: Mr. Scott T. Paulsen, Chief, DPR Enforcement Branch, (w/o attachment)
Mr. Daniel J. Merkley, Agricultural Commissioner Liaison, (w/o attachment)
Mr. Harvard Fong WHS Branch, (w/o attachment)
Ms. Charlene Martens, WHS Branch, (w/o attachment)

TEXT OF PROPOSED REGULATIONS

Current wording is indicated by regular type.
Originally proposed deletions are indicated by ~~strikeout~~.
Originally proposed additions are indicated by underline.

TITLE 3. CALIFORNIA CODE OF REGULATIONS
DIVISION 6. PESTICIDES AND PEST CONTROL OPERATIONS
CHAPTER 3. PEST CONTROL OPERATIONS
SUBCHAPTER 3. PESTICIDE WORKER SAFETY
ARTICLE 2. GENERAL SAFETY REQUIREMENTS

Amend section 6720 to read:

6720. Safety of Employed Persons.

(a) The requirements of this article shall be complied with by the employer for the safety of employees handling pesticides.

(b) When only vertebrate pest control baits, solid fumigants (including aluminum phosphide, magnesium phosphide, and smoke cartridges), insect monitoring traps or non-insecticidal lures are handled, the employer is exempt from the requirements of Sections 6730 (Working Alone), 6732 (Change Area), and 6736 (Coveralls).

(c) When antimicrobial agents, used only as sanitizers, disinfectants, or medical sterilants, or pool and spa chemicals are handled, the employer is exempt from complying with the provisions of this subchapter, provided the employer instead complies with any applicable requirements in the following corresponding provisions of Title 8, California Code of Regulations. Where the word "None" appears in the Title 8 column, the employer does not have to comply with the corresponding regulations specified in the Title 3 column.

<i>Title 3, CCR</i>	<i>Title 8, CCR</i>
6700	3200 and 3202
6702	3200 and 3203
6704	None
6706	None
6710	None
6720	As indicated in this Subsection
6723	3203, 3204, and 5194
6724	3203 and 5194
6726	3400
6728	None
6730	None
6732	3367
6734	3363 and 3366
6736	3383
6738	3380 through 3385, and 5144

DRAFT 11-24-03

6740	3317
6742	5141
6744	3203 and 5194
6746	None
Article 3	None
Article 4	None
Article 5	None
Article 6	None

(d) The provisions of sections 6734 and 6768 (Decontamination), 6726 and 6766 (Emergency Medical Care), 6736 (Coveralls), 6738(b)- (i) (h) (Personal Protective Equipment), 6739 (Respiratory Protection), and 6770 (Field Reentry) do not apply to licensed agricultural pest control advisers and registered professional foresters, or employees under their direct supervision, while performing, after the application is completed, crop adviser tasks, including field-checking or scouting, making observations of the well-being of the plants, or taking samples provided:

(1) They have been trained equivalent to the requirements of section 6724 (licensed agricultural pest control advisers are considered trained for the purposes of this exception); and

(2) The licensed agricultural pest control adviser or registered professional forester responsible for the direct supervision has:

(A) Made specific determinations regarding appropriate personal protective equipment, needed decontamination facilities, and how to safely conduct crop adviser tasks;

(B) Informed each employee under his or her direct supervision of the pesticide product and active ingredient(s) applied, method and time of application, the restricted entry interval, and determinations made pursuant to (A) above; and

(C) Instructed each employee under his or her direct supervision regarding which tasks to perform and how to contact him or her if the need arises.

(e) The provisions of this Subchapter do not apply to employees handling consumer products packaged for distribution to, and use by, the general public, provided that employee use of the product is not significantly greater than the typical consumer use of the product.

NOTE: Authority cited: Section 12981, Food and Agricultural Code.

Reference: Sections 11501, 12973, 12980 and 12981, Food and Agricultural Code.

Amend section 6738 to read:

6738. Personal Protective Equipment.

...

(g) The employer shall assure that:

(1) When pesticide product labeling or regulations specify a chemical resistant suit, waterproof or impervious pants and coat or a rain suit, a chemical resistant suit that covers the torso, head, arms, and legs is worn.

(2) If the ambient temperature exceeds 80°F during daylight hours or 85°F during nighttime hours (sunset to sunrise) pesticides requiring a chemical resistant suit are not handled by

employees unless they are handled pursuant to exceptions and substitutions permitted in (i) or employees use cooled chemical resistant suits or other control methods to maintain an effective working environment at or below 80°F during daylight hours or 85°F during nighttime hours (sunset to sunrise).

(h) 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, California Code of Regulations, Section 5155.~~

~~(2) Respiratory protection required by these regulations or labeling is currently approved by the National Institute for Occupational Safety and Health (NIOSH) and/or the Mine Safety and Health Administration (MSHA) for the specific chemical and exposure condition. Proper selection of respirators shall be made following pesticide product labeling, or absent specific instruction, according to the guidance of National Standard Practices for Respiratory Protection: Z88.2-1980, or the American National Standard Practices of Respiratory Protection During Fumigation: Z88.3-1983.~~

~~(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 not assigned work requiring them to wear a respirator unless they 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. A record of the most recent inspection shall be maintained on the respirator or its storage container.~~

~~(6)(A) 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 in substantially the following form shall be on file for each employee assigned to work that requires wearing a respirator.~~

