INITIAL 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

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 (3 CCR). Section 6110 meets the requirement of Title 14 CCR section 15252 and Public Resources Code section 21080.5 pertaining to state regulatory programs certified under the California Environmental Quality Act.

SUMMARY OF PROPOSED ACTION/PESTICIDE REGULATORY PROGRAM ACTIVITIES AFFECTED

The Department of Pesticide Regulation (DPR) proposes to amend 3 CCR sections 6512 and 6513. The pesticide regulatory program activities that will be affected by the proposal pertain to the approval process for continuing education (CE) courses and programs and CE recordkeeping requirements of sponsors and license and certificate holders. In summary, the proposed regulations would require CE sponsors to provide additional information when submitting CE course applications to DPR for evaluation and approval; set forth criteria for obtaining approval from DPR for online and correspondence CE courses; require CE sponsors and license and certificate holders to retain additional information in their records; and require CE sponsors to give license and certificate holders a record of his or her course or program completion.

SPECIFIC PURPOSE AND FACTUAL BASIS

State and federal law requires that DPR protect human health and the environment by regulating pesticide sales and use. DPR's oversight begins with product evaluation and registration; and continues through statewide licensing of commercial and private applicators, pest control businesses, and pest control advisers; environmental and human illness monitoring; residue testing of fresh produce; and finally enforcement to ensure products available for sale are properly registered and pesticide use laws and regulations are adhered to. This structure is set forth in statute primarily in Divisions 6 and 7 of the Food and Agricultural Code (FAC).

Many individuals and businesses that sell or professionally apply pesticides, or recommend pesticide use, are required to get a license or certificate from DPR’s Pest Management and Licensing (PML) Branch. The purpose of licensing commercial and private applicators, pest control businesses, and pest control advisers is to ensure that people selling, possessing, storing, handling, applying, and recommending the use of pesticides have the knowledge and ability to use pesticides safely and effectively.

PML’s Licensing and Certification Program staff administer examinations for two-year licenses and certificates to applicants who meet DPR requirements. After passing the initial qualification examination, license and certificate holders can renew a license or certificate without repeating

the examination by taking DPR-approved CE courses. Completion of CE courses ensure license and certificate holders receive current pesticide laws and regulations and pest management information related to proper, safe, and efficient pesticide use, protection of public health and the environment, and safe working conditions for agricultural and pest control workers. Failure to complete the required CE hours results in the loss of the license or certificate, making re-examination necessary for reinstatement.

DPR reviews CE course applications that have been submitted by CE sponsors during a content evaluation and approval process. Through this process DPR confirms that the material to be presented in each CE course corresponds with the knowledge expectations of DPR's license and certificate holders and assigns the appropriate amount of CE credit (hours) to each course. The current regulations in section 6512 broadly outline what is required of sponsors when submitting CE course applications for content evaluation and approval. However, the current regulations were established when most CE courses were classroom based. Now, the variety of CE course types submitted to DPR for course evaluation and approval includes correspondence, interactive online, narrated online, and noninteractive (text-based) online type courses.

Current regulation does not provide CE sponsors with clear criteria the Director will use to assess the course length in order to meet the minimum one-hour regulatory requirement for correspondence, interactive online, narrated online, and noninteractive (text-based) online courses. These four types of CE courses are fundamentally different than classroom-based CE courses in that the material is presented to license and certificate holders using different media and in various computer-based styles. The challenge for DPR staff is to remain consistent during the evaluation and approval of all types of CE courses. Updated evaluation criteria that are appropriate for the various types of CE courses are needed to improve CE course quality, standardize CE course evaluation and approval, and maintain a transparent CE approval process.

Currently, section 6513 includes the recordkeeping requirements for CE sponsors and license and certificate holders. CE sponsors are required to keep records in order to maintain an accurate account of each DPR approved CE course, who attended, and how much CE credit they received. License and certificate holders must keep records for renewal purposes because they are required to provide DPR with information about their completed CE courses.

During the renewal process PML Licensing and Certification Program staff verify that the required CE hours have been met by reviewing a summary of CE course information submitted by each license and certificate holder. When license and certificate holders do not submit complete CE course information, or if the information is audited, Licensing and Certification Program staff require that copies of CE course completion records be submitted. In order to make the renewal process more efficient for license and certificate holders, CE sponsors need to provide each license and certificate holder with his or her CE record upon course completion, or soon thereafter.

