

FINAL STATEMENT OF REASONS AND PUBLIC REPORT
DEPARTMENT OF PESTICIDE REGULATION

Title 3. California Code of Regulations

Adopt Sections 6509, 6512.1, 6512.2, 6512.3, 6512.4, 6580.1, 6580.2, 6624.5, and 6731; Amend Sections 6000, 6404, 6302, 6406, 6414, 6428, 6430, 6500, 6502, 6504, 6508, 6510, 6511, 6512, 6513, 6522, 6530, 6531, 6540, 6562, 6564, 6568, 6580, 6582, 6584, 6612, 6622, 6624, 6724, and 6742; Repeal Sections 6445.5, 6534, 6536, and 6560
Pertaining to the Certification of Pesticide Applicators

UPDATE OF THE INITIAL STATEMENT OF REASONS

The proposed regulatory action was noticed in the *California Regulatory Notice Register* on June 3, 2022.

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 During the 45-Day Comment Period” of this Final Statement of Reasons. For the reasons stated below, DPR modified sections of the originally proposed text which are summarized under the heading “Changes to the Text of Proposed Regulations.” Furthermore, an additional document was relied upon and added to the rulemaking file. The document relied upon is an addendum to the Initial Statement of Reasons and clarifies a statement.

DPR received comments addressing the modified text during the 15-day public comment period. These comments are discussed under the subheading “Comments Received During the 15-Day Public Comment Period.”

These regulations will go into effect on January 1, 2024.

Changes to the Text of Proposed Regulations

- Amended originally proposed section 6500 as follows:
 - Subsection 6500(c) – Amended original proposal to clarify that the Director will determine if the issuance of an updated license or certificate is necessary. This amendment is necessary to clarify issuance of updated licenses or certificates, as not all individuals may need to be issued an updated license or certificate, and issuance can be best determined by DPR’s Licensing and Certification Program staff using DPR’s licensing data. By using DPR’s licensing data, DPR will determine the specific individuals who require an updated license or certificate to reflect categories consistent with section 6530. Additionally, during the 15-day comment period, the date originally proposed for the beginning of the issuance of updated licenses or certificates was amended to “[pending effective date of this action].” This amendment ensured the most accurate regulatory effective date is included in the final text. Upon adoption of these regulations, DPR is prescribing an effective date of January 1, 2024 and, as a result, is replacing “[pending effective date of this action]” with “January 1, 2024.” The original proposal was also amended to further clarify that the term of each updated license or certificate issued will be in accordance with an individual’s current two-year cycle as determined by the existing terms specified in either subsection 6500(a)(1) or (a)(2). This amendment is necessary to ensure the updated licenses and certificates issued follow a license

or certificate holder's current renewal cycle, and to ensure consistency with DPR renewal processing and existing regulations that specify license and certificate terms. Lastly, DPR amended the originally proposed inoperative and repeal date of this subsection to be one year after the effective date of this subsection. This amendment ensures the most accurate inoperative and repeal date is included in the final text. One year is consistent with the originally proposed inoperative and repeal time.

- Amended originally proposed section 6512 as follows:
 - Subsection 6512(d) – Amended proposal to allow courses to be approved for a maximum amount of continuing education (CE) hours during poster or vendor displays, question and answer sessions (Q&A), and panel discussions; the current proposal does not allow CE hours for these types of interactions. This amendment will result in a new subsection 6512(e), which addresses this topic specifically. In addition, the requirement specifying that courses will not be approved for CE hours during break periods was relocated from the end of this subsection due to the additions of new subsections (e) and (f).
 - Subsection 6512(e) – The proposed regulations were amended to allow up to 30 minutes of combined credit for vendor/poster displays, Q&A, and panel discussions per application, as long as the course contains a *minimum* of 4 hours of approvable CE content under subsection 6512(b) (not including the time for vendor/poster displays, Q&A, or panel discussions). This would then add up to an additional 30 minutes of approved CE to a course. DPR proposes this credit allowance for courses that are a minimum of 4 hours, as requests for these formats have most commonly been submitted for approval for multi-day conference style courses, which typically meet or exceed this minimum. As specified in proposed subsection 6512(b), the content of the vendor/poster displays, Q&A, and panel discussions submitted for this credit must meet the topic requirements in proposed section 6512(b). Upon review, and based on the comments received during the public comment period, DPR has determined that, in certain instances, vendor/poster displays, Q&A, and panel discussions positively support the learning of new material focused on pesticides or pest management and therefore should not be completely eliminated as a learning option. Up to 30 minutes of combined credit is appropriate as these formats often do not include presented material (i.e., PowerPoint, instructor, speaker) focused solely on the required topics and conversations can vary or become off topic to the focus of pesticides and pest management.
 - Subsection 6512(f) – Amended proposal to add a subsection for the approval of CE hours for quiz and final examination questions. This amendment will allow quiz and final examination questions to be approved at one minute of credit per question. Each hour of approved course time may include up to 10 minutes of questions. A similar requirement is currently in existing subsection 6512(f)(3) and was inadvertently removed during the regulatory revisions. Allowing 10 minutes of questions per hour to be approved for CE credit provides sponsors with the option to award CE credit to attendees for demonstrating their participation and knowledge gained throughout a course. Based on DPR's past CE approvals, courses submitted for approval rarely have a maximum average that exceeds 10 questions per hour. Limiting this approval to 10 minutes per hour of course time will also ensure that course attendees spend an adequate amount of time in a course learning and becoming familiar with course material.
 - The amendments to section 6512 discussed above resulted in some reorganization of the originally proposed subsections.
- Amended originally proposed section 6512.2 as follows:
 - Subsection 6512.2(a) – Amended the proposed 60-day submission requirement for webinar course CE approval to a 30-day submission requirement. Under existing subsection

6512(a), all requests for evaluation and approval of CE courses, which would include webinar formatted courses, are required to be submitted 30 days in advance of the course date. Upon review, and based on the comments received during the public comment period, DPR has determined that the proposed 60-day submission requirement for webinar courses is not necessary and that the current 30-day submission requirement provides an adequate amount of time for DPR staff to review webinar courses. Although approval requirements for webinar courses in proposed section 6512.2 will increase, since 2020, DPR has worked with sponsors who seek to provide CE courses in a webinar format; this was a necessary shift in CE course format that began in 2020. As a result, many of the approval requirements for webinar formatted courses are already being met by CE sponsors. For these reasons, DPR believes the existing 30-day submission requirement is adequate review time as DPR and CE sponsors are already familiar with presenting courses formatted in this way.

- Subsection 6512.2(b)(1) – Amended the proposed section to include two subsections (6512.2(b)(1)(A) and 6512.2(b)(1)(B)). These two subsections will differentiate monitoring and attendance and participation requirements for interactive online (6512.2(b)(1)(A)) and webinar (6512.2(b)(1)(B)) courses. Although both course types are presented online, there are some differences in the capabilities, most efficient methods used, and presentation formats (i.e., live or recorded) between interactive online and webinar courses. DPR proposes to state these requirements separately to improve clarity for sponsors on what is appropriate and feasible for the two types of online formats. Subsection 6512.2(b)(1)(A) includes the originally proposed requirement that participants must be automatically logged out of an interactive online course if actions that require a response are not responded to. Unlike webinar courses (where participation can be monitored by the sponsor throughout a course and credit can be reduced by the sponsor for lack of participation, if necessary), interactive online courses are not live, and the sponsor must rely on the online software they are using to ensure active participation throughout a course. Therefore, a feature to ensure individuals are automatically logged out of the course if the actions that require a participant response are not responded to is appropriate and ensures that an interactive online course sponsor could reduce credit if an individual is not present or not actively participating in the interactive online course. In addition, other minor grammatical and editorial changes will be made for clarity.
- Minor grammatical and editorial corrections to change instances of ‘webinar online’ to ‘webinar’ were made for clarity and consistency across proposed sections and forms.
- Amended originally proposed section 6512.3 as follows:
 - Minor grammatical and editorial correction to change instance of ‘webinar online’ to ‘webinar’ were made for clarity and consistency across proposed sections and forms.
- Amended originally proposed section 6582 as follows:
 - Subsection 6582(c) – During the 15-day comment period, DPR amended originally proposed date to “[pending effective date of this action].” This amendment ensured that the most accurate regulatory effective date is included in the final text. Upon adoption of these regulations, DPR is prescribing an effective date of January 1, 2024 and, as a result, is replacing “[pending effective date of this action]” with “January 1, 2024.”
- Amended originally proposed form, "Interactive Online and Webinar Continuing Education Approval Request Application, LIC-131B (Rev. 07/23),” incorporated by reference in section 6512.2, as follows:
 - Page 2 – Amended the proposed form to reflect changes to 6512.2(b)(1) pertaining to features for monitoring and ensuring course attendance and participation for interactive

- online and webinar courses.
- Page 3 – Amended the proposed form to reflect changes and additions to sections 6512 and 6512.2(a) pertaining to poster or vendor displays, question and answer sessions, and panel discussions and the submission requirement for webinar courses being amended from 60 to 30 days.
- Page 4 – Minor grammatical change made for clarity.
- Amended originally proposed form, “Private Applicator Certificate Application, LIC-045 (Rev. 07/23),” incorporated by reference in sections 6580 and 6582, as follows:
 - Page 1 – Amended the proposed form to remove the current “Date of Birth (mm/dd/yyyy)” requirement. This currently proposed requirement was replaced with the statement “I am at least 18 years of age. Yes.” Per proposed section 6580.1(c), private applicators must present valid, government-issued, photo identification to verify a minimum age of 18, at the time of examination. This will be verified by CACs in-person as private applicator examinations are administered at CAC offices by county staff. Therefore, the newly proposed attestation statement is sufficient for the purposes of this form and to indicate to the applicant the minimum age requirement.
 - Page 1 - Amended the proposed form to include the ‘Certificate Issuance Date.’ This is included on the current form and was inadvertently removed during the form revisions.
 - Page 2 – Amended the proposed form section “A. New Applicant (Practical Knowledge Exam)” to make a grammatical edit. Amended the proposed form section “B. Applicant Information” to make grammatical edits consistent with section A and to reflect revisions made to page 1 pertaining to the change in request format to verify the minimum age requirement.

DPR has adopted 3 CCR sections 6509, 6512.1, 6512.2, 6512.3, 6512.4, 6580.1, 6580.2, 6624.5, and 6731; amended sections 6000, 6302, 6404, 6406, 6414, 6428, 6430, 6500, 6502, 6504, 6508, 6510, 6511, 6512, 6513, 6522, 6530, 6531, 6540, 6562, 6564, 6568, 6580, 6582, 6584, 6612, 6622, 6624, 6724, and 6742; and repealed sections 6445.5, 6534, 6536, and 6560. This action affects pesticide regulatory program activities pertaining to the certification of commercial and private pesticide applicators (“certified applicators”), development and submittal of continuing education (CE) courses for pesticide applicator license or certificate renewal, and supervision of non-certified applicators. In summary, these regulations align California’s regulations with the revised federal regulations in Title 40, Code of Federal Regulations Part 171 “Certification of Pesticide Applicators” (40 CFR Part 171) that were noticed in the Federal Register Vol. 82, No. 2 on Wednesday, January 4, 2017. This action also improves the competency standards for certified applicators using California restricted materials, which includes federally restricted use pesticides (RUPs), improves certification standards for certified applicators, creates additional certification categories for certified applicators, increases protection for noncertified applicators using restricted materials under the direct supervision of a certified applicator through enhanced pesticide safety training and standards for supervision of noncertified applicators, establishes a minimum age requirement for certified and noncertified applicators using restricted materials under the direct supervision of a certified applicator, and improves standards for CE courses. In addition, new forms are incorporated by reference and some forms currently incorporated by reference are amended to align with this action. These forms are incorporated by reference because they total 30 pages in length and it would be cumbersome, unduly expensive, and otherwise impractical to publish them in the California Code of Regulations.