~~To the best of my knowledge, I have _____, have no _____ medical conditions which would interfere with wearing a respirator while engaged in potential pesticide exposure situations. I understand that heart disease, high blood pressure, lung disease or presence of a perforated ear drum are examples of conditions that require specific medical evaluation by a physician before safe use of a respirator can be determined.~~

Name _____ Date _____

~~(B) If an employee checks that he or she has such a condition, a physician's report of evaluation and approval for respirator use is on file before work requiring respirator use is allowed. The following or substantially similar statement from a physician is acceptable.~~

~~On _____, I examined _____.~~
Date _____ Patient name _____

~~At this time there is no medical contraindication to the employee named above wearing a respirator to allow working in potential pesticide exposure environments. (Other comments)~~

Physician

Date

~~(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 as described in the Compressed Gas Association Commodity Specification G-7.1 (ANSI Z86.1-1973).~~

~~(8) When air purifying type respirators are required for protection against pesticides, the air purifying elements or entire respirator, if disposable, are replaced according to pesticide product labeling directions or respiratory equipment manufacturer recommendations, whichever provides for the most frequent replacement, or, absent any other instructions on service life, at the end of each day's work period. At the first indication of odor, taste, or irritation, the wearer leaves the area and checks the respirator for fit or function concerns or air purifying element replacement.~~

~~(i h) The following exceptions and substitutions to personal protective equipment required by pesticide product labeling or regulations are permitted:~~

~~(1) Persons using a closed system to handle pesticide products with the signal word "DANGER" or "WARNING" may substitute coveralls, chemical resistant gloves, and a chemical resistant apron for personal protective equipment required by pesticide product labeling;~~

~~(2) Persons using a closed system to handle pesticide products with the signal word "CAUTION" may substitute work clothing for personal protective equipment required by pesticide product labeling;~~

~~(3) Persons using a closed system that operates under positive pressure shall wear protective eyewear in addition to the personal protective equipment listed in (1) or (2). Persons using any closed system shall have all personal protective equipment required by pesticide product labeling immediately available for use in an emergency;~~

~~(4) Persons properly mixing pesticides packaged in water soluble packets are considered to be using a closed (mixing) system for the purposes of this subsection;~~

~~(5) Persons occupying an enclosed cab (including cockpit) may substitute work clothing for personal protective equipment required by pesticide product labeling. If respiratory protection is required it must be worn, except in an enclosed cockpit;~~

~~(6) Persons occupying an enclosed cab acceptable for respiratory protection may substitute work clothing for personal protective equipment required by pesticide product labeling;~~

~~(7) Persons working in an enclosed cab, as specified in (5) and (6), other than an aircraft, shall have all personal protective equipment required by pesticide product labeling immediately available and stored in a chemical resistant container, such as a plastic bag. Labeling-required personal protective equipment shall be worn if it is necessary to work outside the cab and contact pesticide treated surfaces in the treated area. Once personal protective equipment is worn in the treated area, it shall be removed and stored in a chemical resistant container, such as a plastic bag, before reentering the cab;~~

~~(8) A chemical resistant suit may be substituted for coveralls and/or a chemical resistant apron; and~~

~~(9) Pest control aircraft pilots are not required to wear gloves during operation but gloves shall be worn by any person entering or exiting an aircraft contaminated with pesticide residues. While in the cockpit, gloves shall be carried in a chemical resistant container, such as a plastic bag.~~

~~INFORMATIONAL NOTE FOR Section 6738(e): ANSI Z86.1 specifies in summary: Oxygen 19.5 to 23.5%, Hydrocarbons less than 5 mg/m³ at normal temperature and pressure, Carbon Monoxide less than 20 ppm, no pronounced odor, Carbon Dioxide less than 1000 ppm.~~

NOTE: Authority cited: Sections 11456 and 12981, Food and Agricultural Code. Reference: Sections 12980 and 12981, Food and Agricultural Code.

Adopt section 6739 to read: *(This section will be underlined)*

6739. Respiratory Protection

(a) General Requirements.

(1) In any workplace where respirators are required by label, restricted material permit condition, regulation, or employer, the employer shall establish a written respiratory protection program with worksite-specific procedures. The program shall be updated as necessary to reflect those changes in workplace conditions that affect respirator use. The employer shall include in the program the following provisions, as applicable:

(A) Procedures for selecting respirators for use in the workplace;

(B) Medical evaluations of employees required to use respirators;

(C) Fit testing procedures for tight-fitting respirators;

(D) Procedures for proper use of respirators in routine and reasonably foreseeable emergency situations;

(E) Procedures and schedules for cleaning, disinfecting, storing, inspecting, repairing, discarding, and otherwise maintaining respirators;

(F) Procedures to ensure adequate air quality, quantity, and flow of breathing air for atmosphere-supplying respirators;

(G) Training of employees in the respiratory hazards to which they are potentially exposed during routine and emergency situations, including Immediately Dangerous to Life or Health (IDLH) atmospheres, if appropriate;

(H) Training of employees in the proper use of respirators, including putting on and removing them, any limitations on their use, and their maintenance; and

(I) Procedures for regularly evaluating the effectiveness of the program.

(2) The employer, if qualified, or a designated program administrator (who is qualified by appropriate training or experience that is commensurate with the complexity of the program) shall administer the respiratory protection program and conduct the required evaluations of program effectiveness.

(3) The employer shall provide respirators, training, and medical evaluations at no cost to the employee.

(b) Voluntary Respirator Provision. An employer may provide respirators at the request of employees or permit employees to use their own respirators for use on a voluntary basis, if the employer determines that such respirator use will not in itself create a hazard. If the employer determines that any voluntary respirator use is permissible, the employer shall provide the respirator users with the information contained in subsection (r).

