FINAL STATEMENT OF REASONS AND PUBLIC REPORT
DEPARTMENT OF PESTICIDE REGULATION

Title 3. California Code of Regulations
Amend Sections 6512 and 6513
Pertaining to Continuing Education Records and Course Approval

UPDATE OF THE INITIAL STATEMENT OF REASONS

The proposed regulatory action was originally noticed in the *California Regulatory Notice Register* on March 8, 2013. A Notice of Change of Date of Regulatory Hearing and Extension of Written Comment Period was issued and published in the *California Regulatory Notice Register* on March 29, 2013.

During the 45-day public comment period, the Department of Pesticide Regulation (DPR) received comments on the proposed text. The comments are discussed under the heading "Summary and Response to Comments Received" of this Final Statement of Reasons.

As authorized by Government Code section 11346.9(d), DPR incorporates by reference the Initial Statement of Reasons prepared for this rulemaking. No changes were made to the proposed regulations nor are any changes necessary to the Initial Statement of Reasons following the 45-day public comment period.

DPR has amended Title 3, California Code of Regulations sections 6512 and 6513. This action requires continuing education (CE) sponsors to provide additional information when submitting CE course applications to DPR for evaluation and approval; sets forth criteria for obtaining approval from DPR for online and correspondence CE courses; requires CE sponsors and license and certificate holders to retain additional information in their records; and requires CE sponsors to give license and certificate holders a record of his or her course or program completion.

PUBLIC HEARING

DPR scheduled and held a public hearing on May 13, 2013 in Sacramento, California. A transcript of the hearing is contained in the rulemaking file.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING 45-DAY COMMENT PERIOD

- Paul Verdegaal, University of California Cooperative Extension, San Joaquin County Farm Advisor for Viticulture, Almonds, and Berries

Comment: The proposed regulations will result in increased costs for small farmers and minorities to obtain CE hours.

Response: The economic analysis conducted by DPR determined that there will not be a significant economic impact on DPR license or certificate holders.

Comment: The proposed regulations will result in reduced quality of CE courses.

Response: The proposed regulations are intended to improve the quality of CE courses. DPR worked with various stakeholder groups, including University of California staff, when drafting these regulations with the primary goal of improving the consistency and quality of CE course content.

Comment: The proposed regulations will result in reduced participation of Land Grant institutions that are trusted by growers and the public.

Response: The economic analysis conducted by DPR determined that there will not be a significant economic impact on DPR license or certificate holders. DPR worked with various stakeholder groups, including land grant institutions, when drafting these regulations and received no concerns related to reduced participation in CE course sponsorship.

Comment: The proposed regulations will encourage private, for-profit meetings that will restrict certain groups.

Response: The economic analysis conducted by DPR determined that there will not be a significant economic impact on DPR license or certificate holders.

- Renee Rianda, California Licensed Pest Control Adviser and Qualified Applicator, MorningStar Farms

Comment: By changing "shall" to "must," flexibility will be limited.

Response: The words "shall" and "must" have the same meaning. This grammatical change is based on the more appropriate use of the word and does not change existing requirements.

Comment: CE course applications should not be discarded if the application fee is not submitted.

Response: This language exists on the current application form. This is not a new requirement but a format change.

Comment: It should not be required to submit CE course applications at least 30 days before the course takes place.

Response: Submitting an application at least 30 days before the course or program begins is not a new requirement. This is an existing requirement that was part of clarifying changes to the form.

Comment: DPR should not delete examples from the CE course application form.

Response: DPR created consistency in the CE application form by editing and clarifying the form instructions, which included removing some examples under "Section G: Course Agenda." The lists of examples are not inclusive lists because approvable CE topics are always growing. DPR staff review every CE course agenda during an evaluation and approval process. If it is not apparent that a CE course relates to pesticide use or pest management, then DPR contacts the CE sponsor for clarification before approval or denial of the course.

Comment: There should not be a checkbox on the CE course application to indicate if the CE sponsor is a County Agricultural Commissioner.

Response: This is existing language on the CE course application.

Comment: CE courses about maximum residue limits (MRLs) should receive credit.

Response: MRLs, which are established by other countries, are not enforced by DPR. Companies or growers that choose to comply with MRL restrictions do so based on pest management and/or marketing strategies. Therefore, CE courses about MRLs would receive "Other" CE credit. CE courses about domestic pesticide tolerances are about California or federal pesticide laws and/or regulations, which would qualify for "Laws" CE credit.

- Bill Gillespie

Comment: DPR should require a written examination coupled with practical qualification requirements for the actual provider (teacher) of the course.

Response: This comment is not relevant to the proposed regulation. No response necessary.

Comment: The proposed requirement for 200 words per minute (wpm) is unrealistic in the real world.