PUBLIC HEARING

No public hearing was scheduled or held, and none was requested.

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

- *Abbie Asche, Research and Regulatory Specialist, Tri-Cal, Inc.; Greg Vargas, Research and Special Projects, Tri-Cal, Inc.; Kent Vargas, Sales Manager, Tri-Cal, Inc.*

Comment Number 1: The proposed regulation eliminates category O, Field Fumigation, and renamed it category L, Soil Fumigation. These categories are the same. All of the other categories that stay the same are not required to retest. The field fumigation category should be the same. Simply changing the letter and renaming it Soil Fumigation does not make it a different topic. Soil fumigation and field fumigation remain the same and should be treated as such.

Response: The original federal rule did not include a soil fumigation category, as such, the soil fumigation category along with its competencies in the final revised federal rule (40 CFR 171.101(m) and 171.103(d)(13)) are new. Although California currently has a field fumigation subcategory (Subcategory O), the existing subcategory is not consistent with new soil fumigation category in 40 CFR and there are several new federal competencies that are not included in the existing California field fumigation subcategory study guide and examination. In addition, as part of this proposed action, the scope of the category has expanded beyond agricultural fields to include all soil fumigations, including forests, golf courses, greenhouses, and individual tree or vine hole sites, for example. The newly proposed Category L – Soil Fumigation is consistent with the requirements detailed in 40 CFR 171.101(m) and 171.103(d)(13). Using the new category letter of “L” will ensure that DPR can track which individuals conducting soil fumigation activities have obtained compliance with the new federal requirements.

Comment Number 2: This proposal creates a logistical problem for growers, applicators and my company. There were problems with the process when Category O was created about 10 years ago. Originally, the Department proposed that anyone with a current category D license and 2 years of fumigation experience would be grandfathered in to category O. My applicators had plenty of field experience with fumigations, and they worked hard to get category D license before the regulation took effect. Unfortunately, the Department changed the rule shortly before it went into effect. The Department came out with a statement saying that applicators had to have category D license for at least two years. This change in policy invalidated thousands of paid hours my employees put into acquiring category D, not to mention the cost of the actual exam.

The actual testing and licensing were challenging last time as well. The test was not even available until after the proposed regulation went into effect. We needed to get a large number of applicators certified in a very short time in order to prevent application delays. Delays impact growers, pest control businesses and everyone that they employ. Additionally, the Department was also backlogged and slow on turn around of licenses. I don't want to repeat that whole process simply because the Department decided to change the letter of the category and use a synonym of the current license name.

In order to prevent testing redundancy, exam expenses, and loss of revenue due to state licensing delays, I request that you amend the proposed regulation to grandfather current category O holders into the new letter L category.

Response: See response to comment no. 1. DPR is required to ensure individuals conducting soil fumigations activities, at minimum, meet the federal standards. For these reasons, individuals who currently hold Subcategory O will be required to review the new Soil Fumigation study guide (currently being written to cover new soil fumigation federal competencies) and examine on this material to demonstrate competency with the new federal requirements and ability to use soil fumigants safely and effectively. In addition, DPR currently provides through contractor, in-person computer-based testing for commercial applicator examinations, providing more opportunities for applicants to test. DPR will ensure there are sufficient resources and staffing available to accommodate DPR's commercial license and certificate testing needs for those needing to obtain a fumigant category.

- *Tri-Cal, Inc.: Nathan Sorenson; Alfonso Guerrero; R.L. [signature illegible]; Victor Guerrero; E.G. [signature illegible]; Ramiro N. Romero; C. Charles Cobarruvias; Jose L. Guerrero; Fernando Gonzalez; Cipriono Pouce; Robert Deluna; Aurelio Nuñez; Guadalupe Gonzalez; Armando [signature of last name illegible]; Ernesto [signature of last name illegible]; Employee [signature illegible]; Jose Alfredo Garcia; Jesus Naranjo; Bryan Naranjo; Domingo Gonzalez-Aguilar; Edmundo Gonzalez; J.M [signature illegible]; Manuel [signature of last name illegible]; Mario Estrada; Isabel Lopez; Andrew Fuller; Augustin Castillo; Jesus Ramirez; Andres Garcia; Abel Gomez; Octavio Parrilla; Roland Espinoza; Jesus Parrilla; Jesus Ortiz; Elias Lopez; Ken Romero; Luis Velasquez Jr.; Carlos Velazquez; Luis Felipe Mendoza; Javier V. Ramirez; Raymundo Garcia; Jose Alfaro Hernandez; Kaleb Roberson; Abelardo Garcia.*

Comment Number 3: I don't think that the proposal to require all category O holders retest makes any sense. The other categories that are staying the same are not required to retest under the proposed rule. Therefore, current category O licensees should be grandfathered into the new proposed category L. Simply changing the letter and the name of the category from Field Fumigation to Soil Fumigation does not make it a new category. Field Fumigation and Soil Fumigation are the same thing. Please amend the proposed regulation to grandfather current category O holders into the new letter L category.

Response: See response to comment no. 1.

Comment Number 4: I have held a license in category since it was created. I had to pass the test when it was created about 10 years ago. Originally, the Department proposed that anyone with a current category D license and 2 years of fumigation experience would be grandfathered into category O. I had plenty of field experience with fumigations, and I worked hard to get my category D license before the regulation took effect. Then the Department changed the rule. The Department came out with a statement saying that applicators had to of had the category D license for at least two years. It was like pulling the rug out from under me. I had worked hard to meet the requirements to be grandfathered in. When the rule was changed, it felt punitive and revenue seeking. I had to pay the new test fee, study for the test and take time to take the new test despite having met the requirements in the initial proposal. The testing itself was also problematic. English is not my first language. It is harder for me to take a timed test in English. When it comes to labels and other areas of knowledge, I can take as much time as I need to go through the information. If the test were in Spanish or allowed a substantially longer test time, it would be fairer. Additionally, last time, the testing was a logistical nightmare. The test was not

even available until after the proposed regulation went into effect. I was pressed with getting my license in a very short period of time or risk losing the ability to do my job. The Department was also backlogged and slow on turnaround of licenses. I don't want to repeat that whole process simply because the Department decided to change the letter of the category and use a synonym of the current license name.

Response: See response to comment no. 2. The commenter also noted about examination language access and time needed to complete an examination. Since pesticide labels are approved at the federal level and most labels are approved in English only, examinations are currently offered in English to best ensure license and certificate holders can read and understand the pesticide label. In addition, the revised federal rule does not establish requirements for examination language. DPR is aware of broader efforts to consider Spanish-language labels and will consider changes in the future to accommodate different needs as appropriate. In FY 22/23, DPR was authorized additional funding to provide QAL/QAC examinations and study materials in alternative languages; DPR is currently developing an implementation plan for this funding. Based on DPR's computer-based testing examination statistics, QAC/QAL examinations are typically completed within the currently allotted time; for these reasons, DPR believes the currently allotted time for QAC/QAL examinations is appropriate. Furthermore, DPR allows extra time for those that need a reasonable accommodation under the Americans with Disabilities Act (ADA).

- *Ivy Bader, Licensing and Compliance Manager, Global Go, LLC*

Comment Number 5: Proposed 3 CCR section 6731 is too restrictive. So long as the individuals communicating confirm receipt of the confirmation it should be deemed as immediate. California doesn't need to dictate the technology in which communications are delivered. Cannabis companies, who do not qualify for tax exemptions and write-offs like other traditional businesses must bear the burden of more costs as they will be required to provide means of direct communication if in person communication is not an option. Some cannabis employees work outside and don't get cell service and the burden would be on the employer to either provide two-way radio, internet, or hire other more labor just to fulfill this new requirement. Cannabis is already over-regulated and over-taxed and they shouldn't endure the most of additional compliance costs for this regulation because the CA Department of Pesticide Regulations wants to dictate how pesticide applicators are allowed to communicate.

Response: Due to the high toxicity of California restricted materials, immediate communication is critical to ensure the protection of employees using such chemicals and prevent possible exposure. Direct communication minimizes the possibility of delays in communicating critical or emergency information regarding the use of these products. Section 6731 provides multiple options for employers to meet the requirement for direct communication in order to ensure the safety of their employees. Indirect communication using texts, emails, or voicemails are dependent on the user regularly monitoring a device, which could result in communication delays. These communication requirements are also necessary to maintain consistency with 40 CFR 171.201(b)(3)(v). Moreover, restricted materials are not currently approved for use on cannabis.

Comment Number 6: Proposed 3 CCR section 6580.1 should be written more narrowly to exclude cannabis operators with Lake and Streambed Alteration agreements with the California Department of Fish and Wildlife (CDFW) and that operate facilities where nesting birds are a protected species because these agreements generally mandate that anytime a burrowing bird nest

is found on site that the CDFW must be contacted to remedy the issue of the infestation. So, it follows that unless the class of cannabis operators listed above are directly instructed by the CDFW to fumigate for which they would need proper authorizations, they can't fumigate until contacting the CDFW rendering this regulation somewhat futile.

Response: A cannabis operator would only need to get the additional private applicator fumigation certificate if needing to fumigate for burrowing vertebrate pests. If the cannabis operator does not need to fumigate or does not receive the appropriate approvals to fumigate for burrowing pests, they would *not* need the additional private applicator fumigation certification. It would not be appropriate to exempt cannabis operators from this regulation as the federal regulations require States to ensure applicators who perform fumigant activities, including those for burrowing vertebrate pest control, are properly trained and certified. The proper certification and training of pesticide applicators is a separate requirement than CDFW requirements noted by the commenter. The new private applicator certificate option ensures the safety of applicators and verifies competency for the use of a restricted material labeled as a fumigant to control burrowing vertebrate pests.

Comment Number 7: Proposed section 6612 does not consider that cannabis cultivation farms may not employ anyone under the age of 21. A special exception should be created for cannabis for clarity.

Response: A private applicator certificate or a DPR commercial applicator license or certificate are only required should the operator choose to use California restricted materials, including federal RUPs. If using these products, it is essential for the protection of the applicator, public health, and the environment that an individual is properly trained and certified. The use of restricted products is optional and restricted materials are not currently approved for use on cannabis; operators do not need a private or commercial applicator certificate to use general use pesticides. Furthermore, the cannabis cultivation farm employment age of 21 that is required by the Department of Cannabis Control exceeds DPR's proposed age requirement for certified pesticide applicators of 18 years of age. Therefore, cannabis operators already must hire employees whose age would meet the employment age for certified applicators in proposed section 6612.

Comment Number 8: Qualified Applicator License and Qualified Applicator Certificate applications and renewals can be costly to those who need them – especially for those in the cannabis industry where nothing can be considered tax exempt. There should be both an application and fee exception for cannabis industry applicants.

Response: This comment is outside of the scope of the proposed regulations.

- Tom

Comment Number 9: I suggest that those with current QAL not be required to retest for vertebrate pests including burrowing rodents. And fumigation control measures. Those areas were covered in in the original vertebrate category.