(1) For an employer-supplied voluntary respirator program, the employer shall establish and implement the provisions of a written respiratory protection program necessary to ensure that

any employee using a respirator voluntarily is medically able to use that respirator, and that the respirator is cleaned, stored, and maintained so that its use does not present a health hazard to the user.

(2) Employers are not required to include in a written respiratory protection program those employees whose only use of respirators involves the voluntary use of filtering facepieces (dust masks).

(3) The employer shall provide respirators, training, and medical evaluations at no cost to the employee.

(c) Selection of Respirators. The employer shall select and provide an appropriate respirator certified by the National Institute for Occupational Safety and Health (NIOSH) based on the respiratory hazard(s) and relevant workplace and user factors to which the worker is exposed; and the appropriate pesticide label, restricted materials permit condition, regulation, or employer, whichever is most protective.

(1) The employer shall select respirators from a sufficient number of respirator models and sizes so that the respirator is acceptable to, and correctly fits, the user.

(2) All oxygen-deficient atmospheres (less than 19.5 percent oxygen) shall be considered IDLH. Oxygen deficient atmospheres are beyond the scope of this regulation and are regulated under the jurisdiction of the California Department of Industrial Relations. Persons entering oxygen deficient environments shall conform to Title 8, California Code of Regulations, section 5144.

(3) Fumigant-confined structures shall be considered IDLH atmosphere unless proven not to be by appropriate measuring devices. The employer shall provide the following respirators for employee use in IDLH atmospheres:

(A) A full facepiece pressure demand self-contained breathing apparatus (SCBA) certified by NIOSH for a minimum service life of thirty minutes, or

(B) A combination full facepiece pressure demand supplied-air respirator (SAR) with auxiliary self-contained air supply.

(C) Respirators provided only for escape from IDLH atmospheres shall be NIOSH-certified for escape from the atmosphere in which they will be used.

(d) Medical Evaluation. The employer shall ensure a medical evaluation is conducted to determine the employee's ability to use a respirator, before the employee is fit tested or required to use the respirator in the workplace. The employer may discontinue an employee's medical evaluations when the employee is no longer required to use a respirator.

(1) Medical Evaluation Procedures.

(A) The employer shall identify a physician or other licensed health care professional (PLHCP) to perform medical evaluations using the medical questionnaire in subsection (q) or an initial medical examination that obtains the same information as the medical questionnaire.

(B) The medical evaluation shall obtain the information requested by the questionnaire in subsection (q), sections 1 and 2.

(2) Follow-up Medical Examination.

(A) The employer shall ensure that a follow-up medical examination is provided when a PLHCP determines that there is a need for a follow-up medical examination.

(B) The follow-up medical examination shall include any medical tests, consultations, or diagnostic procedures that the PLHCP deems necessary to make a final determination.

(3) Administration of the Medical Questionnaire and Examinations.

(A) The medical questionnaire and examinations shall be administered confidentially during the employee's normal working hours or at a time and place convenient to the employee. The medical questionnaire shall be administered in a manner that ensures that the employee understands its content.

(B) The employer shall provide the employee with an opportunity to discuss the questionnaire and examination results with the PLHCP.

(4) Supplemental Information for the PLHCP.

(A) The employer shall provide the following information to the PLHCP before the PLHCP makes a recommendation concerning an employee's ability to use a respirator:

1. The type and weight of the respirator to be used by the employee;
2. The duration and frequency of respirator use (including use for rescue and escape);
3. The expected physical work effort;
4. Additional protective clothing and equipment to be worn; and
5. Temperature and humidity extremes that may be encountered.

(B) The employer shall not be required to provide any supplemental information provided previously to the PLHCP regarding an employee for a subsequent medical evaluation if the information and the PLHCP remain the same. When the employer replaces a PLHCP, the employer shall ensure that the new PLHCP obtains this information by having the documents transferred from the former PLHCP to the new PLHCP. Employers are not required to have employees medically reevaluated solely because a new PLHCP has been selected.

(C) The employer shall provide the PLHCP with a copy of the written respiratory protection program and a copy of this section.

(5) Medical Determination.

(A) The employer shall obtain a written medical recommendation from the PLHCP regarding the employee's ability to use the respirator. The written medical recommendation shall be provided on the form in subsection (s) or provide substantially the same information as follows:

1. Any limitations on respirator use related to the medical condition of the employee, or relating to the workplace conditions in which the respirator will be used, including whether or not the employee is medically able to use the respirator;
2. The need, if any, for follow-up medical evaluations; and
3. A statement that the PLHCP has provided the employee with a copy of the PLHCP's written medical recommendation.

(B) If a negative pressure respirator is used and the PLHCP finds a medical condition that may place the employee's health at increased risk, the employer shall provide a powered air purifying respirator (PAPR) provided the PLHCP's medical evaluation finds that the employee can use such a respirator. If a subsequent medical evaluation finds that the employee is medically able to use a negative pressure respirator, then the employer shall no longer be required to provide a PAPR.

(6) Additional Medical Evaluations. The employer shall provide additional medical evaluations that comply with the requirements of this section if:

(A) An employee reports medical signs or symptoms that are related to ability to use a respirator;

(B) A PLHCP, supervisor, or the respirator program administrator informs the employer that an employee needs to be reevaluated;

(C) Information from the respiratory protection program, including observations made during fit testing and program evaluation, indicates a need for employee reevaluation; or

(D) A change occurs in workplace conditions including, but not limited to, physical work effort, protective clothing, or temperature, may result in a substantial increase in the physiological burden placed on an employee.

