

INITIAL STATEMENT OF REASONS AND PUBLIC REPORT  
DEPARTMENT OF PESTICIDE REGULATION

Title 3. California Code of Regulations  
Amend Sections 6000 and 6739  
Pertaining to Respiratory Protective Equipment – Filtering Facepiece Definition

This is the Initial Statement of Reasons (ISR) 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 and 6739(b)(3). The pesticide regulatory program activities affected by the proposal are those pertaining to pesticide worker safety. In summary, the proposed action will update and clarify the definition of a filtering facepiece respirator.

SPECIFIC PURPOSE AND FACTUAL BASIS

DPR's mission is to protect public health and the environment from the 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 respiratory protection.

DPR has a full respiratory protection program equivalent to the U.S. Department of Labor's Occupational Safety and Health Administration and the California Department of Industrial Relation's Division of Occupational Safety and Health. However, DPR's respiratory protection program requirements in 3 CCR section 6739 are specifically designed to cover respiratory protection worn by employees working with pesticide materials. Also, there are definitions in 3 CCR section 6000 to clarify terms used in section 6739.

The National Institute of Occupational Safety and Health (NIOSH) specifies minimum approval requirements for respiratory devices in Title 42 Code of Federal Regulation (CFR) Part 84. Particulate filter respirators are classified under the Testing and Certification (TC)-84A protocol. Under previous respiratory protection federal standard Title 30 CFR Part 11, particulate-filtering facepiece respirators were generally classified as dust, dust/mist, dust/mist/fume, and high efficiency particulate air (HEPA) filters. Now superseded by Title 42 CFR Part 84, except for powered air-purifying respirators, these classifications are no longer used for filtering facepiece masks. Particulate filter respirators are classified under the TC-84A protocols which define three levels of filter efficiency (95, 99, and 99.97 percent) with three categories of resistance to filter efficiency degradation (N [Not resistant to oil], R [Resistant to oil], and P [oil Proof]).

The current definition for "filtering facepiece (dust mask)" in section 6000 means a negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium. The term "dust mask" is vague, obsolete, and not fully descriptive of the respiratory protective device referred to. The definition is not specific enough to differentiate between a NIOSH- approved filtering facepiece respirator and a dust mask used for nuisance dust.

The term "dust mask" does not adequately describe the filtering capability of the respirator under the TC-84A protocols. Additionally, non-NIOSH-approved masks, often described as "dust masks" (though technically "non-toxic dust masks") may be confused with NIOSH-approved filtering facepiece masks. An internet search of the phrase "dust mask" brings up a collection of both NIOSH-approved and unapproved items. NIOSH does not use the phrase "dust mask" and specifically defines a filtering facepiece as "A type of N, R, or P series disposable particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium. The unit may or may not have an exhalation valve. The unit has no replaceable parts."

The regulatory requirement found in 3 CCR section 6739(c) requires the employer to provide a respirator approved by NIOSH. However, the filtering facepiece definition in 3 CCR section 6000 referencing a "dust mask" conflicts with this requirement and causes confusion about whether one must comply with the definition or the actual protective measures in subsection (c).

DPR proposes to specify in the definition that a filtering facepiece is one that is NIOSH-approved, and to remove the term "dust mask" in the section 6000 definition to reduce ambiguity of the type of filtering facepiece that is allowed.

DPR also proposes to delete the obsolete reference to "dust mask" in 3 CCR section 6739(b)(3).

#### COLLABORATION WITH THE OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT (OEHHA) PURSUANT TO FAC SECTIONS 12980 AND 12981

DPR and OEHHA jointly and mutually developed the proposed regulation as specified in FAC sections 12980 and 12981, utilizing OEHHA's health-based recommendations as a factor in setting DPR's regulatory target level related to pesticides and worker safety. DPR and OEHHA have set forth the rulemaking process used to meet these statutory requirements in a Memorandum of Agreement dated August 13, 2008.

#### CONSULTATION WITH OTHER AGENCIES

DPR consulted with the California Department of Food and Agriculture during the development of the text of proposed regulations, as specified in FAC section 11454, and the February 6, 1992, Memorandum of Agreement that was developed per FAC section 11454.2.

DPR has consulted with the Department of Industrial Relations and the University of California pursuant to FAC section 12981.

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 have no cost impact on private persons or businesses.

ECONOMIC IMPACT ON BUSINESSES [GOVERNMENT CODE SECTION 1346.2(b)(5)(A)]

The proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. There are no costs involved with this clarification of the regulatory wording. The regulatory requirement found in 3 CCR section 6739(c) requires the employer to provide a respirator approved by NIOSH. However, the definition is conflicting and causes confusion about whether one must comply with the definition or the actual protective measures in 6739(c).

ECONOMIC IMPACT ASSESSMENT PURSUANT TO SECTION 11346.3(b)

Creation or Elimination of Jobs within the State of California: The proposed action would not create or eliminate jobs in California because the proposed regulations are clarifying and designed to reduce the ambiguity of current respiratory protection requirements.

Creation of New Business or the Elimination of Existing Businesses within the State of California: This proposal is not likely to result in the creation of new businesses or the elimination of existing businesses within the State of California since the proposed regulations are clarifying and designed to reduce the ambiguity of current respiratory protection requirements. There are no potential increased costs for compliance by pesticide users and the regulatory amendment should not significantly affect business operations or have a significant adverse economic impact on the sector.

The Expansion of Businesses Currently Doing Business within the State of California: This proposal is not likely to result in an expansion of businesses currently doing business with the State of California since the proposed regulations are clarifying and designed to reduce the ambiguity of current respiratory protection requirements.

The Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment: The 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 personal protective equipment and other protective devices. The regulations clarify and reduce the ambiguity of current respiratory protection requirements, ensuring that pesticide users correctly comply with respiratory protection requirements that benefit worker safety.

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

The proposed action would clarify the current respiratory protection requirements that employers must follow when employees are required, by pesticide label, regulation, or restricted materials permit, to use respiratory protection. 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 conflict with federal regulations found in Title 40 CFR Part 170.507. This section of the CFR contains the PPE requirements for agricultural pesticide handlers. This section includes by citation Title 29 CFR Part 1910.134, the Department of Labor regulations on respiratory protection. Though there is some overlap in the regulatory requirements, California and DPR maintain a separate regulatory structure from the Federal standards. As such, what little duplication may occur with the Federal regulations is unavoidable, but necessary to allow California to have a fully operational and independent program of worker safety when using pesticides.

#### DOCUMENTS RELIED UPON

None.