Response: The original federal rule did not include fumigation categories (soil or non-soil), as such, the fumigation competencies at the federal level are new. Although the commenter may have

previously received some information on the use of fumigants as part of previous examinations taken, it would not have included all the new federal requirements. DPR's current QAL study materials and examinations do not sufficiently cover the new federal competencies for soil and non-soil fumigation activities. Also see response to comment no. 1.

In addition, DPR does not have an existing "vertebrate category" for QAL holders. DPR is required to ensure individuals conducting fumigation activities, at minimum, meet the federal standards. For these reasons, commercial applicators (QAL/QAC holders) who currently conduct fumigation activities under an existing DPR category or subcategory will be required to obtain the new category(ies) of Soil Fumigation (Category L) and/or Non-Soil Fumigation (Category M) appropriate to their pest control activities. This will require some individuals to review the new soil and/or non-soil fumigation study guide(s), which will cover new federal competencies, and demonstrate competency with the new federal requirements and ability to use fumigants safely and effectively by passing an examination. The appropriate new category for a QAL holder, fumigating pest burrows in sites including, but not limited to: fields, rights-of-way, ditches, landscaping, and equipment yards, is the new Category M-Non-Soil Fumigation category.

- *Jeff Keller, Executive Director, Western Wood Preservers Institute*

Comment Number 10: Currently, the California Department of Pesticide Regulation issues qualified applicator certificates and licenses for wood preservation under subcategory L. However, the proposed changes would eliminate wood preservation subcategory L and require wood preservation to be certified under category A – Residential, Industrial, and Institutional Pest Control.

The application of wood preservative pesticides is only used either within a sealed steel cylinder or inside an enclosed building at secure facilities by trained technicians. Wood preservatives are unique and should be treated as such by keeping the current subcategory L.

Lumping wood preservation into category A would cause an undue burden on the wood preservation industry by expanding the testing examination materials well beyond the scope of wood preservation. This would require testing on applications and usages that are not part of the wood preserving industry and knowledge that current licensees would not have or need to have.

The U.S. Environmental Protection Agency published a Questions and Answers document (https://www.epa.gov/sites/default/files/2020-02/documents/amended-aug-2019-qas-for-slas_tribes_certification-plan-revisions-40cfr171.pdf) for State Lead Agencies to answer questions on the 2017 Certification of Pesticide Applicators regulation. One of the questions (9P Q) in the publication seeks to confirm if the following draft language is acceptable to allow applicators to operate under preexisting, valid certifications for wood preservation:

Section 6530.1 Wood Preservation Subcategory.

An individual holding a valid license or certificate in one of the following subcategories obtained prior to April 1, 2022 may perform pest control activities described below, provided the individual continues to meet the renewal requirements detailed in section 6511 for the respective subcategory.

(a) Subcategory L - Wood Preservation

Perform pest control for wood damage and wood preservation, not including the use of fumigants.

The answer provided for question 9P Q states to continue to provide a license or certificate under wood preservation, California would need to “demonstrate how the recertification and renewal requirements meet the requirements of [40 CFR] § 171.303(b)(4), as well as ensure the recertification renewal requirements meet the specific category competency standards for certification under that category.” Since California is already meeting the minimum requirements outlined in 40 CFR § 171.303(b)(4) we respectfully request the department to keep subcategory L wood preservation by making the following changes to proposed section 6530:

(l) Category L - Wood Preservation

- (1) An individual holding a valid license or certificate prior to April 1, 2022, may perform pest control activities for wood preservation, provided the individual continues to meet the renewal requirements detailed in section 6511 for the respective subcategory.
- (2) Perform pest control for wood damage and wood preservation, not including the use of fumigants.

Response: To remain consistent with federal changes, DPR proposed to remove California-specific certification subcategories, which are not included in the 40 CFR 171.101 certification categories, from section 6530. These amendments align DPR’s commercial applicator certification categories in section 6530 with federal certification categories and descriptions listed in 40 CFR 171.101 and provide clarity on California’s category descriptions, including appropriate use settings and restrictions. Both DPR categories A (Residential, Industrial, and Institutional) and C (Right-of-Way) cover the necessary knowledge to conduct wood preservation pest control activities safely and effectively, dependent upon the use setting. These DPR categories are consistent with the federal certification categories of Industrial, institutional, and structural pest control (consistent with DPR category A) and Right-of-way pest control (consistent with DPR category C). As there is no federal category for wood preservation, these are the appropriate federally consistent certification categories for wood preservation pest control activities. Based on 2022 license and certificate data, the majority of individuals who currently hold subcategory L also hold a category A or C. No changes to proposed section 6530 will be made.

Regarding the commenter’s reference to the U.S. EPA Q&A publication, this document was published 3 years ago, prior to DPR working closely with U.S. EPA and getting approval on the proposed regulations. The questions and answers detailed in the U.S. EPA document are not an indication that a State will adopt a specific approach. Furthermore, DPR explored the option of ‘grandfathering’ in existing subcategories, including wood preservation. However, 40 CFR does not include the existing subcategories as certification categories, nor does 40 CFR include competencies for these subcategories. As a result, in working with U.S. EPA it was determined that ‘grandfathering’ these subcategories would not be appropriate, and the pest control activities currently conducted under the subcategories will require the appropriate larger DPR category to meet competency standards (i.e., Category A and/or Category C).

In addition, 40 CFR does not include provisions to grandfather in any category and/or subcategory. As the State Lead Agency, DPR is responsible for ensuring California’s pesticide applicator

certification programs, at minimum, meets the revised standards of 40 CFR Part 171. The proposed regulations meet the revised federal standards, have been approved by U.S. EPA, and will be implemented according to the U.S. EPA-approved timeline.

- *Anne Katten, Pesticide and Work Safety Project Director, CRLAF*

Comment Number 11: It is my understanding that the Maintenance Gardener Certification exam is available in Spanish. This is highly appropriate given the demographics. There is now an added proposed requirement in 6504(b) that all applicants must be able to read pesticide labeling. Unfortunately I know that some but not all landscaping pesticide labels have been translated into Spanish. How will this be handled? It is my understanding that Maintenance Gardening businesses must be certified if they apply any pesticides, not just restricted use pesticides.

I generally think more robust pesticide training and examination requirements are a good idea but I am concerned that these specific changes might have the effect of causing more maintenance gardeners to work outside of the system.

Response: DPR does currently offer the Maintenance Gardener examination in both English and Spanish, however, the label included in this examination to assess label comprehension is only presented using an English label. Under 40 CFR 156.10(a)(3), all pesticide labeling is required to appear in the English language. Although foreign language text is permitted in addition to the full English text, most pesticide labels are in English only or will be in English at a minimum. For this reason, and to best ensure license and certificate holders can read and understand pesticide labels available in the market, DPR uses English labels on all examinations administered. DPR is aware of broader efforts nationally to consider Spanish-language labels, and will adjust its practices as appropriate if changes are made.

An individual must possess a Maintenance Gardener Pest Control Business license if they are a maintenance gardener who occasionally engages in incidental pest control in support of their primary gardening business for hire; this would include the use of non-restricted pesticides. DPR notes the concern raised about working outside of the system, and will consider options to address this concern separately from this regulation.

Comment Number 12: Language access is a barrier for a significant number of small farmers. It is my vague understanding that private applicator certification has not always involved a written exam. Am I also correct in thinking that farmers must have private applicator certification even if they don't apply restricted pesticides?

Response: A private applicator certificate is required for an individual who uses or supervises the use of federally restricted use products or California restricted materials for the production of an agricultural commodity on property owned, leased, or rented by them or their employer. As such, a private applicator certificate would *not* be required for an individual who is applying general use products.

The revised federal rule does not include an option for oral examination. The written private applicator examination format is consistent with 40 CFR 171.105(h)(1) and is necessary to meet the federal standard. Recently, Assembly Bill 203 (Chapter 60, Statutes 2022) amended Food and Agricultural Code (FAC) section 14092(b) and eliminated oral examinations for private applicator

certificates. As a result, effective June 30, 2022, oral examinations are no longer an option for private applicator certification.

- *Ruthann Anderson, President/CEO, California Association of Pest Control Advisers (CAPCA)*

Comment Number 13: While PCAs are technically not incorporated into the certification portion of the changes proposed, as the PCA license stands unique in the California framework, we do have concerns about the timeline to roll out and implement the proposed changes. C&T was first discussed with CAPCA in 2019 as a set of changes that we would soon be able to review with a long road to implement. However, not only have delays lead to this comment period being open at the peak of the season when industry stakeholders are too busy to fully engage, but the timeline to implement has been backed into a very brief window.

Response: DPR is required to implement the proposed changes according to a timeline approved by U.S. EPA. This timeline was submitted and approved with the revisions proposed in this rulemaking to meet revised federal requirements.

The final revised federal regulations were issued in 2017, but were placed on hold for various reasons through 2020. In addition, the final revised federal regulations required certifying authorities to submit proposed revisions to meet federal requirements by March 4, 2020 (a deadline met by California) and required U.S. EPA to approve or reject revisions by no later than March 4, 2022 (later delayed to November 4, 2022). These delays, combined with the federal submission deadline, resulted in a short time frame for DPR to incorporate the revised federal standards into California's regulations and still meet the required submission date. DPR received final approval from U.S. EPA for the proposed changes and timeline in September 2022 and had begun outreach efforts to stakeholders in May 2022. To best ensure California meets the revised federal standards, the proposed regulations will be implemented according to the U.S. EPA-approved timeline.

Comment Number 14: Has the department considered how this shortened timeline to roll out could impact fumigant applications in late 2023 or early 2024? With the Department acknowledging they do not plan to make the test available until after July 1, 2023 - how many applicators will be qualified to apply by January 1, 2024? How will the added retesting of categories impact to the current testing program with a large wave of QAL and QACs retesting new fumigant categories?

Response: DPR is prescribing an effective date of January 1, 2024 and providing individuals the opportunity to achieve early compliance starting July 2023. This will provide a six-month period, giving adequate time for prospective and current fumigant applicators to study and pass the required certification examination(s) prior to the effective date. Six months provides a reasonable amount of time for individuals to review, prepare, study, and examine, if necessary. DPR is incorporating this six-month period to specifically address and accommodate the expected increase in individuals requiring examinations and to best promote compliance by January 1, 2024, for QAL and QAC holders conducting fumigant activities. In addition, DPR is required to implement the proposed changes according to a timeline approved by U.S. EPA. To best ensure the revised federal standards are met, the proposed regulations will be implemented according to the timeline approved by U.S. EPA. Also see response to comment no. 13.

In addition, DPR currently provides through a contractor, in-person computer-based testing for commercial applicator examinations. DPR will ensure there are sufficient resources and staffing available to accommodate DPR's commercial license and certificate testing obligations for those needing to obtain a fumigant category.

DPR estimates that approximately 1,781 individuals will apply to take the new Soil Fumigation category, 3,434 individuals will apply to take the new Non-Soil Fumigation category, and 1,583 individuals will apply to take an alternative category (i.e., Category(ies) A-K) that may be necessary due to the removal of the existing subcategories.

Comment Number 15: How will C DPR be supporting County Ag Commissioners who will have the bulk of workload of nearly 18,000 PACs to re-test in office?