(e) Fit Testing. The employer shall assure that employees using a tight-fitting facepiece respirator pass an appropriate qualitative fit test (QLFT) or quantitative fit test (QNFT).

(1) The employer shall ensure that an employee using a tight-fitting facepiece respirator is fit tested prior to initial use of the respirator whenever a different respirator facepiece (size, style, model or make) is used, and at least annually thereafter.

(2) The employer shall conduct an additional fit test whenever the employee reports, or the employer, PLHCP, supervisor, or respirator program administrator makes visual observations of changes in the employee's physical condition that could affect respirator fit. Such conditions include, but are not limited to, facial scarring, dental changes, cosmetic surgery, or an obvious change in body weight.

(3) If after passing a QLFT or QNFT, the employee subsequently notifies the employer, PLHCP, supervisor, or respirator program administrator, that the fit of the respirator is unacceptable, the employee shall be given a reasonable opportunity to select a different respirator facepiece and to be retested.

(4) The fit test shall be administered using either the Cal/OSHA-accepted QLFT or QNFT protocols (Title 8, California Code of Regulations, section 5144, Appendix A), or as recommended by the manufacturer of the respirator. QLFT is acceptable for all negative-pressure tight-fitting half or full facepieces respiratory protection used in the application of pesticides.

(5) If the fit factor, as determined through a Cal/OSHA-accepted QNFT protocol (Title 8, California Code of Regulations, section 5144, Appendix A), is equal to or greater than 100 for tight-fitting half or full facepieces, or equal to or greater than 500 for tight-fitting full facepieces, the QNFT has been passed with that respirator.

(6) Fit testing of tight-fitting atmosphere-supplying respirators and tight-fitting powered air-purifying respirators shall be accomplished by performing quantitative or qualitative fit testing in the negative pressure mode, regardless of the mode of operation (negative or positive pressure) that is used for respiratory protection.

(A) Qualitative fit testing of these respirators shall be accomplished by temporarily converting the respirator user's actual facepiece into a negative pressure respirator with appropriate filters, or by using an identical negative pressure air-purifying respirator facepiece with the same sealing surfaces as a surrogate for the atmosphere-supplying or powered air-purifying respirator facepiece.

(B) Quantitative fit testing of these respirators shall be accomplished by modifying the facepiece to allow sampling inside the facepiece in the breathing zone of the user, midway between the nose and mouth. This requirement shall be accomplished by installing a permanent sampling probe onto a surrogate facepiece, or by using a sampling adapter designed to temporarily provide a means of sampling air from inside the facepiece.

(C) Any modifications to the respirator facepiece for fit testing shall be completely removed, and the facepiece restored to NIOSH-approved configuration, before that facepiece can be used in the workplace.

(f) Facepiece Seal Protection. A respirator that requires a tight face-to-facepiece seal shall not have any interference with the establishment of this seal. The employer shall ensure that:

(1) Employees shall not wear a respirator with a tight-fitting facepiece if:

(A) Facial hair comes between the sealing surface of the facepiece and the face or interferes with valve function; or

(B) Any condition interferes with the face-to-facepiece seal or valve function.

(2) Corrective glasses or goggles or other personal protective equipment worn by an employee that do not interfere with the face-to-facepiece seal.

(3) Employees perform a user seal check each time they put on the respirator using the Cal/OSHA procedures (Title 8, California Code of Regulations, section 5144, Appendix B-1) or procedures recommended by the respirator manufacturer that the employer demonstrates are as effective as those in the Cal/OSHA procedures when using tight-fitting respirators.

(4) Appropriate surveillance shall be maintained of work area conditions and degree of employee exposure or stress. When there is a change in work area conditions or degree of employee exposure or stress that may affect respirator effectiveness, the employer shall reevaluate the continued effectiveness of the respirator.

(5) Employees shall leave the contaminated area:

(A) To wash their faces and respirator facepieces as necessary to prevent eye or skin irritation associated with respirator use; or

(B) If they detect vapor or gas breakthrough, changes in breathing resistance, or leakage of the facepiece; or

(C) To replace or adjust the respirator or the filter, cartridge, or canister elements.

(6) If the employee detects vapor or gas breakthrough, changes in breathing resistance, or leakage of the facepiece, the employer shall replace or repair the respirator before allowing the employee to return to the work area.

(g) Procedures for Immediately Dangerous to Life or Health (IDLH) Atmospheres. Fumigant-confined structures shall be considered IDLH atmosphere unless proven not to be by appropriate measuring devices. For all IDLH atmospheres, the employer shall assure that:

(1) One employee, or when needed more than one employee, is located outside the IDHL atmosphere;

(2) Visual, voice, or signal line communication is maintained between the employee(s) in the IDLH atmosphere and the employee(s) located outside the IDHL atmosphere;

(3) The employee(s) located outside the IDHL atmosphere is trained and equipped to provide effective emergency rescue;

(4) The employee(s) located outside the IDLH atmosphere notifies the employer or designee, and/or calls 9-1-1 before entering the IDHL atmosphere to provide emergency rescue. Once notified, the employer or designee authorized to do so by the employer, shall provide necessary assistance appropriate to the situation;

(5) Employee(s) located outside the IDHL atmospheres is equipped with:

(A) Pressure demand or other positive pressure self-contained breathing apparatus (SCBA), or a pressure demand or other positive pressure supplied-air respirator with auxiliary SCBA; and either

(B) Appropriate retrieval equipment for removing the employee(s) who enter(s) these hazardous atmospheres where retrieval equipment would contribute to the rescue of the employee(s) and would not increase the overall risk resulting from entry; or

(C) Equivalent means for rescue where retrieval equipment is not required under subsection (g)(6)(B).