The Agricultural Pest Control Advisory Committee (APCAC), established in FAC section 12042-12047, advises the DPR Director in all matters concerning the licensing, certification, and regulation of persons and firms providing agricultural pest control advice and services in California. APCAC, in early 2010, considered the variety of CE course formats and

began to discuss the need for updating DPR's CE course evaluation and approval criteria. A subcommittee was created, the APCAC Performance Indicators (PI) subcommittee, to evaluate CE course quality and the evolving needs for evaluation and approval of CE courses. The initial proposed criteria developed by DPR with the help of the PI subcommittee were presented to, reviewed, and approved by APCAC at the May 3, 2010 APCAC meeting. An initial APCAC recommendation was made to the DPR Director on September 7, 2010 and, in large part, formed the basis for the current proposed regulations.

Refinements to the proposed criteria and initial APCAC recommendation continued throughout 2011 and 2012. These refined criteria were presented by the PI subcommittee to APCAC at the July 12, 2012 and September 4, 2012 APCAC meetings. The updated criteria for the CE evaluation and approval process were approved by APCAC to go forward as an APCAC recommendation to DPR Director Brian Leahy at the September 4, 2012 APCAC meeting.

DPR discussed the APCAC criteria with representatives from stakeholder groups, including governmental and nongovernmental CE sponsors, who will be directly affected by the proposed regulations. Comments were received at three public workshops conducted during August 2012 in Sacramento, Fresno, and Arcadia.

DPR is confident that the APCAC recommendations will improve CE quality and the evaluation and approval of all CE courses and, therefore, proposes the following regulatory amendments:

- Amend Section 6512 – Approval of Continuing Education Courses or Programs

Currently, section 6512 lists the requirements for submitting a CE course or program to DPR for evaluation and approval. Not included in section 6512 are specific approval requirements for the different types of courses or programs (such as online courses). The following proposed additions and amendments add the criteria for the evaluation and approval of correspondence, interactive online, narrated online, or non-interactive (text-based) online courses or programs and make terms consistent throughout section 6512 and associated forms.

The proposed amendments to the title of the section and to subsection (a) create consistency throughout the CE regulations and forms. In this case, DPR is proposing to use the term "continuing education courses or programs" in place of "continuing education courses." CE is offered in various formats and is better described as a "course or program."

The proposed amendments to the introductory paragraph remove the letter (a) of the subsection, remove the term CE "provider" and replace it with CE "sponsor," and remove repetitive language. The term CE "sponsor" refers to a person or organization that offers CE courses or programs. In order to remain consistent, DPR is proposing to use the term "continuing education sponsor" instead of "continuing education provider" throughout the CE regulations and associated forms.

The proposed amendments to subsection (a) add clarifying language and delete repetitive language. In addition, clarifying changes to the Continuing Education Approval Request Application form (DPR-PML-131, Rev. 1/13), incorporated by reference, have been made.

The proposed amendments to subsection (a)(1) require that a "comprehensive agenda" be submitted for evaluation and approval, instead of a "comprehensive outline." The term "comprehensive agenda" includes a needed time component and keeps terminology consistent throughout the CE regulations and associated forms.

The proposed addition of subsections (a)(1)(A)-(F) lists and makes clear the requirements that must be included in each comprehensive agenda. DPR uses these agenda items during the CE course evaluation and approval process to determine if a course meets the knowledge expectations for DPR's license and certificate holders.

Subsection (b) has been proposed as an addition to section 6512. The proposed amendment outlines the requirements for submitting requests for evaluation and approval for multiple day CE courses. The proposed amendment requires that a CE sponsor submit an application, comprehensive agenda, and fee for each day of a multiple day course when license and certificate holders have the option to attend different days and/or sessions of the course or program. Each day would be treated as its own individual course to ensure that attendees do not receive credit for days they do not attend.

Proposed subsections (c) and (d) replace the current subsection (c). Together, these subsections clarify what is required of sponsors when they request approval of course changes, including adding course dates, for previously approved CE courses or programs within the calendar year. Clarifying changes to the Continuing Education Additional Course Date Request form (DPR PML 132, Rev. 1/13), incorporated by reference, have been made.