Response: DPR is working closely with the County Agricultural Commissioners (CACs) and will be offering resources to help with outreach to private applicators and the testing efforts. Additionally, DPR worked with U.S. EPA to establish a three-year phase-in process in the U.S. EPA approved implementation plan/timeline. This three-year approach will allow PACs to take their examinations at the time of their renewal and distributes the workload of testing, reducing the required number of tests administered each year to approximately 6,000. This distribution, in combination with outreach and testing support from DPR, will support CACs through the implementation of the proposed regulations. DPR made the new PAC examination available beginning Fall of 2022. Those that take this examination will have met the revised PAC standards. Individuals may choose to take this revised examination early, or at the time of their renewal. Additionally, DPR estimates that approximately 2,500 individuals will apply to take the new Burrowing Vertebrate Pest Fumigation examination; this would be in addition to the estimated 6,000 PAC examinations.

Comment Number 16: Under a stressed economy with whispers of recession, we want to express concerns over the added costs of exam application(s), study time, time off work and study guides for those who are required to re-test. We would ask at a minimum that C DPR provide free to all study materials well in advance of exams becoming available, to all required to re-test.

Response: Cost associated to those impacted by the regulatory changes was considered in the development of these regulations. Details on the cost impact of the proposed regulations can be found in the Economic and Fiscal Impact Statement (Form STD. 399). While the regulatory changes will result in a cost to those impacted, the regulations are necessary to comply with the revised federal requirements. The private applicator Burrowing Vertebrate Pest Fumigation study guide is currently being written by DPR; this guide will be available at no cost. DPR does not write or publish the study guides for the commercial and private fumigant categories (excluding the new Burrowing Vertebrate Pest Fumigation certificate option); they are written and published by other entities. The commercial Soil Fumigation study guide is being written and copyrighted by the University of California Agriculture and Natural Resources. The commercial Non-Soil Fumigation study guide is being written and copyrighted by the Pesticide Education Resource Collaborative. As such, DPR is unable to provide these resources free of charge and the price established for these materials is not within DPR's control. The revised private applicator Pesticide Safety study guide (est. 2021) was also written and copyrighted by the University of California Agriculture and Natural Resources and DPR is unable to control the fee for this guide; this guide is available for purchase now. We expect all study guides to be available by July 1, 2023.

Comment Number 17: It is a little unclear what the overall additional cost of the program will be and how that will impact each individual licensee. CDPR has struggled with professionally processing exams, CE, and renewals over the years. We request CDPR to consider efficiencies and collaborations that can be formally gained in this process in order to mitigate some of the increased cost (or decreased value like changing the number of categories each test application fee covers) to licensees while maintaining their professional engagement in the process.

We respectfully request, considering the current economic forecast and as mentioned above the cost of re-testing in order to continue with normal work, that CDPR consider a more transparent cost plan with a phased in approach to help licensees not only budget for but successfully manage the continuation of their license. A professionally licensed group of stakeholders is a clear benefit to everyone when considering pesticide safety and use.

Response: See response to comment no. 16. In addition, DPR currently works collaboratively with licensees and stakeholders and will continue to work with these individuals and groups through the implementation of the proposed regulations. While DPR recognizes that testing can be both a time and financial burden for some individuals, information on who may need to take and pass an examination to remain in compliance started being communicated by DPR in May 2022 to best prepare those who may need to budget and plan for this requirement in the future. DPR is required to implement the proposed changes according to a timeline approved by U.S. EPA to meet federal requirements. To best ensure California meets the revised federal standards, the proposed regulations will be implemented according to the U.S. EPA-approved timeline.

Comment Number 18: As an organization that seeks to raise the bar of professionalism when it comes to Continuing Education (CE), we believe a number of the proposed changes to CE are eliminating opportunities for varied learning styles to engage. Rather than eliminating Panel, Q&A Discussions or Vendor displays completely, we request the Department consider: What valuable educational content is lost in a Panel, Q&A Session or Vendor display discussions? Would requirements structured around participants, for example in a panel session, be a more appropriate change - include at least one “expert” in their field on the panel – i.e. UC Adviser, doctorate level corporate employee, etc.? Would it be appropriate to have a max number on a panel to ensure robust discussion, or a moderated Q&A table setting with at least one “expert” per table? Is it possible that receiving a total time stamp from scanning in and out of vendor display discussions could be added up to reach a maximum learning time approved for that session?

Response: DPR agrees with the commenter that there is value in panel discussions, Q&A, and vendor/poster displays. As a result, DPR amended section 6512 of the originally proposed regulations to include panel discussions, Q&A, and vendor/poster displays as approvable CE formats, but with specific guidelines. The proposed regulations will be amended to allow up to 30 minutes of combined credit for panel discussion, Q&A, and vendor/poster displays per application, as long as the course contains a *minimum* of 4 hours of additional approvable CE content. This would then add an additional 30 minutes of approved CE to a course. For example, a sponsor submits an application which contains 6 hours of approvable CE content. This application also includes one 30-minute panel discussion. DPR would approve this application for 6.5 hours of CE. To provide an additional example, a sponsor submits an application which contains 3 hours of approvable CE content. This application also includes one 30-minute Q&A session. DPR would approve this application for 3 hours of CE (not 3.5 hours), as the submitted application does not

contain the minimum 4 hours of content required to accept the Q&A session as approvable for an additional 30 minutes of credit. The content of the panel discussions, Q&A, and vendor/poster displays submitted for this credit must meet the topic requirements listed in proposed section 6512(b).

Comment Number 19: Throughout the pandemic many sponsors, including CAPCA, worked diligently to create online learning tools that would meet and exceed the engagement learning level versus in-person instruction. As we move out of the pandemic and in-person learning returns, we still see a good number of licensees that prefer to receive their education online. Furthermore, online instruction provides a realistic safety net for the industry to stay professional and educated if, for example, another lockdown was to occur, an individual becomes ill (or high risk) and are no longer able to attend in person training or any number of other personal reasons. Moving forward, it's important to provide options for the reasons stated. However, the proposed changes making online learning more difficult for sponsors, without any justification, seem to be contrary to the above.

Response: The proposed interactive online and webinar requirements in section 6512.2 are intended to clarify the current CE sponsor course submission requirements in existing section 6512 for these types of courses. The proposed amendments and additions are necessary to comply with 40 CFR 171.107(b)(2) and 171.303(b)(4) and meet the federal standard. The proposed requirements for interactive online and webinar courses are also necessary to distinguish the submission requirements between CE courses hosted online and CE courses hosted in-person. Several of the requirements included in 6512.2 for interactive online and webinar courses are already being used by sponsors hosting these course types. DPR will work closely with sponsors to help them understand the CE requirements in the proposed regulations and implement these requirements in courses going forward.

Comment Number 20: Online courses must have a minimum of 5 question quizzes for any content over an hour AND a 10-question exam at the end of every course. While we agree with the need to check for content engagement, the requirements seem unrealistic for a short course just over an hour. When you compare a 1.5-hour course which would require 15 questions to 8 hours courses that average six questions per hour. Is there a more tiered approach for courses just over an hour to 3-hour courses?

Response: The 5-question quiz requirement every hour of accredited time for interactive online courses longer than one hour ensures attendees are participating and engaged in the CE course by responding to course specific questions. The proposed approach is currently tiered based on course length, for example:

- Up to 1 hour approved CE content: no quiz questions required
- > 1 hour < 2 hours: 5 quiz questions required
- > 2 hours < 3 hours: 10 quiz questions required
- > 3 hours < 4 hours: 15 quiz questions required
- > 4 hours < 5 hours: 20 quiz questions required
- > 5 hours < 6 hours: 25 quiz questions required
- > 6 hours < 7 hours: 30 quiz questions required
- > 7 hours < 8 hours: 35 quiz questions required
- > 8 hours < 9 hours: 40 quiz questions required

All interactive online and webinar courses require a minimum 10 question final exam upon the conclusion of the course, regardless of course length.

In response to this comment, DPR amended proposed section 6512 to include a subsection for the approval of continuing education hours for quiz and final examination questions. This amendment allows final examination and review questions to be approved at one minute of credit per question. Each hour of approved material may include up to 10 minutes of questions.

Comment Number 21: Having worked in the online CE space for the last two years, we have seen questions written by speakers be valuable content checks – many of them include “all of the above”, “none of the above”, or all-inclusive response options since we recognize that some things are not a one size fits all. We are concerned that creating questions without these inclusive response options could lead to easier tests. Again, since CDPR is checking all coursework, a limit on the number of these types of questions in a quiz or exam setting would be more appropriate to bridge teaching and learning styles.

Response: Although there may be value to these types of questions in some cases, through several audits conducted by DPR, DPR has found that these questions are easily answered (“all of the above” or “none of the above” predominately being the correct response for these questions) and do not necessarily test knowledge learned throughout a CE course. The requirement for quiz and final examination questions to be in multiple choice format with one correct answer and at least two plausible but incorrect options is also best, so they are consistent in formatting with DPR’s licensing and certification examinations. Without requiring two plausible, but incorrect options, the correct answer is more likely to be obvious and the quiz or exam will not accurately assess the attendee’s knowledge. In addition, all-inclusive response options will not be permitted as attendees only need to have partial knowledge to identify the correct answer.

Comment Number 22: CAPCA encourages CDPR to think long term. The limitation that quiz and final exam questions must be changed every year the course is being accredited by CDPR seems to push for a licensee to have new exam content, when they simply need new content options each year to fulfil their renewal. Rather than changing the course code each year, the Department should consider whether codes should be kept for the duration of renewal so that licensees do not repeat content.

Response: Requiring questions that are different from the preceding year ensures attendees pass courses based on knowledge presented at the course and not from memorization of a previous year’s course. This also ensures course attendees participate throughout the duration of a course each year, as they must pass a final examination with a score of 70% or greater to receive CE credit. The approval duration of CE courses is out of the scope of the proposed regulations; however, the Department will take this into consideration for the future if CE course approval duration is evaluated.

Comment Number 23: We support CDPR raising the bar of professionalism in terms of licenses and certificate holders maintaining their renewal through quality CE. It has been at great expense and thoughtful planning that CAPCA has been able to pivot and build more professional tools to raise this bar including piloting a QR code tracking system for down to the minute accuracy of attendee engagement for in-person CE programs. *How will CDPR be supporting sponsors in meeting compliance and standards?* We hope that CDPR will help sponsors continue to innovate –

including reconsider whether physical signatures for license or certificate holder with CE records can be expanded to more digital and touch free options even for in person CE (6513.c.9)

Response: The proposed regulations do not exclude the use of electronic signatures on CE records, course sign-in sheets, or certificates of completion, for example. The signature format (i.e., wet signature or electronic) is left at the CE sponsor's discretion.

Comment Number 24: CDPR has long relied on third party systems to provide hours tracking support. CAPCA is concerned with the increased costs to licensing and the potential impact on an already stressed licensing department if CDPR were to develop and manage a larger database, including CE hours tracking. More importantly, if CDPR were to assume the responsibility of managing a larger database with those costs passed on to the licensee, a demonstration of value to the licensees is expected. *Are you prepared to demonstrate that value?*

Response: DPR has sufficient staff positions within the Licensing and Certification Program, including permanent positions recently authorized in fiscal year 2022/23, to ensure this new system and tasks associated with it are managed appropriately. As a result, the workload and potential impact to the licensing program that is associated with the creation of the CE tracking system has been considered. The amendments to subsection 6513(d) ensure submission consistency for all CE sponsors through a common submission format, enables DPR to verify a license holder's completion hours on the behalf of both sponsors and license holders, if necessary, and verifies that CE sponsors acknowledge that their submissions are in accordance with the requirements of section 6513(a).