(h) Cleaning and Disinfecting. The employer shall provide each respirator user with a respirator that is clean, sanitary, and in good working order. The employer shall assure that respirators are cleaned and disinfected using the procedures recommended by the respirator manufacturer. The employer shall assure that:

(1) Respirators issued for the exclusive use of an employee shall be cleaned and disinfected as often as necessary to be maintained in a sanitary condition.

(2) Respirators maintained for emergency use shall be cleaned and disinfected after each use.

(3) Respirators that are collected and reissued for use of any employee shall be cleaned and disinfected before reissue.

(4) Respirators are stored to protect them from damage, contamination, dust, sunlight, extreme temperatures, excessive moisture, and damaging chemicals. Respirators shall be packed or stored to prevent deformation of the facepiece and exhalation valve.

(i) Emergency Respirators. Emergency respirators shall be:

(1) Kept accessible to the work area.

(2) Stored in compartments or in covers that are clearly marked as containing emergency respirators.

(3) Stored in accordance with any applicable manufacturer instructions.

(4) Stored in such a location as to be safely accessible for use if conditions develop requiring utilization of emergency respiratory protection.

(j) Inspection and Repair. The employer shall ensure that all respirators used in routine situations shall be inspected before each use and during cleaning. All respirators maintained for use in emergency situations shall be inspected at least monthly and in accordance with the manufacturer's recommendations, and shall be checked for proper function before and after each use.

(1) The employer shall ensure that respirator inspections include the following:

(A) A check of respirator function, tightness of connections, and the condition of the various parts including, but not limited to, the facepiece, head straps, valves, connecting tube, and cartridges, canisters or filters; and

(B) A check of elastomeric parts for pliability and signs of deterioration.

(2) The employer shall ensure that self-contained breathing apparatus are inspected monthly and that the regulator and warning devices function properly. For non-emergency use SCBA, air cylinders shall be recharged when the pressure falls to 80 percent of the manufacturer's recommended pressure level by the end of any workday. Emergency use SCBA shall be maintained at 100 percent manufacturer's recommended capacity.

(3) For respirators maintained for emergency use, the employer shall:

(A) Certify the respirator by documenting the date the inspection was performed, the name (or signature) of the person who made the inspection, the findings, required remedial action, and a serial number or other means of identifying the inspected respirator; and

(B) Provide this information on a tag or label that is attached to the storage compartment for the respirator or is kept with the respirator. This information shall be maintained until replaced following a subsequent certification.

(C) Require any escape-only respirator be inspected before being brought into the workplace for use.

(4) The employer shall ensure that respirators that fail an inspection or are otherwise found to be defective are removed from service, and are discarded or repaired or adjusted in accordance with the following procedures:

(A) Repairs or adjustments to respirators are to be made only by persons appropriately trained to perform such operations and shall use only the respirator manufacturer's NIOSH-approved parts designed for the respirator;

(B) Repairs shall be made according to the manufacturer's recommendations and specifications for the type and extent of repairs to be performed; and

(C) Reducing and admission valves, regulators, and alarms shall be adjusted or repaired only by the manufacturer or a technician trained by the manufacturer.

(k) Breathing Air Quality and Use. The employer shall ensure:

(1) Compressed breathing air suppliers meet at least the requirements for Grade D breathing air described by the Compressed Gas Association (CGA) Commodity Specification for Air, G-7.1-1997 and certify such with a Certificate of Analysis (original or copy) from the supplier.

(2) Cylinders shall be tested and maintained as prescribed in the Shipping Container Specification Regulations of the Department of Transportation (49 Code of Federal Regulation part 173 and part 178).

(3) Compressors used to supply breathing air to respirators are constructed and situated so as to conform to Title 8, California Code of Regulations, section 5144.

(l) Identification of Filters, Cartridges, and Canisters. The employer shall ensure that all filters, cartridges and canisters used in the workplace are labeled and color-coded with the NIOSH approval label. The label shall remain legible and not be removed.

(m) Training and Information. In addition to the training requirements specified in section 6724, the employer shall ensure that:

(1) Each employee can demonstrate knowledge of at least the following:

(A) Why the respirator is necessary and how improper fit, usage, or maintenance can compromise the protective effect of the respirator;

(B) What the limitations and capabilities of the respirator are;

(C) How to use the respirator effectively in emergency situations, including situations in which the respirator malfunctions;

(D) How to inspect, put on and remove, use, and check the seals of the respirator;

(E) What the procedures are for maintenance and storage of the respirator;

(F) How to recognize medical signs and symptoms that may limit or prevent the effective use of respirators; and

(G) The general requirements of this section.

(2) Training shall be conducted in a manner that is understandable to the employee.

(3) Training is provided prior to requiring the employee to use a respirator in the workplace.

(4) A new employee has received training within the last 12 months that addresses the elements specified in subsection (m)(1)(A) through (G) is not required to repeat such training provided that, as required by subsection (m)(1), the employee can demonstrate knowledge of those

element(s). Previous training not repeated initially by the employer must be provided no later than 12 months from the date of the previous training.