Proposed subsection (e)(1) adds language from FAC section 11502.5 and specify that CE courses or programs about laws and regulations must be about California or federal pesticide laws or regulations. The proposed amendments add specific subjects to the list of acceptable CE topics and add the term "California and federal pesticide" to specify which laws and/or regulations may be approved to ensure that attendees are not receiving CE hour credit for laws or regulations that pertain to other states or countries. By including these topics in the proposed regulation, information about pesticide laws and regulation topics will be in one location and more visible to sponsors.

The proposed addition of subsection (e)(2) further specifies that only California and federal pesticide laws and/or regulations will qualify for pesticide laws and hours credited as stated in section 6511. Included in this proposed amendment are examples of topics that are commonly requested for laws and regulations hours, but will not be credited as such because the laws must pertain to pesticide use in California. Programs about maximum residue levels do not pertain to California law. Also, the Business and Professions Code Division 3, Chapter 14 or Chapter 14.5, and 16 CCR, Division 19 applies to those individuals that are licensed by the Structural Pest Control Board and not DPR.

The proposed subsection (e)(3) clarifies that only the accredited portion of a CE course or program must be at least one hour.

Proposed subsection (f) adds the criteria required for evaluation and approval of interactive online and narrated online CE courses or programs. The current regulations broadly outline the criteria for the evaluation and approval of CE courses or programs but do not differentiate between the different types of courses or programs.

Proposed subsection (f)(1)(A) requires that the CE sponsor submit an electronic copy of the complete course or program. This would allow DPR staff to view the course or program and determine if it meets the required criteria, making the evaluation and approval process more efficient, consistent, and transparent.

Proposed subsection (f)(1)(B)1 improves CE course quality by requiring the sponsor to divide CE courses or programs into segments that are no more than two hours long. In addition, if the course is longer than two hours, then each segment must end with review questions. Formatting online CE courses or programs in this manner requires the license or certificate holder to learn and review course material in smaller segments which will better ensure that the CE material is studied and learned. It is also a way to verify that the license or certificate holder earns the full amount of CE credit, without requiring timers or additional computer software.

Proposed subsection (f)(1)(B)2 requires that the CE sponsor administer a final examination that reviews the accredited material and main points of each interactive online and narrated online CE course or program. Proposed subsection (f)(1)(B)3 permits the CE sponsor to offer license or certificate holders a re-examination option if the license or certificate holder does not pass the final examination. However, if the CE sponsor allows the license or certificate holder to retake the final examination, then the sponsor must use a different version of the final examination each time a license or certificate holder retakes it. Each version of the final examination must provide different questions or reorder the examination questions. A revised or reordered examination gives DPR some assurance that the license or certificate holder understands the material.

Proposed subsection (f)(2) requires that sponsors award license and certificate holders with CE credit only if the license or certificate holder receives a score of 70 percent or higher on the final examination. Passing a final examination gives DPR some assurance that the license or certificate holder has read and understands the material. The required examination also serves to verify that credit is given only after the online CE course or program has been completed as opposed to a classroom CE course or program where attendance is verified in person by the CE sponsor. A passing score of 70 percent is typical of other similar online courses, such as for the Certified Crop Advisor certification of the American Society of Agronomy and for the University of California Extension certificate programs, like the Better Process Control School online.

Proposed subsection (f)(3) sets forth the amount of CE credit time granted for examination and review questions. DPR has no current standards; a reasonable proportion of text (information) to examinations and questions (review) is typical of most teaching formats such as text books.

Proposed subsection (g) adds the criteria required for evaluation and approval of correspondence and noninteractive (text-based) online CE courses or programs. The current regulations broadly

outline the criteria for the evaluation and approval of CE courses or programs but do not differentiate between the different types of courses or programs.

Proposed subsection (g)(1) requires that the CE sponsor include a complete copy of the course or program and meets the criteria set forth in (f)(1)(B) and (f)(2)-(3). DPR cannot review and assign CE hours to correspondence and noninteractive (text-based) online CE courses or programs efficiently or consistently without a copy of the course.

Proposed subsection (g)(2) sets forth the amount of time that correspondence and noninteractive (text-based) online CE courses or programs will receive for CE credit. Due to time and resource constraints, DPR staff need a way to assign CE credit without having to take each course as if they were a student. The method of assigning CE credit must be consistent for all correspondence and noninteractive (text-based) online CE courses and should take into consideration the need for reading comprehension. DPR proposes to use 200 words per minute as the standard for calculating the length of correspondence and noninteractive (text-based) online CE courses or programs based on evaluations by Carver's *Reading Rate: A Review of Research and Theory* (1990) that the average adult reading speed is 250 words per minute.