- *Coalition of Agricultural and Business Interests: Terry Gage, President, California Agricultural Aircraft Association; Todd Sanders, Executive Director, California Apple Commission, California Blueberry; Association, California Blueberry Commission, Consolidated Central Valley Table Grape Pest; and Disease Control District, and Olive Growers Council of California; Ruthann Anderson, President/CEO, California Association of Pest Control Advisers; Mike Montna, President/CEO, California Tomato Growers Association; Roger Isom, President/CEO, California Cotton Ginners and Growers Association and Western Agricultural Processors Association; Taylor Roschen, Policy Advocate, California Farm Bureau Federation; Ian LeMay, President, California Fresh Fruit Association; Rick Tomlinson, President, California Strawberry Commission; Robert Verloop, Executive Director/CEO, California Walnut Commission; Richard Matoian, President, American Pistachio Growers.*

Comment Number 25: We are concerned with the overall timing of the regulation and the compliance deadlines for both the new fumigation commercial applicators and the revised private applicator certificates (PAC). If all goes as planned and the C&T changes are approved by July 2023, commercial applicators will only have 5-6 months to study and pass their respective examinations. Additionally, study guides and materials will not be available for the new fumigation categories until the regulation is adopted. We are appreciative of DPR's new partnerships with local testing facilities, but we are unsure if these facilities will have enough personnel and time to handle the influx of all of the necessary tests in this shortened timeframe.

We are also of the opinion that, because of the new content required under the proposed regulation, it is highly likely many of the existing applicators may need to take exams multiple times. These

time and resource constraints will become more acute under these circumstances. As the Department is aware, agricultural harvest seasons vary by commodity and timing to respond to pest and disease pressure is essential. The tight examination and licensing deadline for compliance could conflict with peak season for some commodities and thus impact our ability to perform the necessary applications. Finally, considering the current dearth of professional applicators available in California, we are concerned about what a constriction of the current pool of professionals may mean for agriculture. Non-high production but still active agricultural regions outside of the Central Valley where pest management services are still required but access is already limited, and the re-examination required may exacerbate that disparity.

Response: The commercial applicator Soil and Non-Soil fumigation study guides are expected to be available by July 2023, the revised private applicator Pesticide Safety study guide (est. 2021) is available for purchase now, and the private applicator Burrowing Vertebrate Pest Fumigation study guide is also expected to be available by July 2023. The availability of these guides at these times supports the 6-month period in which individuals needing to retest will have the available resources to do so.

Through a contractor, DPR currently provides in-person computer-based testing for commercial applicator examinations. DPR is working with its contractor to ensure there are sufficient resources and staffing available to accommodate DPR's commercial license and certificate holder testing needs. DPR is working closely with the County Agricultural Commissioners (CACs) and offer resources to help with the testing efforts for private applicators. Additionally, DPR worked with U.S. EPA to establish a three-year phase-in process in the U.S. EPA approved implementation plan/timeline. This three-year approach will allow PACs to take their examinations at the time of their renewal and distributes the workload of testing, reducing the required amount of test administered each year to approximately 6,000. This distribution, in combination with outreach and testing support from DPR, will greatly support CACs through the implementation of the proposed regulations and testing efforts. DPR made the new PAC examination available beginning Fall of 2022. Those that take this examination will have met the revised PAC standards. Individuals may choose to take this revised examination early, or at the time of their renewal.

Also see response to comment no. 14.

Comment Number 26: The new detailed requirements for exam components in the regulations, such as age verification, will exacerbate the local circumstances. There are ways for testing sites to accommodate this change, but we would request the Department not be so prescriptive in the draft regulations and rather allow discretion for proctors. This could include verifying age of new potential licensees rather than verifying the age of one who has been licensed for years or including recommendations for alternative, expedited good identification strategies for those who are obviously over 18 years old. Even these small opportunities for discretion may help with any backlog that could occur.

Response: The proposed minimum age requirement to apply for a commercial or private license or certificate is consistent with 40 CFR 171.103(a)(1) and 171.105(g). For commercial applicators, age will be verified by DPR at the time an individual initially applies for a license or certificate and is separate from identity verification prior to examination administration and/or at continuing education courses. For private applicators, age will be verified at the time an individual is scheduled to take an examination at a CAC office. Identity verification prior to examination

administration by a third-party testing facility, DPR, or CAC is necessary to ensure the appropriate person is administered an examination and to best ensure an individual is not taking an examination on the behalf of someone else. This also best promotes examination integrity and security.

Comment Number 27: While we appreciate the revised PAC exams will be available in the Fall of 2022 and the phased compliance dates for licensees, the burden of retesting the roughly 17,000 PACs will be significant. County Ag Commissioners (CAC) will be the first and most heartedly afflicted. As they and their staff are already spread exceptionally thin, adding this compliance deadline will lead to an even greater local workload. We do not agree with the cost consideration in the regulatory package stating: “CAC offices will be the local agencies responsible for enforcing the proposed regulations. As stated, DPR anticipates that there will be no fiscal impact to these agencies.” CACs will be responsible for administering these tests and we do not believe that DPR has adequately budgeted for the increased need for multiple exams for licensees, questions about compliance, directing stakeholders for CE and study services, and any other requirements of the CACs. We respectfully request the Department reconsider this determination.

Response: See response to comment no. 15.

Comment Number 28: Exam administration and test preparation will be made more challenging by this draft regulation. We ask that DPR, and its partners, aid us in announcing the new revision requirements to help avoid any potential backup in the examination process. We also suggest that DPR provide free study materials as soon as possible for all impacted stakeholders. If funding cannot be provided directly for stakeholders or those distributing study guide materials, the Department should issue funds for exam facilitators or study sites to purchase and distribute items. The earlier stakeholders can prepare for the examinations, the less potential for an overload of testing with CACs and the greater chance of passage for PACs. DPR should also consider how they may improve access and availability of both testing and study site infrastructure. Many local offices, both CACs and others, make themselves available to host study sessions and serve as testing sites. Considering the large number of applicators that would be required to be relicensed and the challenge with new exam content, DPR should consider compensation for those sites that must remain open and accessible longer and more often to get through this large volume of stakeholders.

Response: DPR is working closely with the CACs and offer resources to help with outreach to private applicators and the testing efforts, including announcement of the proposed regulatory revisions to stakeholders and licensees. DPR is prepared to provide additional assistance to CAC offices as determined to be necessary throughout the implementation process; this will continue to be evaluated over time. The commercial applicator Soil and Non-Soil fumigation study guides are expected to be available by July 2023, the revised private applicator Pesticide Safety study guide (est. 2021) is available for purchase now, and the private applicator Burrowing Vertebrate Pest Fumigation study guide is also expected to be available by July 2023. The availability of these guides at these times supports the 6-month period in which individuals needing to test will have the available resources to do so. Also see response to comment no. 16.

Comment Number 29: As proposed, restricted materials labeled as a fumigant shall only be used by or under the direct supervision of a certified commercial applicator. Historically, restrictive fumigants have safely and successfully been applied by PACs without direct supervision of certified commercial applicators. It is unnecessary for all restrictive fumigants to now require such

supervision. This will be tremendously burdensome for applicators and growers alike.

Response: The initial private applicator certificate examination has been revised to align with the revised federal regulations and include the expanded competencies for private applicators. In addition, the revised federal regulations include new fumigant use requirements for private applicators that are separate from the initial certification competencies. Private applicators using pesticides labeled as a fumigant and labeled for the control of burrowing vertebrate pests must obtain the new Burrowing Vertebrate Pest Fumigation certification option to use these products. Based on DPR's knowledge and discussions with CACs, it is most common for private applicators in California, on property owned, leased, or rented by him/her or his/her employer, to hire professional companies who specialize in fumigation activities to provide fumigation services, with the exception of services for burrowing vertebrate pest control, when needed. As a result, DPR proposes to limit private applicator fumigant use to situations that are most common to a private applicator's pest control activities and to ensure these applicators possess the required knowledge, skills, and information to safely conduct these limited fumigation activities. Any other fumigant use will require a private applicator to obtain a commercial qualified applicator license or certificate and possess the applicable fumigation category as proposed in sections 6530(l) and 6530(m). This approach will best ensure that those using these higher risk fumigant pesticides have the education specific to conduct these activities safely and effectively.

Comment Number 30: It is unclear why there is a significant difference between online and in-person continued education courses. The past two years have proven the importance and necessity of online courses and we do not believe the discrepancy between management of online and in-person courses needs to be as drastic as proposed. For example, online course sponsors are required to submit course approval requests 60 days in advance, while in-person courses only require a 30-day request period. DPR staff have stated that online courses take longer to get approved but have provided no further explanation as to why.

Response: DPR proposes to increase the submission time requirement by 30 days, for a total of 60 days, for interactive online courses to ensure DPR staff have sufficient time to review the submitted course and communicate with interactive online course sponsors. Interactive online courses have specific approval requirements that DPR must confirm (proposed section 6512.2(b)). Interactive online courses have historically taken the Department longer than in-person courses to evaluate, as DPR reviews these courses as an attendee would, for the amount of hours requested, to verify all course requirements are met (e.g., hours requested match length of course, course includes review questions [if appropriate based on length], and course includes a final examination). This is necessary since interactive online courses are available continuously once approved (i.e., not a single event). DPR must be provided online access to each course and has often experienced delays in obtaining initial access to verify the approval requirements or must communicate further with a sponsor to ensure approval requirements are met and reflected online; for these reasons the 60-day advance submission requirement is appropriate for interactive online courses.

DPR agrees with the commenter that some online formatted courses, such as webinars, can be adequately reviewed by DPR if submitted 30 days in advance of the course date. Beginning in 2020, DPR saw a significant shift in CE courses to webinar formats and began working with sponsors to ensure the courses met CE requirements. Although approval requirements for webinar courses in proposed section 6512.2 will increase, many of the requirements for webinar formatted

courses are already being met by CE sponsors. For these reasons, DPR believes the existing 30-day submission requirement is adequate review time as DPR and CE sponsors are already familiar with presenting courses formatted in this way. As a result, DPR amended section 6512.2 of the proposed regulations to require webinar courses to be submitted at least 30 days before the intended course date, which is the current requirement.

Comment Number 31: Under this proposed regulation, online courses would consist of far more questions per course length than the in-person courses. For example, a 1.5-hour online course would require 15 questions compared to an in-person 8-hour course averaging 6 questions per hour. DPR has also eliminated the ability for online course to use questions with “none of the above” or “all of the above” as an answer option. We question this condition, as these types of questions can prove valuable in confirming knowledge and can be used to test the participants’ engagement. We understand the need for certain requirements to prove attendance and participation but believe the requirements for online courses need to be more practical.

Response: See responses to comments no. 20 and no. 21.

Comment Number 32: Regarding online courses, rather than changing the quiz questions or final exam, we suggest that DPR pursue a multi-year course code for (or a cycle equivalent) to avoid applicants repeating course content during their renewal cycle for credit. Re-issuing the course code annually and changing questions doesn’t keep someone from intentionally (or unintentionally) repeating content.

Response: See response to comment no. 22.

Comment Number 33: We do not agree with the elimination of certain educational tools or courses. Question and Answer Sessions, Panel Discussions or Vendor Displays are all valuable forms of education and help accommodate different learning styles. Rather than eliminating these altogether, we recommend updating the requirements or creating a new standard that could be met for those that find these valuable. For example, Panel Discussions provide a useful forum for education when they are crafted and moderated well with specific topics of relevance. So, instead of eliminating this educational tool, we recommend DPR develop new standards like limiting the number of presenters on a panel and requiring one subject matter expert (i.e., UC Adviser or doctorate level corporate employee).

