

Respiratory Protection Requirements (California Code of Regulations Section 6739)

April 2008

Section 6739 went into effect on July 1, 2007. Enforcement of the section was delayed until January 1, 2008. There are several documents on DPR's website to support employer compliance with this regulation. A template for creating worksite specific respiratory protection programs is at <http://www.cdpr.ca.gov/docs/whs/pdf/hs1513.pdf> Included in this document is a summary chart of the required elements of a respiratory protection program.

Following are some questions that have been asked about Section 6739 and clarifying answers.

General Questions

1. Q: *What are the main changes in the respirator requirements?*

A: Most of the changes are explicit implementation of best practices industrial hygiene concerning respirators, such as:

- Respirator fit testing
- Specifying cartridge changes
- Medical evaluation, including specifying the employee questionnaire
- Respirator cleaning, maintenance and storage procedures
- Voluntary respirator provision (VRP), including exemptions

2. Q: *When does Section 6739 (Respiratory Protection) require use of a respirator?*

A: A respirator must be worn when required by one of the following:

- Pesticide label
- Restricted materials permit condition
- Regulation
- Employer policy

When a respirator is required, it must be NIOSH-approved.

3. Q: *Are non-employees (business owners, domestic users) who perform their own pest control required to comply with the provisions of 3CCR Section 6739?*

A: No. 3CCR Section 6739 applies only to employees. Everyone must still comply with requirements of the label.

4. Q: *What types of respirators are regulated by Section 6739?*

A: The following National Institute of Occupational Safety and Health (NIOSH) certified respirators:

- Filtering facepiece (FFP) respirators are one-piece, disposable respirators where the filter is an integral part of the facepiece or is the entire facepiece, certified for particulate protection, also referred to as dust masks. They must be labeled with their approval rating, such as N95, N99, or R95. FFP respirators are considered “tight-fitting” because their effectiveness depends on their fit to the skin on the face.
- Elastomeric facepiece respirators are “tight-fitting,” but have replaceable filter cartridges. They are available as half-face (cover the nose and mouth) and full-face (also cover the eyes).
- Self-contained breathing apparatus (SCBA) are also “tight-fitting,” but use compressed air and regulator to supply breathing air to the user instead of filtered ambient air.
- Supplied-air respirators (SAR) are similar to SCBA, but use a continuous flow of pressurized air from a nearby compressor or other non-portable source.
- Powered air purifying respirators (PAPR) use fans to force air into the breathing zone of the worker. These may be tight-fitting and use an elastomeric mask, or they may be loose-fitting and use a hood that covers the head and so does not depend on a face-to-facepiece seal. A sufficient flow of filtered air into the mask prevents contaminated materials from entering the breathing zone.

5. Q: *What types of respirators are not regulated by Section 6739?*

A: Section 6739 does not regulate or promote use of nuisance-type dust masks, which are not NIOSH-approved. The only way to distinguish a nuisance-type dust mask from a filtering facepiece respirator is to look for the NIOSH approval. Employees may wear a nuisance-type dust mask as an article of clothing, provided it does not create a hazard. For regulatory purposes, it should be treated as an article of non-work clothing. See Voluntary Respirator Provision section below.

6. Q: *Does Section 6739 specify certain filter cartridges?*

A: No. The employer must select the respirator and cartridge based on the label requirements and the hazard present. Use the NIOSH approval information on the respirator to assure proper selection.

7. Q: *If only one employee handler has to wear the required respiratory protection, can that person also be the Respiratory Program Administrator (RPA)?*

A: Yes, but only if the employee qualifies as the RPA per the definition in 3CCR Section 6000.

Voluntary Respirator Provision (VRP)

8. Q: *When does the VRP apply?*

A: The VRP applies when the employee uses a respirator voluntarily. That is, when a respirator is not required by the product label, permit conditions, regulations, or the employer's policy. The VRP does not apply to nuisance-type dust masks, since they are not recognized as respirators. *Reference Section 6739(b)*

9. Q: *What is an employer policy as regards the VRP?*

A: Any training or instruction from the employer that compels the employee to wear a respirator.

10. Q: *If an employee uses a respirator to follow a precautionary label statement of "Do not breathe spray mist/vapor/dust," does that use fall under the VRP?*

A: It is the employer's responsibility to create a safe workplace. If the employer requires the employee to wear a respirator, the VRP does not apply. If the employer does not require a respirator, but the employee chooses to wear one anyway, then the VRP would apply.

11. Q: *What are the requirements under the VRP?*

A: It depends on who provides the respirator and what type of respirator is supplied.

