

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION
Respiratory Protective Equipment – Filtering Facepiece Definition
DPR Regulation No. 17-002

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to amend Title 3, California Code of Regulations (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.

SUBMITTAL OF COMMENTS

Any interested person may present comments in writing about the proposed action to the agency contact person named below. Written comments must be received no later than 5:00 p.m. on November 27, 2017. Comments regarding this proposed action may also be transmitted via e-mail to <dpr17002@cdpr.ca.gov> or by facsimile at 916-324-1491.

A public hearing is not scheduled. However, one will be scheduled if any interested person submits a written request to DPR no later than 15 days prior to the close of the written comment period.¹

EFFECT ON SMALL BUSINESS

DPR has determined that the proposed regulatory action does affect small businesses.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

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 filtering facepiece respirators are classified under the Testing and Certification (TC)-84A protocol.

¹ If you have special accommodation or language needs, please include this in your request for a public hearing. TTY/TDD speech-to-speech users may dial 7-1-1 for the California Relay Service.

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."

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 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).

Adoption of these regulations will provide a benefit to worker safety. 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 ambiguity of current respiratory protection requirements, ensuring that pesticide users correctly comply with respiratory protection requirements that benefit worker safety.

During the process of developing these proposed regulations, DPR conducted a search of any similar regulations on this topic and has concluded that these proposed regulations are neither inconsistent nor incompatible with existing state regulations. Although DPR and the California Department of Industrial Relations, Division of Occupational Safety and Health, have regulatory mandates to protect workers from health and safety hazards in workplaces, DPR enforces pesticide laws in workplaces where pesticides are used.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR determined that the proposed regulatory action does not impose a mandate on local agencies or school districts. DPR also determined that there are no costs to any local agency or school district requiring reimbursement pursuant to Government Code section 17500 et seq. There are no other nondiscretionary costs or savings imposed upon local agencies that are expected to result from the proposed regulation action.

COSTS OR SAVINGS TO STATE AGENCIES

DPR determined that no savings or increased costs to any state agency will result from the proposed regulatory action.

EFFECT ON FEDERAL FUNDING TO THE STATE

DPR determined that no costs or savings in federal funding to the state will result from the proposed action.

EFFECT ON HOUSING COSTS

DPR made an initial determination that the proposed action will have no effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

DPR made an initial determination that adoption of this regulation 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.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

DPR is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Impact on the Creation, Elimination, or Expansion of Job/Businesses: DPR determined it is not likely the proposed regulatory action will impact the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business with the State of California because the proposed regulation is clarifying and reducing ambiguity with existing respiratory requirements.

The proposed regulations will benefit worker safety by reducing the risk of pesticide poisonings and injuries among pesticide handlers and other agricultural workers exposed to pesticides. Ensuring that pesticide users comply with the newly adopted regulations will benefit worker safety. Implementation of the proposed regulations will not adversely affect the health and welfare of California residents or the environment.

CONSIDERATION OF ALTERNATIVES

DPR must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of the law.

AUTHORITY

This regulatory action is taken pursuant to the authority vested by FAC sections 11456 and 12981.

REFERENCE

This regulatory action is to implement, interpret, or make specific FAC sections 12980 and 12981.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

DPR prepared an Initial Statement of Reasons and is making available the express terms of the proposed action, all of the information upon which the proposal is based, and a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulation may be obtained from the agency contact person named in this notice. The information upon which DPR relied in preparing this proposal and the rulemaking file are available for review at the address specified below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the comment period, DPR may make the regulation permanent if it remains substantially the same as described in the Informative Digest. If DPR does make substantial changes to the regulation, the modified text will be made available for at least 15 days prior to adoption. Requests for the modified text should be addressed to the agency contact person named in this notice. DPR will accept written comments on any changes for 15 days after the modified text is made available.

AGENCY CONTACT

Written comments about the proposed regulatory action; requests for a copy of the Initial Statement of Reasons, and the proposed text of the regulation; and inquiries regarding the rulemaking file may be directed to:

Linda Irokawa-Otani, Regulations Coordinator
Department of Pesticide Regulation
1001 I Street, P.O. Box 4015
Sacramento, California 95812-4015
916-445-3991

Note: In the event the contact person is unavailable, questions on the substance of the proposed regulatory action may be directed to the following back-up person at the same address as noted below:

Harvard Fong, Senior Industrial Hygienist
Worker Health and Safety Branch
916-445-4211

This Notice of Proposed Action, the Initial Statement of Reasons, and the proposed text of the regulation are also available on DPR's Internet Home Page <<http://www.cdpr.ca.gov>>. Upon request, the documents can be made available in another language, or an alternate form as a disability-related accommodation.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons mandated by Government Code section 11346.9(a) may be obtained from the contact person named above. In addition, the Final Statement of Reasons will be posted on DPR's Internet Home Page and accessed at <<http://www.cdpr.ca.gov>>.

DEPARTMENT OF PESTICIDE REGULATION

Director