

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION
Continuing Education for Private Applicators
DPR Regulation No. 05-006

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to adopt article 7, sections 6580, 6582, and 6584, in chapter 3, subchapter 1 of Title 3, California Code of Regulations (3 CCR). The proposed regulatory action pertains to private applicator certification requirements.

SUBMITTAL OF COMMENTS

Any interested party 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 January 23, 2006. Comments regarding this proposed action may also be transmitted via e-mail <dpr05006@cdpr.ca.gov> or by facsimile (FAX) 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 since the regulatory action simply places current provisions of the private applicator certificate program from the Food and Agricultural Code (FAC) into regulation.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law requires certification of pesticide applicators who use or supervise the use of restricted materials. Both DPR and the U.S. Environmental Protection Agency (U.S. EPA) designate certain pesticides as restricted materials due to their potential danger to human or environmental health. DPR administers California's certification program that was established in 1976 with final regulations adopted in 1980. The program follows standards set forth in Title 40 of the Code of Federal Regulations Part 171, and has been approved by U.S. EPA. DPR's certification program ensures that pesticide applicators have demonstrated sufficient knowledge to apply pesticides safely and legally.

In 1997, legislation enacted (Chapter 705, Statutes of 1995) separated the private applicator certification program from the issuance of a restricted materials permit and established a continuing education program for certified private applicators (FAC sections 14090-14099.5). A private applicator, as defined in 3 CCR section 6000, is an individual who uses or supervises the use of a pesticide to produce an agricultural commodity on property owned, leased, or rented by him/her or his/her employer; or a householder who uses or supervises the use of pesticide outside

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 confines of a residential dwelling to control pests on residential property owned, leased, or rented by him/her.

The private applicator certification program is administered by the county agricultural commissioners (CACs) who certify and/or recertify 7,000 private applicators every year statewide. A private applicator must initially take a DPR-prepared examination given by the CAC to obtain a private applicator certificate that may be issued for up to three years. FAC section 14096 authorizes the private applicator to renew the certificate through continuing education or re-examination. FAC section 14099 provided the hours required to renew a certificate based on continuing education. However, subsection 14099(g) included a provision to sunset section 14099 on January 1, 2003, and, therefore, the continuing education requirements were repealed.

FAC section 11502.5 states that the Director may adopt regulations to require and establish the minimum qualifications for education, examination, and continuing education for the renewal of any license or certificate. DPR proposes to adopt Article 7, Private Applicators, sections 6580, 6582, and 6584 to establish continuing education requirements, as well as clarify private applicator certificate requirements.

Proposed section 6580 would specify that before a person receives a new private applicator certificate, a Private Applicator Certificate Application form PR-PML-045 (Rev. 12/04), hereby incorporated by reference, shall be submitted, and the applicant take and pass the private applicator examination. No fee is required to be submitted with the application. The private applicator certificate would be valid for up to three years in accordance with FAC section 14095.

Proposed section 6582 would specify that a certified private applicator who wants to renew his/her certificate must submit a Private Applicator Certificate Application form PR-PML-045 (Rev. 12/04), hereby incorporated by reference, to the CAC no sooner than 120 days prior to, and no later than 90 days after, the expiration date of the certificate. Also, the private applicator would need to complete the required continuing education hours during the time the certificate is valid, or take and pass the private applicator certificate examination. However, in the event the private applicator does not renew his certification with the above timeframe, he/she would be required to take and pass the private applicator certificate examination.

Proposed section 6584(a) would specify the continuing education hours needed from topic areas described in section 6512(e)(1). FAC section 14095 specifies that private applicator certificates be issued for a period of three years, except that the term of the initial private applicator certificate is based on the first letter of the surname. Therefore, in some instances, licenses could be valid for one year, two years, or even 10 months. It would only be appropriate to proportionately reduce the number of continuing education hours required depending on how long the certificate was valid. The proposed section would break down the number of continuing education hours required based on when the certificate was issued. These required hours are the same as those that were in FAC section 14099 before the section was repealed.

Proposed section 6584(b) would require continuing education be taken from courses or programs approved pursuant to 3 CCR section 6512.

Without the adoption of the proposed regulation, private applicators will no longer be able to renew their certificate through continuing education and must retake the private applicator examination administered by the CACs.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts, nor does it require reimbursement by the State pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code because the regulatory action 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.

The proposed regulation will not result in any new costs to the CACs since the regulatory action places the certified private application continuing education program that was originally established under FAC section 14099(g) into regulation.

COSTS OR SAVINGS TO STATE AGENCIES

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

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. The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. Private applicators have examined for their certification and renewed their certificate through continuing education under the FAC since January 1, 1997. Therefore, the costs incurred by private persons or businesses associated with private applicator certificates and their renewals through continuing education are not impacted by the proposed regulatory 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 has determined that no reasonable alternatives considered by the agency, or that have 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 regulatory action.

AUTHORITY

This regulatory action is taken pursuant to the authority vested by FAC sections 11456, 11502, and 11502.5.

REFERENCE

This regulatory action is to implement, interpret, or make specific FAC sections 14091, 14092, 14093, 14095, and 14096.

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 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 DPR's continuing education regulations, may be directed to:

Ada 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