(5) Retraining shall be administered annually, and when the following situations occur:

(A) Changes in the workplace or the type of respirator render previous training obsolete;

(B) Inadequacies in the employee's knowledge or use of the respirator indicate that the employee has not retained the requisite understanding or skill; or

(C) Any other situation arises in which retraining appears necessary to ensure safe respirator use.

(6) The basic advisory information on respirators specified in (r), is provided in any written or oral format to employees who wear respirators when such use is not required by label, restricted materials permit condition, regulation, or by the employer.

(n) Program Evaluation.

(1) The employer shall conduct evaluations of the workplace as necessary to ensure that the provisions of the current written program are being effectively implemented and that it continues to be effective.

(2) The employer shall regularly consult employees required to use respirators to assess the employees' views on program effectiveness and to identify any problems. Any problems that are identified during this assessment shall be corrected. Factors to be assessed include, but are not limited to:

(A) Respirator fit (including the ability to use the respirator without interfering with effective workplace performance);

(B) Appropriate respirator selection for the pesticides to which the employee is exposed;

(C) Proper respirator use under the workplace conditions the employee encounters; and

(D) Proper respirator maintenance.

(o) End of Service Life. When air-purifying respirators are required for protection against pesticides, the employer shall ensure that air purifying elements (or entire respirator, if disposable type) shall be replaced according to the following hierarchically arranged criteria:

(1) When any End-of-Service-Life-Indicator (ESLI) indicates that the respirator has reached its end of service;

(2) All disposable filtering facepiece respirators shall be discarded at the end of the workday;

(3) According to pesticide/chemical specific label directions/recommendations;

(4) According to pesticide/chemical specific directions from the respirator manufacturer;

(5) Absent any specific directions/recommendations, at the end of the day's work period;

(6) Additionally, at the first indication of odor, taste, or irritation while in use, the wearer leaves the contaminated area, adjusts the mask for fit, and on returning still encounters odor, taste or irritation.

(p) Recordkeeping. The employer shall retain written information regarding medical recommendations, fit testing, and the respirator program.

(1) Medical recommendation. Records required by this section shall be maintained for three years and shall be available for inspection by the employee, the Director, or commissioner.

(2) Fit testing.

(A) The employer shall establish a record of the qualitative and quantitative fit tests administered to an employee including:

1. The name or identification of the employee tested;
2. Type of fit test performed;
3. Specific make, model, style, and size of respirator tested;
4. Date of test; and
5. The pass/fail results for qualitative fit testing or the fit factor and strip chart recording or other recording of the test results for QNFTs.

(B) Fit test records shall be retained for respirator users until the next fit test is administered.

(3) A written copy of the current respirator program shall be retained by the employer.

(4) Written materials required to be retained under this subsection shall be made available upon request to affected employees and to the County Agricultural Commissioner or persons designated by the Director for examination and copying.

(q) Medical Evaluation Questionnaire.

The completion of this form, or a form substantially equivalent and acceptable to the DEPARTMENT OF PESTICIDE REGULATION, by each respirator wearing employee; and the review of the completed form by a physician or licensed health care provider, is mandatory for all employees whose work activities require the wearing of respiratory protection.

To the employee:

Can you read (circle): Yes/No (*This question to be asked orally by employer. If yes, employee may continue with answering form. If no, employer must provide a confidential reader, in the primarily understood language of the employee.*)

Your employer must allow you to answer this questionnaire during normal working hours, or at a time and place that is convenient to you. To maintain your confidentiality, your employer or supervisor must not look at or review your answers, and your employer must tell you how to deliver or send this questionnaire to the health care professional who will review it.

Section 1. (Mandatory, no variance in this format allowed) Every employee who has been selected to use any type of respirator must provide the following information (please print):

1. Today's date: ____ / ____ / ____

2. Your name: _____

3. Your age: _____

4. Sex (circle one): Male/Female

5. Your height: _____ ft. _____ in.

6. Your weight: _____ lbs.

7. Your job title: _____

8. A phone number where you can be reached by the health care professional who reviews this questionnaire (include the Area Code): _____ - _____ - _____

9. The best time to phone you at this number: Morning/Afternoon/Evening/Night

10. Has your employer told you how to contact the health care professional who will review this questionnaire (circle one): Yes/No

11. Check the type of respirator you will use (you can check more than one category):

- a. N, R, or P disposable respirator (filter-mask, non-cartridge type only).
- b. Half-face respirator (particulate or vapor filtering or both)
- c. Full-face respirator (particulate or vapor filtering or both)
- d. Powered air purifying respirator (PAPR)
- e. Self contained breathing apparatus (SCBA)
- f. Supplied air respirator (SAR)
- g. Other

12. Have you worn a respirator (circle one): Yes/No

If "yes," what type(s):

- a. N, R, or P disposable respirator (filter-mask, non-cartridge type only).
- b. Half-face respirator (particulate or vapor filtering or both)
- c. Full-face respirator (particulate or vapor filtering or both)
- d. Powered air purifying respirator (PAPR)
- e. Self contained breathing apparatus (SCBA)
- f. Supplied air respirator (SAR)
- g. Other

Section 2. (Mandatory) Every employee who has been selected to use any type of respirator must answer questions 1 through 8 below (please circle "yes" or "no").