Response: See response to comment no. 18.

Comment Number 34: We understand the need to minimize the length of Correspondence Courses, but again, we do not agree with the elimination of this course category. Many participants find these courses useful as a refresher for many of the basics and we do not find it appropriate to eliminate a course that had proven helpful to some.

Response: As a result of the proposed section 6512(d), CE courses may not be longer than 8 hours. Correspondence style courses are typically longer than 8 hours, and thus, will not meet the new proposed requirements. In addition, due to the nature of correspondence style courses, it is difficult to verify that an attendee has successfully read and completed the entirety of a course, which allows individuals to skip through reading course content completely. Therefore, these courses do not meet the requirements of 40 CFR 171.107(b)(2)(iii) and can no longer be permitted because

there is no process to verify the attendee's successful completion of the course.

Comment Number 35: We ask that DPR reconsider allowing the use of an applicator's license card as a form of identification when taking continuing education courses. Checking a government-issued photo identification card for large events will be extremely onerous and from our understanding, is not a requirement under 40 CFR Part 171.

Response: The proposed identity verification for CE courses ensures there is a process in place to verify an individual's successful completion of a course, is necessary to comply with the requirement of 40 CFR 171.303(b)(4)(iv)(C) and has been determined to meet the revised federal requirements by U.S. EPA. DPR has proposed two options for identity verification for in-person CE courses, as DPR recognizes advances in technology capable of identity verification. Proposed section 6512.3(c)(1)(B) has also been added for DPR to ensure sponsors are able to verify an attendee's successful completion of interactive online and webinar courses. Because it is not feasible to physically check a government-issued I.D. at an interactive online or webinar course, DPR has also proposed two identity verification options available to sponsors to allow sponsors flexibility in the methods used to verify an attendee's identity. These proposed regulations are necessary to be in compliance with verifying an individual's successful completion of a course, as required per 40 CFR 171.303(b)(4)(iv)(C).

- *Rusty Randall, Technical Learning College*

Comment Number 36: Technical Learning College has implemented safe-guards, such as word count, within correspondence courses to prevent attendees from skipping through reading course content completely. Our staff have taken several of DPR's approved CE interactive courses and webinars, and are concerned with the security measures of these courses. Correspondence courses and assessments do not discriminate. The majority of our students do not want to take an interactive/webinar course due to several reasons:

1. Generally, no printable educational materials. No reference materials. Nothing to carry in the vehicle or have on the desk. Not a traditional educational experience.
2. Programs are not easily accessible. Students must have familiarity with computers and the internet. Many students prefer to do work on their own, at any place, without a computer. Many older students prefer textbooks. Some students do not have access to a computer.
3. Do not deal well with test anxiety or timed courses. Prefer not to be rushed or timed by a computer. Many have PTSD or other anxiety concerns. Many veterans do not enjoy timed courses. A form of harassment (discrimination) to many students.
4. The majority of students do not enjoy a 1 hour course that takes 2-3 hours to complete because the exam is too difficult or not complete.
5. Generally, there is no feedback mechanism during the course and no feedback survey when finished. Often no telephone number or email address are provided.
6. Some of these interactive CE providers sell the student's information for pesticide sales and no one enjoys cold-call pesticide sales.

Disparity/Malpractice/discrimination Discoveries:

Technical Learning College has provided correspondence courses to DPR students for approximately 20 years. Many of the DPR proposed changes (no correspondence courses, no longer than 8 hours, no effect to small business, etc.) that directly affects Technical Learning College and our students. These changes are not unexpected due the nature that we are the technical division of The Love of Christ Bible College, a Christian non-profit organization and have endured 10 years or more of consistent discrimination and disparity of treatment (double standards) from Agricultural DPR.

Response: See below for responses to commenter’s list of statements.

1. This comment is outside the scope of the proposed regulations.
2. This comment is outside the scope of the proposed regulations. Note, cost associated to those impacted by the regulatory changes was considered in the development of these regulations. Details on the cost impact of the proposed regulations can be found in the Economic and Fiscal Impact Statement (Form STD. 399). While the regulatory changes will result in a cost to those impacted, the regulations are necessary to comply with the revised federal requirements.
3. This comment is outside the scope of the proposed regulations.
4. This comment is outside the scope of the proposed regulations.
5. This comment is outside the scope of the proposed regulations.
6. This comment is outside the scope of the proposed regulations.

Due to the nature of correspondence style courses, it is difficult to verify that an attendee has successfully read and completed the entirety of a course, which allows individuals to skip through reading course content completely. Therefore, these courses do not meet the requirements of 40 CFR 171.107(b)(2)(iii) and will no longer be permitted because there is no process to verify the attendee’s successful completion of the course. In addition, as a result of the proposed section 6512(d), CE courses may not be longer than 8 hours. Correspondence style courses are typically longer than 8 hours, and thus, will not meet the new proposed requirements. The proposed 8-hour requirement ensures that DPR can evaluate an approved CE course and that an individual can successfully complete a course within a reasonable timeframe. Sponsors who previously sponsored approved CE courses in a correspondence format may apply to present the same course content in an in-person, interactive online, or webinar format. In addition, proposed section 6512.2 includes requirements for interactive online and webinar courses to: verify attendees course participation and successful completion; include features which prevent fast forwarding and participation in more than one course simultaneously; track time spent in a course; and verify the identity of an attendee. These proposed regulations are necessary to comply with 40 CFR 171.107(b)(2) and 171.303(b)(4).

- *Jeff Durbin, Technical Learning College*

Comment Number 37:

1. **Censorship of Textbooks:** Correspondence courses are no longer allowed because of the chance of someone cheating on the time. Our courses are proctored and require driver’s license, signing an affidavit, telephone verification and these procedures are more security than most of the other C/E courses. Identity verification not often required for course completion of online trainings Passwords will do nothing to prevent this practice. Telephone verification is the only viable option.
2. **Lack of Time Standards:** Other than textbooks, there is no C/E time standards for any of the

other types of training formats. Correspondence courses have a fixed timed formula that all the other C/E formats lack and DPR cannot guarantee the other formats are any more secure. Unlike textbooks, some C/E formats do not require any assessments from the students. Have these standards in place before making up rules.

3. **Invasion of Student's Privacy:** Many of DPR's new C/E provider requirements are depending upon provider intentionally invading students' privacy under the premise of security (Webinars and some LMSs). Hire a consultant who understands two things: Student's privacy (civil rights) and the invasiveness of computer programs (exploitation). Over the years, we have pushed this issue in attempts to appease DPR.
4. **No Expense on Small Business:** Learning Management Systems (LMSs) range in cost from 5 K to 30 K per year and this expense will only be passed on to students. That can be up to \$50 per student per course. There will be unrecoverable great expenses to many C/E providers on many issues.
5. **Work Requirements without Compensation:** Many of these new C/E requirements are nothing more than requiring C/E providers to provide the State of California free labor and resources with the threat of losing C/E assignment to existing approved courses. Many of these new tasks should be assigned and completed by DPR staff and not coerce C/E providers for uncompensated services.
6. **60 Day C/E Program Review:** Since C/E review is a paid service to DPR, there needs to be a reasonable expectation from DPR. 10 days is reasonable. 30 days is reasonable without payment. It is conceivable that it could take 4 to 6 months to have a course approved if there were minor problems, especially since there are no standards or any response from DPR, which has been a normal practice to TLC. Neglect of information and abandonment are forms of harassment. It might be best to have a two-year approval of all C/E courses as the Structural Pest agency.
7. **LMSs Problems:** LMSs offer minimum C/E regardless of how long the course actually took the student to complete. For example, a student can obtain 1 hour of C/E when it took 3 hours to complete. Having to pass the pre-quiz with 100% is essentially making a longer and stricter post assessment. Is it necessary to have different questions each year if you have a large pool of randomized questions and answers?

Response: See below for responses to commenter's list of statements.

1. It is difficult to verify that an attendee has successfully read and completed the entirety of a correspondence-style course, which allows individuals to skip through reading course content completely. Therefore, these courses do not meet the requirements of 40 CFR 171.107(b)(2)(iii) and will no longer be permitted because there is no process to verify the attendee's successful completion of the course. Also see response to comment no. 36.
2. Other formatted courses (i.e., in-person, interactive online, and webinar) do include time standards which are required to be provided with the approval request application in the form of a course syllabus or agenda (depending on the course format).
3. The identity verification requirements in proposed subsections 6512.2(a)(3)(A) and (a)(3)(B) are necessary for DPR to ensure sponsors are able to verify an attendee's successful completion of a course. Because it is not feasible to physically check a government-issued I.D. at an interactive online or webinar course, DPR proposes two identity verification options available to sponsors (proposed 6512.2(a)(3)(A) and (a)(3)(B)). Subsection (a)(3) is necessary to be in compliance with verifying an individual's completion of a course, as required per 40 CFR 171.303(b)(4)(iv)(C). Note, if invasion of privacy is a concern for an individual there are other

CE course options that are not in an interactive online or webinar format (i.e., in-person CE courses).

4. For detailed information on the impact of the proposed regulations on small businesses, see the Economic and Fiscal Impact Statement (form STD. 399), which was published during the public comment period.
5. This comment is outside the scope of the proposed regulations.
6. DPR agrees with the commenter that the submission time could be made more reasonable. Some online formatted courses, such as webinars, can be adequately reviewed by DPR if submitted 30 days in advance of the course date. As a result, DPR amended section 6512.2 of the proposed regulations to require webinar courses to be submitted at least 30 days before the intended course date.
7. Requiring questions that are different from the preceding year ensures attendees pass courses based on knowledge presented at the course and not from memorization of a previous year's course. This also ensures course attendees participate throughout the duration of a course each year, as they must pass a final examination with a score of 70% or greater to receive CE credit.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 15-DAY COMMENT PERIOD

- *Jeff Keller, Executive Director, Western Wood Preservers Institute*

Comment Number 1: Currently, CDPR issues qualified applicator licenses and certificates for wood preservation under Subcategory L. However, the updated proposed changes would eliminate wood preservation Subcategory L altogether, and require wood preservation to be certified under Category A – Residential, Industrial, and Institutional Pest Control or Category C – Right-of-Way Pest Control. Lumping wood preservation into Category A and Category C would cause an undue burden on our industry by requiring examination on curriculum that is not applicable to wood preservation.

The U.S. Environmental Protection Agency published a Questions and Answers document (https://www.epa.gov/sites/default/files/2020-02/documents/amended-aug-2019-qas-for-slas_tribes_certification-plan-revisions-40cfr171.pdf) for State Lead Agencies to answer questions on the 2017 Certification of Pesticide Applicators regulation. One of the questions (9P Q) in the publication seeks to confirm if the following draft language is acceptable to allow applicators to operate under preexisting, valid certifications for wood preservation:

Section 6530.1 Wood Preservation Subcategory.

An individual holding a valid license or certificate in one of the following subcategories obtained prior to April 1, 2022 may perform pest control activities described below, provided the individual continues to meet the renewal requirements detailed in section 6511 for the respective Subcategory.

(a) Subcategory L - Wood Preservation

Perform pest control for wood damage and wood preservation, not including the use of fumigants.

The answer provided for question 9P Q states that to continue to provide a license or certificate under wood preservation, California would need to “demonstrate how the recertification and renewal requirements meet the requirements of [40 CFR] § 171.303(b)(4), as well as ensure the recertification renewal requirements meet the specific category competency standards for certification under that category.” EPA confirmed by phone the quote cited is applicable and accurate.