- If the respirator is elastomeric and provided by the employer, VRP requires:
 - A written program to address cleaning, storing and maintaining the respirator and sufficient training to ensure compliance. *Reference Section 6739(b)(3)*
 - A medical evaluation of the employee. *Reference: Sections 6739(b)(3), (d) and (s)*
- If the respirator is a filtering facepiece (disposable) or if employee provides the respirator, neither the written program nor the medical evaluation is required.

Keep in mind that the posting requirements of Section 6739(r) are required when the employer allows voluntary use of respirators. Section 6739(b)(2)

12 Q: *Do the cartridge replacement requirements of Section 6739(o) apply to the VRP?*

A: No.

13 Q: *Must an employer allow employees to use respirators under the VRP?*

A: No.

14. Q: *If a mandatory respiratory program is implemented in the workplace and other respirators are used voluntarily (under VRP), how does the inspector distinguish between them?*

A: It would be the responsibility of the employer to keep the non-voluntary respirators identifiably separated from the voluntary respirators.

Medical evaluation

15. Q: *How often is a medical evaluation required for respirator use?*

A: A medical evaluation is only required once, before the employee does the fit test. However, changes in working conditions such as physical work effort or medical condition may trigger a requirement for an additional medical evaluation.

Reference: 3CCR Section 6739 (d)(6)

16. Q: *Is medical evaluation required under the VRP?*

A1: No, when the respirator (any type) is supplied by the employee.

A2: No, when the voluntary-use respirator is a filtering facepiece supplied by the employer.

A3: Yes, when the voluntary-use respirator is any respirator other than a filtering facepiece.

Reference: 3CCR Section 6739 (b)(3)

17. Q: *If an employee had previously completed a medical evaluation, been approved for respirator use, and changes employers, is the employee required to undergo medical evaluation again, provided that the medical condition and respirator use requirements have not changed?*

A: No. The employer must have a copy of the Medical Recommendation Form (MRF) to prove that the employee has been medically evaluated for respiratory protection use. If the employee presents his or her copy (provided by the physician) to the new employer, the new employer may make a copy of the MRF and use it to fulfill the requirements of Section 6739 (d).

If the employer has reason to believe that the employee needs to be reevaluated, as per Section 6739 (d)(6), the employee must be reevaluated, regardless of the existing MRF.

References: 3CCR Section 6739 (d)(4)(B) & Section 6739 (d)(5)(A) & Section 6739(s)

18. Q: *Can medical evaluation be out-sourced to a safety supply company? Can the company use an online version of the questionnaire?*

A: Yes and yes, provided all the other requirements of Section 6739(d) are met.

19. Q: *As required under 3CCR 6739(d)(1)(A), how does an employer "identify a physician or other licensed health care professional (PLHCP)" when using the services of a safety supply company to administer the medical questionnaire online?*

A: If the employer elects to contract with an online service to conduct the medical evaluation, the employer must identify, and have on record, the responsible PLHCP as part of the written respirator protection program.

20. Q: *Can a person who is a direct agent of the company (foreman, supervisor, employer, etc.) be present during an employee's actual completion of the medical questionnaire?*

A: No, the questionnaire must be completed confidentially. However, employers may make a "how to" presentation to their employees, to explain what the questionnaire is about and what the questions mean. In addition, the person administering the test may offer to read or explain any section of the questionnaire to the employee.

21. Q: *When is a Confidential Reader used?*

A: The confidential reader is a person chosen by an employee to read to them the Medical Evaluation Questionnaire in a language primarily understood by the employee. An agent of the company cannot be the confidential reader.

22. Q: *Is there any instance where an employee of the same company can be a confidential reader for another employee?*

A: Yes, an employee can ask a co-worker to be a confidential reader. This co-worker must not be a manager, supervisor or foreman, and cannot be directed by management to be the confidential reader. *Reference: 3CCR Section 6000*

Fit testing

23. Q: *Is a fit test required when an employee uses a filtering facepiece respirator voluntarily?*

A: No. Reference: Section 6739(b)(3)

24. Q: *Is a fit test required when an employee uses any other respirator voluntarily?*

A: No. Reference: Section 6739(b)(3)

25. Q: *Would fit tests done prior to 1/1/08 be in compliance with the new regulations?*

A: Yes, provided they were fit tested in compliance with Cal/OSHA 5144 Appendix A or they were fit tested under a similar protocol. The regulation does not specifically require a re-fit test just because the new regulation is in place.

Remember that a re-fit test is triggered not only by the calendar date but also by the conditions listed in 3CCR Section 6739(e).

26. Q: *Do employees have to be fit-tested for emergency use respirators?*

A: No. If the respirator (including SCBA) were one that is deployed for general emergency or escape use and is to be used by whomever is close to it, then fit testing of the employees in the facility would not be required.