Proposed subsection (h) replaces the current subsection (d). If the Director cannot verify that the course or program meets the CE requirements listed in the previous subsections, then the Director has the authority to request additional information before approval or denial of the course or program.

Current subsection (f) would be changed to (i).

- Amend Section 6513 - Records Continuing Education Courses or Programs

Section 6513 outlines the CE recordkeeping requirements for CE sponsors and license and certificate holders. Not currently included in section 6513 are items that should be included in the CE records and the requirement for CE sponsors to provide attendees with his or her record of course completion. The following proposed additions and amendments clarify the recordkeeping requirements of CE sponsors and license and certificate holders.

The proposed amendment to change the title of the section is for consistency purposes.

The proposed amendments to subsection (a) introduce the topic of the subsection and tabulate the information from that subsection.

The proposed amendment to subsection (a)(1) changes "instructor or sponsoring organization" to "continuing education sponsor" for consistency reasons as stated above.

The proposed addition of subsection (a)(2) restates the requirement to keep records for three years from completion date of the course, which was deleted from the current subsection (a)(1).

The proposed addition of subsection (a)(3) requires CE sponsors to provide each license or certificate holder with his or her record of course or program completion within 15 business days of completion. The current section 6513(d) was interpreted to mean that CE sponsors had the option to provide a record. Proposed subsection (a)(3) clarifies that CE sponsors must provide accurate records to each attendee at the time of course or program completion. This provides the license or certificate holder with the information needed to maintain pursuant to (b). Typically, CE sponsors will supply the record of attendance at the end of the class. To allow for mailed and e-mailed records, 15 working days is reasonable and consistent with other requirements in the current regulations and will ensure the license or certificate holder will have the records required for renewal.

The proposed addition of subsection (a)(4) restates where to find the information that must be contained in each record, which was deleted from the current subsection (d).

The proposed amendments to subsection (b) introduce the topic of the subsection and tabulate the information from that subsection. Subsections (b)(1), (2), and (3) are in current regulation, but the proposed amendments reorganize the information.

The proposed amendments to subsection (c) add items that must be included in each record of course or program completion, and delete and add text for clarifying purposes.

The amendments to subsection (c)(1), (c)(3), and (c)(4) remove unnecessary text and delete and add text for clarifying purposes.

The addition of (c)(5) restates the requirement to include on the record the location of the CE course or program, which was deleted from the current subsection (c)(3).

The proposed addition of (c)(6) requires that the date of the course or program be included on the record. The date is important because a license or certificate holder must have completed the required number of CE hours within the two-year period of the current active license in order to renew without retaking the initial qualification examination.

The proposed addition of (c)(7) restates and clarifies the requirement to include on the record a number of CE hours credited in each CE category, which was deleted from the current subsection (c)(4).

The addition of (c)(8) requires that the license or certificate holder’s signature be on the record of course or program completion. This will ensure that the certificate came directly from the sponsor and the sponsor verifies the hours attended.

Propose to reorder subsection (c)(5) to (9), and delete reference to the "regional accreditation committee." In 1996, DPR repealed regulations that established the regional accreditation committee (Office of Administrative Law File No. 96-0624-07).

Propose to delete subsection (d) since the information has been proposed as additions in subsection (a) and (b).

Propose to reorder current subsection (e) to (d) and make grammatical changes.

Additionally, propose to delete FAC section 12980.1(c) reference citation since it no longer exists.

CONSULTATION WITH OTHER AGENCIES

APCAC, established by statute in the FAC, advises the DPR Director in all matters concerning the licensing, certification, and regulation of persons and firms providing pest control advice and services in California. DPR shared the intent of the regulation as well as draft proposed language for sections 6512 and 6513 at the May 3, 2010, November 16, 2010, November 17, 2011, February 14, 2012, May 15, 2012, July 12, 2012, and September 4, 2012 APCAC meetings.

DPR conducted three informal public workshops informing CE sponsors and other stakeholders of the proposed regulation concepts. The public workshops were held on August 6, 2012 in Sacramento, August 22, 2012 in Fresno, and August 29, 2012 in Arcadia.