1. Do you currently smoke tobacco, or have you smoked tobacco in the last month: Yes/No

2. Have you ever had any of the following conditions?

- a. Seizures (fits): Yes/No
- b. Allergic reactions that interfere with your breathing: Yes/No
- c. Claustrophobia (fear of closed-in places): Yes/No
- d. Trouble smelling odors: Yes/No/Do not know
- e. Diabetes (sugar disease): Yes/No/Do not know

3. Have you ever had any of the following pulmonary or lung problems?

- a. Asbestosis: Yes/No
- b. Asthma: Yes/No

- c. Chronic bronchitis: Yes/No
- d. Emphysema: Yes/No
- e. Pneumonia: Yes/No
- f. Tuberculosis: Yes/No
- g. Silicosis: Yes/No
- h. Pneumothorax (collapsed lung): Yes/No
- i. Lung cancer: Yes/No
- j. Broken ribs: Yes/No
- k. Any chest injuries or surgeries: Yes/No
- l. Any other lung problem that you've been told about: Yes/No

4. Do you currently have any of the following symptoms of pulmonary or lung illness?

- a. Shortness of breath: Yes/No
- b. Shortness of breath when walking fast on level ground or walking up a slight hill or incline: Yes/No
- c. Shortness of breath when walking with other people at an ordinary pace on level ground: Yes/No
- d. Have to stop for breath when walking at your own pace on level ground: Yes/No
- e. Shortness of breath when washing or dressing yourself: Yes/No
- f. Shortness of breath that interferes with your job: Yes/No
- g. Coughing that produces phlegm (thick sputum): Yes/No
- h. Coughing that wakes you early in the morning: Yes/No
- i. Coughing that occurs mostly when you are lying down: Yes/No
- j. Coughing up blood in the last month: Yes/No
- k. Wheezing: Yes/No
- l. Wheezing that interferes with your job: Yes/No
- m. Chest pain when you breathe deeply: Yes/No
- n. Any other symptoms that you think may be related to lung problems: Yes/No

5. Have you ever had any of the following cardiovascular or heart problems?

- a. Heart attack: Yes/No
- b. Stroke: Yes/No
- c. Angina (pain in chest): Yes/No
- d. Heart failure: Yes/No
- e. Swelling in your legs or feet (not caused by walking): Yes/No
- f. Irregular heart beat (an arrhythmia): Yes/No/Do not know.
- g. High blood pressure: Yes/No/Do not know
- h. Any other heart problem that you've been told about: Yes/No

6. Have you ever had any of the following cardiovascular or heart symptoms?

- a. Frequent pain or tightness in your chest: Yes/No
- b. Pain or tightness in your chest during physical activity: Yes/No
- c. Pain or tightness in your chest that interferes with your job: Yes/No
- d. In the past two years, have you noticed your heart skipping or missing a beat: Yes/No
- e. Heartburn or indigestion that is not related to eating: Yes/No

f. Any other symptoms that you think may be related to heart or circulation problems:
Yes/No

7. Do you currently take medication for any of the following problems?

- a. Breathing or lung problems: Yes/No
- b. Heart trouble: Yes/No
- c. Blood pressure: Yes/No
- d. Seizures (fits): Yes/No

8. If you've used a respirator, have you ever had any of the following problems?

(If you've never used a respirator, check the following space and go to question 9:) _____

- a. Eye irritation: Yes/No
- b. Skin allergies or rashes: Yes/No
- c. Anxiety: Yes/No
- d. General weakness or fatigue: Yes/No
- e. Breathing difficulty: Yes/No
- f. Any other problem that interferes with your use of a respirator: Yes/No

9. Would you like to talk to the health care professional who will review this questionnaire about your answers to this questionnaire: Yes/No

Questions 10-15 must be answered by every employee who has been selected to use either a full-facepiece respirator or a self-contained breathing apparatus (SCBA). For employees who have been selected to use other types of respirators, answering this question is voluntary.

10. Have you ever lost vision in either eye (temporarily or permanently): Yes/No

11. Do you currently have any of the following vision problems?

- a. Wear contact lenses: Yes/No
- b. Wear glasses: Yes/No
- c. Color blind: Yes/No
- d. Any other eye or vision problem: Yes/No

12. Do you currently have any of the following hearing problems?

- a. Difficulty hearing: Yes/No
- b. Wear a hearing aid: Yes/No
- c. Any other hearing or ear problem: Yes/No
- d. Have you ever had an injury to your ears, including a broken ear drum: Yes/No

14. Have you ever had a back injury: Yes/No

15. Do you currently have any of the following musculoskeletal problems?

- a. Weakness in any of your arms, hands, legs, or feet: Yes/No
- b. Back pain: Yes/No

- c. Difficulty fully moving your arms and legs: Yes/No
- d. Pain and stiffness when you lean forward or backward at the waist: Yes/No
- e. Difficulty fully moving your head up or down: Yes/No
- f. Difficulty fully moving your head side to side: Yes/No
- g. Difficulty bending at your knees: Yes/No
- h. Difficulty squatting to the ground: Yes/No
- i. Difficulty climbing a flight of stairs or a ladder carrying more than 25 lbs: Yes/No
- j. Any other muscle or skeletal problem that interferes with using a respirator: Yes/No

At the discretion of the PLHCP, if further information is required to ascertain the employee's health status and suitability for wearing respiratory protection, the PLHCP may include and require the questionnaire found in Title 8, California Code of Regulations, section 5144, Appendix C, Part B, Questions 1-19.

(r) Voluntary Respirator Provision Information. The employer shall ensure that the following information is provided to employees who voluntarily wear a respirator when not required to do so by label, restricted materials permit condition, regulation, or employer.

Information for Employees Using Respirators When Not Required By Label or Restricted Material Permit Conditions or Regulation.

