

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION
Certification and Training
DPR Regulation No. 22-003

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to adopt Title 3, California Code of Regulations (3 CCR) sections 6509, 6512.1, 6512.2, 6512.3, 6512.4, 6580.1, 6580.2, 6624.5, and 6731; amend 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 repeal sections 6445.5, 6534, 6536, and 6560. The pesticide regulatory program activities affected by the proposal are those pertaining to the certification of commercial and private pesticide applicators (“certified applicators”), development and submittal of continuing education (CE) courses required for pesticide applicator license or certificate renewal, and supervision of non-certified applicators. In summary, the proposed regulations will 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 January 4, 2017. The proposed action will improve the competency standards for certified applicators using California restricted materials, which includes federally restricted use pesticides (RUPs), improve certification standards for certified applicators, create additional certification categories for certified applicators, increase 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, establish a minimum age requirement for certified and noncertified applicators using restricted materials under the direct supervision of a certified applicator, and improve standards for CE courses. In addition, new forms will be incorporated by reference and some forms currently incorporated by reference will be amended to align with the proposed action.

SUBMITTAL OF COMMENTS

Any interested person may present comments in writing about the proposed action to the agency contact person named below. Written comments must be received no later than 5:00 p.m. on July 19, 2022. Comments regarding this proposed action may also be transmitted via e-mail to <dpr22003@cdpr.ca.gov> or by facsimile at 916-324-1491.

A public hearing is not scheduled. However, one will be scheduled if any interested person submits a written request to DPR no later than 15 days prior to the close of the written comment period.¹

EFFECT ON SMALL BUSINESS

DPR has determined that the proposed regulatory action does affect small businesses.

¹ If you have special accommodation or language needs, please include this in your request for a public hearing. TTY/TDD speech-to-speech users may dial 7-1-1 for the California Relay Service.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

DPR's mission is to protect public health and the environment, in part by regulating and mitigating the adverse effects of pesticide use, including use of restricted materials, which includes federally restricted use pesticides. DPR regulates statewide licensing of commercial and private pesticide applicators, pest control businesses, dealers, and advisers; conducts environmental monitoring; pesticide product evaluation and registration; and pesticide residue testing of fresh produce. This statutory scheme is set forth primarily in Food and Agricultural Code (FAC) Divisions 6 and 7. Additionally, per FAC section 11501.5, the County Agricultural Commissioner (CAC) of each county, under the direction and supervision of the Director, shall assist in enforcing these FAC divisions and the regulations which are issued pursuant to them.

The FAC also specifically requires that DPR adopt regulations to ensure pesticide applicators, pest control businesses, dealers, advisers, and those working under direct supervision of a certified applicator have sufficient knowledge to safely and effectively perform pest control and related activities. DPR's licensing and certification regulatory requirements for these individuals/entities, are designed to reduce the risk of pesticide exposure and injuries to pesticide applicators, the public, and the environment. This is accomplished through ensuring these individuals/entities meet minimum competency standards, obtain continuing education, and receive the most comprehensive and up to date pesticide and pest management information.

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) establishes the United States Environmental Protection Agency's (U.S. EPA) authority to approve a state's pesticide applicator certification program pertaining to pesticide regulatory activities and establish a State Lead Agency (SLA) responsible for such a program. On December 23, 1974, DPR (formerly part of California Department of Food and Agriculture) was designated as the SLA responsible for establishing and administering California's pesticide applicator certification program, including the provisions contained within 40 CFR Part 171. DPR is responsible for, at minimum, meeting the requirements of 40 CFR Part 171; however, DPR may choose to establish regulatory requirements that are stricter than those established in 40 CFR Part 171.

In 1974, U.S. EPA adopted 40 CFR Part 171 "Certification of Pesticide Applicators" to ensure pesticide applicator certification program standards adequately protected applicators, the public, and the environment from risks associated with the use of RUPs. Since then, U.S. EPA has updated 40 CFR Part 171 to enhance and improve programs that certify applicators of RUPs.

