

INITIAL STATEMENT OF REASONS AND PUBLIC REPORT
DEPARTMENT OF PESTICIDE REGULATION

Title 3. California Code of Regulations
Adopt Section 6551
Pertaining to Pest Control Adviser Licenses for Public Agency Employees

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 (CCR). Section 6110 meets the requirement 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 adopt section 6551 of 3 CCR. The pesticide regulatory program activities that will be impacted by the proposal are licensing and certification. In summary, the proposed action requires any person who is employed by any federal, state, county or local public agency, except those specifically exempted in Food and Agricultural Code (FAC) section 12001, who writes recommendations for any agricultural use, to be licensed by the Director.

SPECIFIC PURPOSE AND FACTUAL BASIS

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 pest control advisers (PCA).

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 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.

The issue of PCA licensing requirements for employees of public governmental agencies has been raised by the county agricultural commissioners (CACs) over the years and has been discussed at the Agricultural Pest Control Advisory Committee (APCAC) meetings. The APCAC advises the Director in all matters concerning the licensing, certification, and regulation of persons and firms providing pest control advice and services in California. It has been recommended that 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. Government organizations responsible for administering public property where the public, and more importantly children, congregate should be held to a high standard of pest control expertise. Those organizations should be required to use licensed

PCAs in making pest control decisions on public property. This implements the purpose of the pesticide statutes to "provide for the safe, proper, and efficient use of pesticides... for the protection of the public health and safety" and "to permit agricultural pest control by competent and responsible licensees..." (FAC section 11501).

This regulation directly supports environmental concerns and the need to protect our citizens, especially children, who have full and free access to public property including city, county, state, and federal parks, forests, campgrounds, rights of ways, etc. This will ensure that those individuals making pest control decisions on public lands do so with full knowledge of state and federal laws and regulations, and utilize best pest management practices in the control of pests.

CONSULTATION WITH OTHER AGENCIES

DPR, the CACs, California Agricultural Production Consultants Association representatives, and the APCAC have reviewed and are in agreement that this new section 6551 most clearly and concisely interprets the current FAC section 12001.

Copies of the correspondence with these entities are contained in the rulemaking file, as are copies of the APCAC meeting minutes where this issue was addressed.

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.

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

The proposed action would adopt a new section 6551 to clarify that employees of any federal, state, county, or local public agency who provide to that federal, state, county, or local public agency recommendations on any agricultural use in California must possess a valid agricultural PCA license issued by the Director, unless specifically exempted under FAC section 12001.

DPR's review of the proposed action showed that no significant adverse environment effect to California's air, soil, water, plants, fish, or wildlife 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 the Code of Federal Regulations.

DOCUMENTS RELIED UPON

1. APCAC meeting minutes dated July 14, 2004.