Respirators are an effective method of protection against designated hazards when properly selected and worn. Respirator use, even when exposures are below the exposure limit, may provide an additional level of comfort and perceived protection for workers. However, if a respirator is used improperly or not kept clean, the respirator itself can become a hazard to the worker. Sometimes, workers may wear respirators to avoid exposures to hazards, even if the amount of hazardous substance does not exceed the limits set by OSHA standards or Department of Pesticide Regulation guidelines. If your employer provides respirators for your voluntary use, or if you provide your own respirator, you need to take certain precautions to be sure that the respirator itself does not present a hazard.

You should do the following:

1. Read and follow all instructions provided by the manufacturer on use, maintenance, cleaning and care, and warnings regarding the respirators limitations.
2. Choose respirators certified for use to protect against the contaminant of concern. NIOSH, the National Institute for Occupational Safety and Health of the U.S. Department of Health and Human Services, certifies respirators. A label or statement of certification should appear on the respirator or respirator packaging. It will tell you what the respirator is designed for and how much it will protect you.
3. Do not wear your respirator into atmospheres containing contaminants for which your respirator is not designed to protect against. For example, a respirator designed to filter dust particles will not protect you against gases, vapors, or very small solid particles of fumes or smoke.

DRAFT 11-24-03

4. Keep track of your respirator so that you do not mistakenly use someone else's respirator.
5. Air filtering respirators DO NOT supply oxygen. Do not use in situations where the oxygen levels are questionable or unknown.

DRAFT 11-24-03

(s) Medical Recommendation Form. A physician or other licensed health care professional's report of evaluation and approval for respirator use must be on file before work requiring respirator use is allowed. The following or substantially similar statement from a physician is acceptable:

On _____, I evaluated _____.
Date Patient's name

At this time there (are)/(are not) medical contraindications to the employee named above wearing a respirator while working in potential pesticide exposure environments. The patient (does)/(does not) require further medical evaluation at this time. Any restrictions to wearing a respirator or to the type of respiratory protection are given below.

I have provided the above named patient with a copy of this form.

Physician

Date

INITIAL STATEMENT OF REASONS AND PUBLIC REPORT
DEPARTMENT OF PESTICIDE REGULATION

Title 3. California Code of Regulations
Amend Sections 6720 and 6738, 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 6720 and 6738, 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 Agriculture 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 former OSHA 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.

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 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 (MSHA) 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.

Within the last few years, both the U.S. Department of Labor's (DOL) Occupational Safety and Health Administration, and subsequently the California Department of Industrial Relation's (DIR) 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 current respiratory protection regulations contained in section 6738(h) are ambiguous and are in need of amendment to improve clarity.

The Cal/OSHA 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 (CFR), 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. DPR has historically crafted regulations that address pesticide use conditions and is very succinct in writing these regulations. The additional language not pertinent to pesticides is unnecessary.

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 worksite. 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 non-applicable to pesticide handling (e.g., firefighting, high altitude oxygen adjustments) have been actually deleted.

The proposed action would amend section 6720(c) (Safety of Employed Persons). When antimicrobial agents, used only as sanitizers, disinfectants, or 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 3 CCR section 6738 from this list of 3 CCR sections and the corresponding reference to 8 CCR sections 3380 through 3385, and 5144. Subsection (d) would also be amended to include a reference to proposed new section 6739.

The proposed action would also delete subsection (h) from section 6738 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.

DPR's proposed new 3 CCR 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 would probably be 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 respirator "program administrator" to administer the respiratory protection program and conduct the required evaluations of program effectiveness. Proposed section 6739(a) also includes the provisions required of a written respiratory protection program.

Proposed section 6739(b) addresses the voluntary use of respirators. If employees request to wear and provide their own respirators, or make a request and the employer provides a respirator, but there is no regulatory reason to wear respiratory protection, 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 implement the provision of a written respiratory protection program (except when filtering facepieces are used).

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-certified structures as an IDLH atmosphere unless proven not to be by appropriate measuring devices. This action proposes to include specific respirator requirements for employee use in IDLH settings. 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 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 (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. This requirement is the most significant amendment; however, 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.

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.

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).

Proposed section 6739(k) expands 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.

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.

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 train employees 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 on the requirements for program evaluation and provides for use 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 canister. The length-of-service of these elements is always a concern. Proposed section 6739(o) would require an employer to use only chemical cartridges with end-of-service life indicators or to establish a change schedule to ensure these air-purification elements are changed before they are no longer effective.

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 OEHHA in developing regulations relating to pesticides and worker safety. Also in carrying out these provisions, the University of California (UC) 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 (CDFA) of the development of regulations and request comments relating to pesticides and worker safety prior to the issuance of a notice of proposed rulemaking.

In order to formalize this process, and to create a forum for other public agencies to communicate with DPR, and provide feedback to it, DPR created a Worker Safety Regulation Work Group. The group is comprised of representatives from DPR, OEHHA, DIR, UC Davis, CDFA, and the County Agricultural Commissioners and Sealers Association. The work group held its first meeting on March 18, 2002 and a second meeting on October 16, 2002. The proposed regulations were discussed at these two meetings. After the first meeting, DPR received written comments from the representatives of the member agencies attending the meeting. DPR responded in writing to these comments and revised the proposed text accordingly.

Documentation relating to the work group and copies of correspondence with these agencies are contained in the rulemaking file. Included is detailed discussion of the points of comparison between the existing DIR regulations and DPR's drafts of proposed regulations.

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 CFR 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.