Response: This comment is outside of the scope of the changes proposed in the 15-day comment period. See response to comment no. 10 in the “SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING 45-DAY COMMENT PERIOD.”

Comment Number 2: We respectfully request the department grandfather Subcategory L wood preservation by making the following changes to the updated draft regulations:

(l) Category L - Wood Preservation

- (1) An individual holding a valid license or certificate prior to April 1, 2022, may perform pest control activities for wood preservation, provided the individual continues to meet the renewal requirements detailed in section 6511 for the respective subcategory.
- (2) Perform pest control for wood damage and wood preservation, not including the use of fumigants.

From our understanding the proposed certification and training requirements are based on a plan approved by the US Environmental Protection Agency (EPA). However, it was not until December 6th, 2022, that the approved plan was publicly available. CDPR did not include a grandfather clause for wood preservation based on the plan approved by EPA. The process to propose certification and training requirements before publishing the approved EPA plan is entirely inappropriate and must be reconsidered. This process is contrary to California’s transparency policy.

California has always been a leader in openness and transparency, and this process is in stark contrast to that. We respectfully request the proposed certification and training requirements process cease and start over after the state plan goes through an open public review process. This will give interested parties the opportunity to take part in creating the framework in which regulations are developed, while complying with 40 CFR § 171.303(b)(4). Alternatively, since states can obtain EPA approval to amend their plan at any time, we respectfully request that CDPR amend the state plan to include a provision to grandfather wood preservation.

Response: The proposed regulations have been presented to the public in accordance with the Administrative Procedure Act, which includes a comment period for public participation and transparency. The comment requesting an amendment to grandfather the wood preservation subcategory is outside of the scope of the changes proposed in the 15-day comment period. See response to comment no. 10 in the “SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING 45-DAY COMMENT PERIOD.”

- *Ryan Pessah, Director of Government Relations, Western Wood Preservers Institute*

Comment Number 3: WWPI requests the record to reflect that California must include a specific wood preservation as the proposed Category A (Residential, Industrial, and Institutional Pest

Control) and Category C (Right-of-Way Pest Control) does not relate to the application of wood preservatives.

Response: This comment is outside of the scope of the changes proposed in the 15-day comment period. See response to comment no. 10 in the “SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING 45-DAY COMMENT PERIOD.”

- *Ruthann Anderson, President/CEO, California Association of Pest Control Advisers*

Comment Number 4: With respect to the removal of a timeline date - we ask for transparency on the expected timeline so stakeholders can work diligently to meet these proposed requirements. We do believe including “not before January 1, 2024” instead of excluding an explicit date if implementation would be an alternative to the proposed and ensure a minimum set date.

Response: This date placeholder ensures the most accurate effective date is included in the final text. DPR is prescribing an effective date of January 1, 2024 and providing individuals the opportunity to achieve early compliance starting July 2023.

Comment Number 5: While we appreciate a re-approach to some of the learning opportunities, further clarification is needed on the limitations proposed. Specifically, bundling eliminates opportunities for varied learning styles to engage. While we appreciate the change to allow CE for Panels, Q&A Discussions or Vendor displays – we believe that Panels are unfairly coupled into this category of less structured CE. Rather than bundling panels into a blanket maximum credit per day, we suggest CDPR treat a panel group like they would any other speaker with set requirements to review. For example, when CAPCA develops a panel, we not only bring experts from different specialties on a topic together but construct a flow of topics, questions and identify someone knowledgeable about the topic to moderate to keep the group focused. A panel isn’t random questions and answers from the audience, but rather a pre-planned group presentation weaving together perspectives that enhances the attendees’ educational opportunities. If a panel is penalized in the updated regulations – we fear that there is a loss to education. Learners will miss out on the interactive quality of discussions among presenters versus standalone presentations from each presenter on similar topics. DPR should consider structured requirements for panels rather than comingling them with the less structured CE and losing the value/lessons learned in the space of an interactive panel discussion among experts on shared topics.

Response: DPR determined that, in certain instances, vendor/poster displays, Q&A, and panel discussions positively support the learning of new material focused on pesticides or pest management and therefore should not be completely eliminated as a learning option. Up to 30 minutes of combined credit is appropriate as these formats often do not include presented material (i.e., PowerPoint, instructor, speaker) focused solely on the required topics, and conversations can vary or become off topic to the focus of pesticides and pest management; this has been seen firsthand by DPR in auditing continuing education courses that include vendor/poster displays, Q&A, and panel discussion formats. Therefore, it is necessary to only allow combined credit for these formats, including panel discussions. Also see response to comment no. 18.

Based on DPR’s audits of CE courses that contain panel discussions, presentations are not commonly, if ever, included in a panel discussion format; rather a group of individuals discuss

matters amongst themselves with minimal interaction with attendees. As such, this format does not adequately support the learning of new material focused on pesticides or pest management, which is the purpose of a CE course taken for license and/or certificate renewal.

Note, DPR supports sponsors in including presentations (i.e., PowerPoint, instructor, speaker) from a variety of pesticide and pest management subject matter experts in a course and multiple instructor/speaker subject matter experts may share a presentation and/or present collaboratively. DPR also supports interactive conversations between licensees and these experts during and/or upon the conclusion of such a presentation. DPR considers this format to be separate from panel discussions and to positively support the learning of new material focused on pesticides and pest management.

Comment Number 6: We recognize, in the context of Continuing Education for licensees, online CE is a much newer feature with its own set of nuances. However, we would appreciate more clarifications to the requirements for online CE. It is imperative that stakeholders can ensure compliance time to build or customize technology. The proposed edit, such as Interactive Online CE requiring an automatic log out, adds another layer of complexity. Under our interpretation of the proposed regulations, the attendee cannot progress in an interactive online CE until they have responded to the prompt/attention check/quiz – which essentially pauses their place in the content. If a log out is also required, why would it not be required for a webinar format when someone is non-responsive? This proposed change adds confusion and inconsistency to the programming – along with increases to customized cost for many to comply with.

Response: Unlike webinar courses (where participation can be monitored by the sponsor throughout a course and credit can be reduced by the sponsor for lack of participation or non-responsiveness, if necessary), interactive online courses are not live, and the sponsor must rely on the online software they are using to ensure active participation throughout a course. The intent of the log out feature for interactive online courses is to ensure attendees are actively participating and is necessary to help sponsors monitor if attendees are present for the entirety of a course to further ensure attendees only obtain CE credit for the amount of time spent in a CE course.

Comment Number 7: There are also inconsistencies in the proposed regulations that were listed in our original comments in July – especially around online learning. We respectfully ask DPR to realistically consider and clarify whether physical signatures for license or certificate holder with CE records can be expanded to more digital and touch free options even for in person CE (6513.c.9).

Response: This comment is outside of the scope of the changes proposed in the 15-day comment period. See response to comment no. 23 in the “SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING 45-DAY COMMENT PERIOD.”

- *Coalition of Agricultural and Business Interests: Emily Rooney, President, Agricultural Council of California; Terry Gage, President, California Agricultural Aircraft Association; Todd Sanders, Executive Director, California Apple Commission, California Blueberry Association, California Blueberry Commission, and Olive Growers Council of California; Ruthann Anderson, President/CEO, California Association of Pest Control Advisers; Michael Miller, Director of Government Relations, California Association of Winegrape Growers; Casey Creamer, President, California Citrus Mutual; Roger Isom, President/CEO,*

California Cotton Ginners and Growers Association and Western Agricultural Processors Association; Christopher Reardon, Director of Legislative Affairs, California Farm Bureau Federation; Joani Woelfel, President & CEO, Far West Equipment Dealers Association; Rick Tomlinson, President, California Strawberry Commission; Renee Pinel, President/CEO, Western Plant Health Association; Richard Matoian, President, American Pistachio Growers.

Comment Number 8: The coalition is concerned with the timeline associated with license and certificate issuance and renewal, as proposed in sections 6500 and 6582. In previous iterations, the draft regulation contained a January 1, 2024, timeline, whereas the current language removes the date entirely in favor of using the phrase “pending effective date.” When the January 1, 2024 date was initially proposed we expressed concern about the receipt of study guides and materials, the availability of testing sites, implementation of new requirements for continuing education sponsors, and the ability for participants to enroll and ultimately pass exams. These concerns have not been assuaged by the proposed change. The ambiguous date will exacerbate these issues. Without greater clarity County Agricultural Commissioners and industry representatives will be ill-equipped to prepare their constituencies appropriately to comply with these new standards. An unanticipated compliance deadline could conflict with peak harvest season and pest pressures and thus impact our ability to perform necessary applications. This concern is exacerbated by the current dearth of professional applicators in California and may further constrict the pool of professionals.

We encourage DPR to share deadlines well in advance of implementation and all expectations in a transparent manner. We ask DPR to consider verbiage akin to “effective no earlier than January 1, 2024.” This would educate the regulated industry of DPR’s minimum expectation while still affording us with the maximum time available to successfully comply with these new requirements.

Response: See response to comment no. 4.

Comment Number 9: The coalition objects to the restrictions proposed in section 6512 for non-course based continuing educational offerings, including Posters, Vendor Displays, Question-and-Answer Sessions, or Panel Discussions. The proposed regulation assumes these methods of education are of equal value and therefore allots insufficient time and credit. This would effectively force continuing education sponsors to select only one method of education (posters versus panels, for example) for offerings. This will severely limit the variety of educational modalities that could be used to serve a wide range of learning styles. Moreover, because these methods are collectively limited to 30 minutes of credit, Panels and Question-and-Answer sessions (which often extend beyond this time) would not be ideal methods. We continue to report that participants value the context and situationally rich information that can be provided in structured Panel Sessions, and it would be a disservice to discontinue their use.

Rather than the proposed communal limit, we encourage DPR to develop separate standards for Panel Discussion courses. This would distinguish them from the 30-minute allowance for more unstructured Question and Answer Sessions, and Posters or Vendor Displays. As a condition of use, sponsors could provide DPR with topics, seeded questions for discussion, and speakers ahead of time in accordance with professionalism and content standards. We also encourage DPR to consider expanding the allowed credit time for Panel Discussions under these improved conditions.

Response: See response to comment no. 5.

Comment Number 10: The coalition requests further justification for the change in section 6512.2 to differing approval times for Interactive versus Webinar continuing education courses. Under the proposed regulations, Webinars must be approved 30 days before course offering whereas Interactive courses must be approved 60 days before course offering. The additional 30 days is punitive for Interactive courses that justifiably have the highest standard of monitoring and reporting.

Response: DPR proposed a 60-day submission requirement for interactive online courses to ensure DPR staff have sufficient time to review the submitted course and communicate with interactive online course sponsors. Interactive online courses have specific approval requirements that DPR must confirm (proposed section 6512.2(b)). Interactive online courses have historically taken the Department longer than in-person courses to evaluate, as DPR reviews these courses as an attendee would, for the amount of hours requested, to verify all course requirements are met (e.g., hours requested match length of course, course includes review questions [if appropriate based on length], and course includes a final examination). This is necessary since interactive online courses are available continuously once approved (i.e., not a single event). DPR must be provided online access to each course and has often experienced delays in obtaining initial access to verify the approval requirements, or must communicate further with a sponsor to ensure approval requirements are met and reflected online; for these reasons the 60-day advance submission requirement is appropriate for interactive online courses.