Response: The proposed rate of 200 wpm is based on the average reading speed of 250 wpm with some allowance for the diversity of educational backgrounds of those required by DPR to complete CE. DPR’s CE attendees range from college graduates with technical backgrounds, to pesticide applicators and maintenance gardeners, some with limited English skills. The proposed rate of 200 wpm was considered appropriate and approved by the Agricultural Pest Control Advisory Committee.

Comment: Continuing education credit should be given for diagrams and illustrations.

Response: The subject of this comment is not specific to the proposed regulation language; therefore, no response is necessary.

Comment: The proposed section 6512(h) "The Director may request that more information about the content of the course or program be submitted before making the determination as to whether the course or program meets the criteria specified in (e), (f), and/or (g)" is-unclear.

Response: This is a requirement in the current regulations. The wording and numbering has been edited to be consistent with language throughout the CE regulations. It is necessary for DPR to request additional information from the CE sponsor, if during the evaluation and approval process DPR staff cannot determine if the course is about pesticides or pest management. This is especially important for classroom CE courses, where only a CE course agenda and main points will be submitted.

Comment: DPR should not place a limit on how many questions a provider may offer for CE credit.

Response: DPR approves CE hours based on the amount of material and time spent learning about pesticide laws and regulations and pest management. Examination questions are used to reinforce the knowledge learned during the course. DPR communicated with representatives from Washington State University, University of California, Davis, the U.S. Environmental Protection Agency, the national Certification Training and Assessment Group, and the Structural Pest Control Board, and received agreement that 10-15 questions is appropriate to reinforce knowledge for 45-50 minutes of learning time and is typical of most teaching formats, such as in text books.

- Terry Stark, President/Chief Executive Officer California Association of Pest Control Advisers

Comment: DPR should remove the mandatory recordkeeping language.

Response: The requirement for CE sponsors to provide a verification of attendance form to course attendees is implied by current regulations. This requirement only clarifies that intent.

Comment: It is recommended that DPR include relevant statutes from related State and federal agencies.

Response: The Code of Federal Regulations, Title 40, Section 171.4 directs DPR in what constitutes pesticide use and handling competency standards for initial licensing and, by extension, license renewal through CE. DPR will continue to evaluate "Laws" CE courses in the context of how they relate to California (state and local) and federal pesticide use laws/regulations.

Comment: DPR should promote accelerated compliance and enhanced industry responses to DPR inquiries with regards to California and federal laws and regulations.

Response: The Code of Federal Regulations, Title 40, Section 171.4 directs DPR in what constitutes pesticide use and handling competency standards for initial licensing and, by extension, license renewal through CE. DPR will continue to evaluate "Laws" CE courses in the context of how they relate to California (state and local) and federal pesticide use laws/regulations.

Comment: DPR should foster rapid adoption of technological advances through flexible regulatory language.

Response: DPR will continue to evaluate all CE courses in the context of how they relate to pesticide use laws and regulations and pest management.

Comment: DPR should clearly define renewal course terms and conditions.

Response: This comment is not relevant to the proposed regulation; therefore no response necessary.

• Steven Gould, Pesticide Applicators Professional Association

Comment: For every two-year renewal period, at least fifty percent of a license or certificate holder's CE hours should be done during in-classroom trainings. If this cannot be accomplished, then a license or certificate holder should get CE credit for online courses only once during a two-year renewal cycle.

Response: This comment is not relevant to the scope of the proposed regulation.
No response is necessary.

Comment: There should be flexibility in approving laws and regulations CE courses.

Response: The Code of Federal Regulations, Title 40, Section 171.4 directs DPR in what constitutes pesticide use and handling competency standards for initial licensing and, by extension, license renewal through CE. DPR will continue to evaluate "Laws" CE courses in the context of how they relate to California (state and local) and federal pesticide use laws/regulations.

Comment: The use of "must be" seems concrete. DPR should continue to work with CE sponsors and provide flexibility.

Response: The words "shall" and "must" have the same meaning. This grammatical change is based on the more appropriate use of the word and does not change existing requirements.

MANDATE 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 requiring 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 B of the California Constitution. DPR has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from this regulatory action.

ALTERNATIVES DETERMINATION

The Director has determined that no alternative considered by DPR would be more effective in carrying out the purpose for which this regulation is proposed, or would be as effective and less burdensome to affected private persons or businesses than the proposed regulatory change.

POSTING REQUIREMENT

Title 3, California Code of Regulations, section 6110, states in part that, "The public report shall be posted on the official bulletin boards of the Department, and of each commissioner's office, and in each District office of the DPR [Division of Pest Management, Environmental Protection and Worker Safety] for 45 days." DPR has posted its Initial Statement of Reasons and Public Report on its official bulletin board, which consists of the Department's Internet Home Page <http://www.cdpr.ca.gov>. In addition, copies were provided to the offices listed above for posting.