However, in the case of fumigations requiring a designated second worker or “watchperson” to be onsite during the application, he or she must be trained and fit-tested.

Emergency use respirator

27. Q: *Structural fumigations require the use of SCBA for routine and for emergency rescue use. Does the emergency use respirator have to be located off of the application truck that has the fumigation gas cylinder?*

A: No. If it is not feasible, because of security or environmental conditions, to move an emergency use SCBA (or other emergency respiratory or rescue equipment) off of the vehicle that also holds the fumigant gas, the SCBA may be located either in the passenger cab of the truck or in a storage box on the truck that is farthest away from the fumigant gas tank. This applies only during the fumigant introduction phase and aeration phase of the application. *Reference: Section 6739(i)(4)*

The SCBA is not to be transported in the cab. In both cases (truck cab or storage box) the access doors must be unlocked during the time that the SCBA is located there for emergency access.

28. Q: *Does the air cylinder in the SCBA used in structural fumigations for routine use have to be at 80% of capacity at the start of the workday?*

A: Yes. If the only SCBAs at the site are the routine use and emergency rescue units, the cylinder on the routine-use unit must be at 80% of capacity at the start of the day. Note that some cylinder gauges are read by the traditional pie chart, while others are by poundage. The intent is that at least 1500 p.s.i. of air is in the regular use cylinder. The emergency SCBA unit must be at 100% capacity per section 6739 (j)(1)(B)(4).

If the employees will not be doing any fumigant-handling activity, such as introducing a fumigant, conducting TRAP operations, or clearing the structure, that could result in acute exposure, the requirement to have a cylinder at 80% capacity at the start of the day is not applicable. For example, if non-complying (less than 80%) air cylinders are stored on the tarp truck, and the crew is only doing the initial tarp placement, these cylinders need not be at 80% of capacity. *Reference: 3CCR section 6739(j)(1)(A)(4)*

Filter cartridge replacement

29. Q: *If the filtering element of an elastomeric air purifying respirator consists of a particulate filter and an organic cartridge, but the only hazard is from particulates, do both of these elements have to be replaced when required by label or regulation?*

A: Yes. Both the particulate filter and the organic cartridge must be replaced at the same time since the organic vapor cartridge is part of the respirator cartridge assembly, and can still absorb organic vapors from the air. The hierarchy of subsection (o) is very specific and must be followed by respirator users. *Reference: 3CCR Section 6739(o)*

30. Q: *Do respirator filter cartridges (or filtering facepiece respirators) have to be disposed of at the end of each day of use?*

A: It depends on whether the respirator is required or is to be used under the VRP:

- If the respirator is being used under VRP, there are no requirements for cartridge change or disposal of filtering facepiece respirators.
- If the respirator is required (by label, regulation, permit conditions or employer policy) the filter must be changed according to the end of service life conditions in Section 6739(o).

RESPIRATORY PROTECTION

Summary of required elements of a respiratory protection program when using pesticides

1. Is a respirator required by label, permit conditions, regulation or employer policy?	Yes	No		
2. Who provides respirator?	Employer	Employer		Employee
3. What type of respirator is it?	All	Filtering Facepiece	All others ¹	All
Requirement				
Respirator Program Administrator 3CCR Section 6000, 6739(a)(2)(I)	Required	NR	NR	NR
Written Respiratory Protection Program 3CCR Section 6739(a)	Required	NR	Required ²	NR
Respirator Selection and Fit Testing 3CCR Section 6739 (c) & (e)	Required	NR	NR	NR
Medical Evaluation 3CCR Section 6739(d)	Required	NR	Required	NR
Facepiece Seal Protection 3CCR Section 6739(f)	Required	NR	NR	NR
Cleaning, Inspection, Repair, and Storage 3CCR Section 6739(h), (i) & (j)	Required	NR	Required	NR
Employee Training & Program Evaluation 3CCR Section 6739(m) & (n)	Required	NR	NR ³	NR
End of Service Life Replacement 3CCR Section 6739(o)	Required	NR	NR	NR
Record Keeping 3CCR Section 6739(p)	Required	NR	Required ²	NR
Medical Evaluation Questionnaire 3CCR Section 6739(q)	Required	NR	Required	NR
VRP posting 3CCR Section 6739(r)	NR	Required	Required	Required
Medical Recommendation Form 3CCR Section 6739(s)	Required	NR	Required	NR

NR - Not Required

¹ Includes half-face and full-face elastomeric, supplied-air, SCBA, and powered air-purifying respirators

² Only medical evaluation and respirator cleaning, storage and maintenance elements are required

³ However, training in medical evaluation and respirator cleaning, storage, and maintenance elements is required