In addition, beginning in 2020, DPR saw a significant shift in CE courses to webinar formats and began working with sponsors to ensure the courses met CE requirements. As a result, many of the approval requirements for webinar formatted courses are already being met by CE sponsors. For these reasons, DPR believes the existing 30-day submission requirement for webinar courses is adequate review time as DPR and CE sponsors are already familiar with presenting a webinar formatted in a way that meets the proposed requirements.

Comment Number 11: Additionally, we seek further clarification for the added requirement for automatic log-out in Interactive courses. Participants in both Interactive and Webinar courses must engage in monitoring activity – pop up questions, completing a poll, or some other keyboard/mouse engagement. However, this draft regulation disregards these requirements for Interactive and Webinar courses and proposes an automatic log-out for Interactive courses, exclusively. It is unreasonable to automatically log a user out at a monitoring point; rather, they should be required to advance forward before continuing in an Interactive environment. Advancement tools, such as completing a question, clicking slides, etc., can allow users to resume courses for continuing education credit. Without such allowance, requirements for Interactive and Webinar courses would be inconsistent and will potentially result in costly custom technology for sponsors to comply. It is unclear why these courses contain different standards of rigor and approval and therefore should not be included in this rulemaking package.

Response: See response to comment no. 6.

Comment Number 12: The coalition wants to address the concerns provided to DPR dated July 19, 2022, relating to (1) allowable continuing education courses, (2) participant identifications, and (3) technological capacities. We do so fully mindful of the importance of enhanced professionalism

where possible, combined with the practical compliance realities within the affected disciplines including different learning styles and preferences.

(1) We do not support elimination of specified educational tools as referenced in the July letter. They continue to be useful and in many instances are suitable alternatives to on-line webinars. Further, courses could be limited in duration to maximize the learning experience and include a verifiable means of completion.

(2) We encourage DPR to consider all forms of government-issued identifications to verify participation in continuing education courses.

(3) Many of these changes required in the proposed regulations are predicated on technology platforms that can be modified to accommodate these regulatory directives. Therefore, we implore DPR to consider regulations and their abilities to be implemented within existing technology frameworks.

Response: See below for responses to commenter’s list of statements.

(1) This comment is outside of the scope of the changes proposed in the 15-day comment period. See response to comment no. 33 in the “SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING 45-DAY COMMENT PERIOD.”

(2) This comment is outside of the scope of the changes proposed in the 15-day comment period. See response to comment no. 35 in the “SUMMARY AND RESPONSE TO COMMENTS RECEIVED DRUING 45-DAY COMMENT PERIOD.”

(3) This comment is outside of the scope of the changes proposed in the 15-day comment period. For detailed information on the impact of the proposed regulations on businesses, including CE sponsors and their use of technology platforms, see the Economic and Fiscal Impact Statement (STD. 399), which was made available for public comment period.

- *Abbie Asche, PCA and QAL License Holder*

Comment Number 13: The proposed regulation eliminates category O, Field Fumigation, and renamed it category L, Soil Fumigation. These categories are the same. All of the other categories that stay the same are not required to retest. The field fumigation category should be the same. Simply changing the letter and renaming it Soil Fumigation does not make it a different topic.

I recently received additional confirmation that the new category L is the same as category O. At a continuing education session in Monterey County, one of my coworkers asked our DPR area Enforcement Branch Liaison, Mariah Taylor, about study material for the new category. She informed us that the test study material would be the same as it was for Category O. Since the study material is the same, that should emphasize that people who have already tested and acquired Category O have been tested and shown satisfactory knowledge of the subject matter.

Response: This comment is outside of the scope of the changes proposed in the 15-day comment period. See response to comment no. 1 in the “SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING 45-DAY COMMENT PERIOD.”

To clarify information received at the Monterey County continuing education session, the competencies, examination, and study materials for the proposed Category L are **new** and are not captured by the existing Subcategory O examination or study materials.

Comment Number 14: This proposal creates a logistical problem for growers, applicators and my company. There were problems with the process when Category O was created about 10 years ago. Originally, the Department proposed that anyone with a current category D license and 2 years of fumigation experience would be grandfathered into category O. My applicators had plenty of field experience with fumigations, and they worked hard to get category D license before the regulation took effect. Unfortunately, the Department changed the rule shortly before it went into effect. The Department came out with a statement saying that applicators had to have category D license for at least two years. This change in policy invalidated thousands of paid hours my employees put into acquiring category D, in addition to the cost of the actual exams. They were treated unfairly the last time this came up, and it should not happen to them again.

The actual testing and licensing were quite challenging last time, and I don't see why it would be any different this time. We needed to get a large number of applicators certified in a very short time in order to prevent application delays. Mariah also told us that the test wouldn't be available until the middle of 2023. That is right when our busiest time of year starts and is a horrible time to be pulling people away from applications to travel and take a redundant exam.

I strongly urge you to amend the proposed regulation to allow current licensees with Category O to automatically be granted the new soil fumigation, category L, on their license.

Response: This comment is outside of the scope of the changes proposed in the 15-day comment period. See response to comment no. 2 in the "SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING 45-DAY COMMENT PERIOD."

To clarify information received at the Monterey County continuing education session, DPR intends to have the new Category L examination and study materials available in July 2023. The proposed regulations are scheduled to become effective January 1, 2024. This will provide a six-month period, giving adequate time for prospective and current fumigant applicators to study and pass the required certification examination(s) prior to the effective date. DPR is incorporating this six-month period to specifically address and accommodate the expected increase in individuals requiring examinations and to best promote compliance by January 1, 2024 for QAL and QAC holders conducting fumigant activities.

- *Fresno Farmers, Fresno County: Tria Vang; Stephen Vang; Bounnheunh Somvoy; Chevtai Xiong; Thieng Yeu; Melissa Phanomphone; Mario Lopez; Bernardo; Vivian Huang; Lilian Yang; Irene Briseno; Kao Wa Saetern; Pedro Gonzalez; Heu Long Siong; Armando Hinojosa; Bounnheunh Somvoy; Chi Chong Yang; Melissa Phanomphone; Zia Thea; Lee Xiong; Alice Xiong; Chi Chong Yang.*

Comment Number 15: The information we have received is that growers will be required to re-take the private applicator exam to renew the certificate over the next three years. We represent communities of farmers who are immigrants or refugees and who may have limited English skills.

We have been attending courses with continuing education hours to renew our certificates, sometimes for many years, and are doing our best to comply with all regulations and requirements for safe and legal pesticide use.

We feel strongly that this new requirement will be difficult for many farmers in our communities to comply with, due to language barriers and limited resources. We would like to ask for consideration of the following:

1. Additional time to pass the new exam. For example, the requirements could be extended for another three years for farmers defined as small-scale, socially disadvantaged, or other criteria.
2. Additional resources to support preparing for the new exam, such as funding for study materials and trainings.
3. Alternate requirements such as a shorter, modified exam combined with additional education and training requirements.

Response: This comment is outside of the scope of the changes proposed in the 15-day comment period. Regarding study materials, see response to comment no. 16 in the “SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING 45-DAY COMMENT PERIOD.” Regarding language access, see responses to comment nos. 4 and 11 in the “SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING 45-DAY COMMENT PERIOD.”

- *Ruth Dahlquist-Willard, Small Farms and Specialty Crops Advisor, Fresno and Tulare Counties, University of California, Agriculture and Natural Resources*

Comment Number 16: Due to the proposed changes, the farmers served by my program will all have to pass a new version of the private applicator exam. While these changes are undoubtedly needed, the new requirements will place a substantial burden of education and technical assistance on programs assisting under-represented farmers and commodities. I am concerned that in the next two to three years, the educational focus of my extension efforts will change to assisting farmers in re-taking the exam rather than providing needed information on pest management and pesticide legal compliance. I am also concerned about the costs of study materials and the staff time needed to provide technical assistance with compliance for the new requirements. My program has already struggled to assist farmers with changes to the process of renewal of private applicator certificates and restricted materials permits during COVID-19, as changes to in-person renewal procedures were difficult for them to navigate. The changes to the certification process and exam requirements will create additional needs for technical assistance for this group. At the same time, there is an opportunity for increased promotion of pesticide alternatives, as this situation creates additional incentive for private applicators to adopt nonchemical alternatives to pesticides and/or reduced-risk pesticides; however, further training on these alternatives is needed for them to be adopted by growers.

Response: This comment is outside of the scope of the changes proposed in the 15-day comment period.

Comment Number 17: I would also like to mention some concerns about the lack of communication regarding these proposed changes. I regularly submit CE courses for approval, yet I was never notified of the proposed changes or the first public comment period, even as I submitted hours for approval in the second half of 2022, after the posting of the proposed changes and the

first public comment period. At a meeting I coordinated in November 2022, my program staff and I, as well as the farmers attending the meeting, heard for the first time about these proposed changes during an update from the Agricultural Commissioner's Office in our county. Both we and the farmers attending to obtain CE hours were surprised to learn that for all except those with last names beginning with I – Q, the CE hours they had obtained this year, including those from the workshop they were currently attending, could not be used to renew their private applicator certificates. Unfortunately, this type of miscommunication undermines my program's efforts to educate and support farmers, as we were advertising and offering CE hours that could not be used for renewals.

I would like to encourage DPR to engage in more effective communication with stakeholders who may be affected by these types of proposed changes. I feel strongly that effective communication with certificate holders is essential to encourage and achieve regulatory compliance. For example, announcements about public comment periods could be sent to lists of CE course sponsors, certificate holders, and other interested parties.

Response: This comment is outside the scope of the proposed regulations proposed during the 15-day comment period. The proposed regulations have been presented to the public in accordance with the Administrative Procedure Act, which includes a comment period for public participation and transparency. Also, see response to comment no. 13 on the timeline in the "SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING 45-DAY COMMENT PERIOD."

Comment Number 18: I would like to share the following suggestions to address the need for technical assistance created by the proposed changes regarding the private applicator certification requirements:

- 1) Identify funding to support technical assistance and educational resources for small-scale, socially disadvantaged private applicators to prepare for the new exam.
- 2) Consider modified requirements for small-scale, socially disadvantaged farmers to be certified private applicators, such as dividing the exam into sections by topic or allowing extended dates for renewal. These could be combined with additional training requirements to ensure that all new compliance requirements are fully understood and followed.

Response: This comment is outside the scope of the proposed regulations proposed during the 15-day comment period.

Comment Number 19: The text of the proposed changes states that: "requests for approval of in-person continuing education courses shall be made on the In-Person Continuing Education Approval Request Application form (LIC-131A, Rev. 07/23), hereby incorporated by reference, and shall be submitted to the department at least 30 days before the date of the course". However, it does not specify the method of submission. I would like to strongly suggest that DPR allow electronic submission of course approval documents. Currently, submission is only allowed by paper mail. Allowing submission by email or an online web form would greatly facilitate course submittal by CE sponsors.

Response: This comment is outside the scope of the proposed regulations proposed during the 15-day comment period.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR has determined that the regulatory action does not impose a mandate upon local agencies or school districts.

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 adopted regulations, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of the law. These amendments are required to align California's regulations with federal regulations relating to competency standards for certified applicators using California restricted materials, recertification, categories for certified applicators, protections for noncertified applicators using restricted materials, and the minimum age requirement for certified and noncertified applicators using restricted materials under the direct supervision of a certified applicator.

POSTING REQUIREMENT

3 CCR section 6110, states in part that, "The public report shall be posted on the official bulletin board of the Department 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>>. The documents incorporated by reference in this rulemaking were available upon request directly from the Department.