

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION
Pertaining to Pest Control Adviser Licenses for Public Agency Employees
DPR Regulation No. 05-003

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to adopt section 6551 of Title 3, California Code of Regulations (3 CCR). The proposed regulatory action pertains to pest control adviser (PCA) licensing requirements for persons employed by any federal, state, county or local public agency, except those specifically exempted in Food and Agricultural Code (FAC) section 12001, who write recommendations for any agricultural use.

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 July 11, 2005. Comments regarding this proposed action may also be transmitted via e-mail <dpr05003@cdpr.ca.gov> or by facsimile transmission at (916) 324-1452.

A public hearing is not scheduled; however, a public hearing 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 will not result in any new impacts on small businesses. The proposed regulation only clarifies existing statute pertaining to those individuals working for public agencies as pest control advisers making agricultural use recommendations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

DPR protects human health and the environment by regulating pesticide sales and use and by fostering reduced-risk pest management. DPR's strict oversight begins with product evaluation and registration and continues through statewide licensing of commercial applicators, dealers, and consultants, environmental monitoring, and residue testing of fresh produce. This statutory scheme is set forth primarily in FAC Divisions 6 and 7.

DPR's Licensing and Certification Program administers and certifies examinations and licenses restricted material pesticide applicators, pest control aircraft pilots, pest control businesses, pesticide dealers, and agricultural PCAs.

Currently, FAC section 12001 states, "No person shall act, or offer to act, as an agricultural pest control adviser without first having secured an agricultural pest control adviser license from the

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.

director. Officials of federal, state, and county departments of agriculture and the University of California personnel engaged in official duties relating to agricultural use are exempt from this section if any recommendation by any of these persons as to a specific application on a specific parcel is made in writing. Officials of districts formed pursuant to Chapter 4 (commencing with section 5780) of Division 5 of the Public Resources Code are exempt from this section until July 1, 1995, if any recommendation by any of these persons as to a specific application on a specific parcel is in writing."

FAC section 11410 was enacted (Chapter 1276, Statutes of 1971) to define an agricultural PCA to mean any person who as a requirement of, or incidental to, his employment or occupation, offers a recommendation to a producer of an agricultural product or to any public or private agency concerning any agricultural use or who holds himself forth as an authority or general adviser on any agricultural use to a producer of an agricultural product. It also exempted all federal, state, and county officials and University of California personnel who participated in agricultural practices involving the use of pesticides. Currently, section 11410 defines an agricultural PCA as any person who offers a recommendation on any agricultural use, who holds himself or herself forth as an authority on any agricultural use, or who solicits services or sales for any agricultural use. From the legislative history (Assembly Journal for Senate Bill 1021), it is apparent that from its inception this law was not intended to apply to employees of a firm discussing pest control pertaining to agricultural use of pesticides on that firm's property; however, the express exemption of specified government employees in both FAC sections 11410 and 12001 reflect the intent of these statutes to include government employees who make agricultural pest control decisions within the scope of the licensing requirements.

Over the years, both sections of the FAC have been amended on several occasions to clarify who requires a PCA license, who is exempt from the requirements, and to provide time frames by which certain individuals have to comply with the licensing requirements. The statutory changes and differing administrative interpretations of those changes resulting from the unclear construction and wording of the statutes have led to confusion and ambiguity regarding PCA licensing requirements for government employees even though the original intent to license these employees has remained unchanged. Clarification of the law must be made through regulation to remove any confusion and ambiguity.

DPR proposes to adopt section 6551 to clarify the original intent of section 12001 and to implement the express statutory purpose of FAC relating to pesticides by explicitly requiring any person who is employed by any federal, state, county or local public agency, except those specifically exempted in FAC section 12001, who make recommendations for any agricultural use, to be licensed by the Director.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR has determined that the proposed regulatory action does impose a mandate on local agencies or school districts. It does not require reimbursement by the state pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code because the regulatory action clarifies an existing requirement that local governmental agencies have a licensed PCA on staff to make agricultural use pest control recommendations on public lands. It does not

constitute a “new program or higher level of service of an existing program” within the meaning of section 6 of Article XIII of the California Constitution. DPR has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action.

COSTS OR SAVINGS TO STATE AGENCIES

DPR has determined that no savings or increased costs to any state agency will result from the proposed regulatory action since the proposed adoption clarifies existing statutory requirements.

EFFECT ON FEDERAL FUNDING TO THE STATE

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

EFFECT ON HOUSING COSTS

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

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

DPR has 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 has made an initial determination that adoption of this regulation will not have a significant cost impact on representative private persons or businesses since the regulatory action only addresses PCA licensing requirements for federal, state, and local governmental agencies. The agency is not aware of any cost impacts that a representative person or business would necessarily incur in reasonable compliance with the proposed action.

IMPACT ON THE CREATION, ELIMINATION, OR EXPANSION OF JOBS

DPR has determined it is unlikely 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.

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 or would be as effective and less burdensome to affected private persons or businesses than the proposed regulatory action.

AUTHORITY

This regulatory action is taken pursuant to the authority vested by FAC sections 11456 and 12005.

REFERENCE

This regulatory action is to implement, interpret, or make specific FAC sections 11501 and 12001.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

DPR has prepared an Initial Statement of Reasons and has 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 not make 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, the proposed text of the regulation, and a public hearing; 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

Questions on the substance of the proposed regulatory action, particularly technical or historical questions concerning this proposal, may be directed to the following person at the same address as noted above:

Ada Ann Scott, Manager
Pest Management and Licensing Branch
Department of Pesticide Regulation
(916) 445-4118

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>>.

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

Date