DPR has also shared this information with county agricultural commissioners at the Pesticide Regulatory Affairs Committee meeting held on October 16, 2012.

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.

ECONOMIC IMPACT ON BUSINESS

The proposed regulations will not have a significant economic impact upon business. The document relied upon to make this determination is listed in the "Documents Relied Upon" section of this initial statement of reasons and is available from DPR.

ECONOMIC IMPACT ASSESSMENT PURSUANT TO SECTION 11346.3(b)

Creation or Elimination of Jobs within the State of California: The proposed action would ensure that all approved CE courses relate to the knowledge expectations of DPR's license and certificate holders. The proposed changes establish new criteria for obtaining DPR approval for online and correspondence CE courses, standardize the evaluation and approval process for all CE courses, and clarify regulation language to be consistent with State law and easy to understand. CE sponsors have a wide variety of course formats they can offer, such as correspondence, online, or in-person classes. For those sponsors who fail to meet the proposed standards for online or correspondence courses, the option of facilitating in-person CE courses would still be available. In addition, the changes to course structure and the course approval

process will require minimal extra work for CE sponsors; and therefore, there would be no creation or elimination of jobs.

Creation of New Business or the Elimination of Existing Businesses within the State of California: The proposed action would ensure that all approved CE courses relate to the knowledge expectations of DPR's license and certificate holders. The proposed changes establish new criteria for obtaining DPR approval for online and correspondence CE courses, standardize the evaluation and approval process for all CE courses, and clarify regulation language to be consistent with State law and easy to understand. For those sponsors who fail to meet the proposed standards for online and correspondence courses, the option of facilitating in-person CE courses would still be available. In addition, the changes to course structure and the course approval process will require minimal extra work for CE sponsors; and therefore, should not significantly affect their operations or have a significant adverse economic impact on the sector.

The Expansion of Businesses Currently Doing Business within the State of California: The proposed action would ensure that all approved CE courses relate to the knowledge expectations of DPR's license and certificate holders. The proposed changes establish new criteria for obtaining DPR approval for online and correspondence CE courses, standardize the evaluation and approval process for all CE courses, and clarify regulation language to be consistent with State law and easy to understand. The proposed regulation changes do not change DPR's CE approval program significantly; and therefore no expansion of businesses currently doing business with the State of California.

The Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment: DPR requires that pest control aircraft pilots, qualified pesticide applicators, and agricultural pest control advisers complete a minimum number of CE hours in order to renew a license or certificate. Completion of CE courses ensures that license and certificate holders receive current pesticide laws and regulations and pest management information related to proper, safe, and efficient pesticide use, protection of public health and the environment, and safe working conditions for agricultural and pest control workers. Failure to complete the required CE hours results in the loss of the license or certificate, making re-examination necessary for re-instatement.

The regulations ensure that all approved CE courses relate to the knowledge expectations of DPR's license and certificate holders. The proposed changes establish new criteria for obtaining DPR approval for online and correspondence CE courses, standardize the evaluation and approval process for all CE courses, and clarify regulation language to be consistent with State law and easy to understand.

Implementation of the proposed regulations will not adversely affect the health and welfare of California residents, worker safety, or the environment. Implementation of the proposed regulations will benefit public health and the environment by ensuring that license and certificate holders remain knowledgeable in the area of pesticide laws and regulations and pest management.

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

DPR's review of the proposed action showed that no significant adverse environmental 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. Agricultural Pest Control Advisory Committee Meeting Minutes. Dated May 3, 2010, November 16, 2010, November 17, 2011, February 14, 2012, May 15, 2012, July 12, 2012, and September 4, 2012.

2. Pesticide Regulatory Affairs Committee Meeting Minutes. Dated October 16, 2012.

3. Carver. R.P. (1990). Reading Rate: A Review of Research and Theory. San Diego, California: Harcourt Brace, Jovanovich.

4. Economic Analysis of Proposed Regulations and Amendments to General License Requirements and Continuing Education Courses for Pest Management Professionals. California Environmental Protection Agency, Agencywide Economic Studies Section, Air Resources Board. Memorandum from Tom Rosen-Molina to Linda Irokawa-Otani, DPR Regulations Coordinator. January 8, 2013.