On March 6, 2017, U.S. EPA's revisions to 40 CFR Part 171 to enhance protections to individuals using or supervising the use of RUPs became effective. These revisions were noticed in the Federal Register, Vol. 82, No. 2. The revisions are intended to further reduce the harmful effects caused to pesticide applicators, the public, and the environment from the use of RUPs by increasing the standards commercial and private applicators must initially and continually meet to be certified to handle or apply RUPs.

RUPs are pesticidal products that U.S. EPA has determined have the potential to cause adverse effects to the environment and have the potential to cause injury to applicators or bystanders if not used properly and according to label instructions. For these reasons, U.S. EPA requires RUPs to only be used by a certified applicator or someone under the direct supervision of a certified applicator (40 CFR 152.170).

FAC sections 14004.5 and 14005 authorize the Director to adopt a list of restricted materials based upon criteria including danger of impairment of public health; hazards to applicators, farmworkers, domestic animals, and crops from direct application or drift; hazards related to persistent residues in the soil resulting in the contamination of air, waterways, estuaries, or lakes; or hazards to subsequent crops. Because U.S. EPA and DPR designate pesticides as “restricted” for similar reasons, 3 CCR section 6400(a) designates that any pesticide labeled as an RUP as a California restricted material. Therefore, when restricted materials are referenced in this document, the reference includes RUPs.

A California restricted material can only be sold in stores that have a DPR-issued dealer license authorizing the sale of restricted materials, and can only be purchased by certified applicators and, if purchasers are not structural pest control applicators, those with a restricted materials permit issued by the CAC. FAC section 14001 authorizes DPR to regulate the use of restricted materials and FAC section 14015 authorizes DPR to ensure that restricted materials are only possessed or used by, or under the direct supervision of, a certified applicator. This statutory scheme allows DPR to ensure individuals using or supervising the use of restricted materials have demonstrated a level of competency to do so safely and in a manner that will not result in harm to human health or the environment.

As the SLA for programs that certify pesticide applicators using RUPs within California, under Section 11 of FIFRA, DPR must ensure that all California state programs and associated regulations concerning the certification of pesticide applicators meet or exceed the federal regulations established by U.S. EPA in 40 CFR Part 171. As the SLA, DPR coordinates with other agencies who maintain pesticide applicator certification and training programs, including the Department of Consumer Affairs’ Structural Pest Control Board (SPCB) and the California Department of Public Health (CDPH), to ensure pesticide laws and regulations are being implemented consistent with the federal requirements. These agencies have their own set of regulations that are currently undergoing revisions for consistency with 40 CFR Part 171 and DPR works closely with these agencies to ensure all requirements are met.

To achieve this, DPR proposes to adopt, amend, and repeal regulatory requirements pertaining to the certification and training of pesticide applicators in order to maintain at least the same level of protection as the revised federal regulations in 40 CFR Part 171. The proposed regulations will improve competency standards for certified applicators using restricted materials, improve competency standards for private applicators using restricted materials, improve certification standards for certified applicators, improve standards for CE courses, create additional certification categories for certified applicators, create additional certification requirements for private applicators that use fumigants, increase protection for noncertified applicators using restricted materials (under direct supervision of a certified applicator), and establish a minimum age requirement for certified and noncertified applicators using restricted materials (under direct supervision of a certified applicator). DPR proposes to have these regulations in effect on January 1, 2024.

Adoption of these regulations will provide a benefit to certified applicators, pest control businesses, dealers, advisers, and noncertified applicators handling restricted materials as well as the public and environment. For example, noncertified applicators will receive improved training on how to handle restricted materials and on the safe use of any equipment used for handling or applying pesticides, and all certified applicators will meet revised minimum competency standards, where applicable. These changes will reduce improper applications and accidental

exposure or poisonings. Better trained applicators (certified or noncertified) will be better able to understand and follow pesticide use requirements, ensuring that applications are made properly and follow requirements of pesticide product labeling, California laws and regulations, and any restricted material permit conditions.

During the process of developing these proposed regulations, DPR conducted a search of any similar regulations on this topic and has concluded that these proposed regulations are neither inconsistent nor incompatible with existing state regulations. Although DPR and the California Department of Industrial Relations, Division of Occupational Safety and Health (Cal/OSHA) have regulatory mandates to protect workers from health and safety hazards in workplaces, DPR enforces pesticide laws in workplaces where pesticides are used. In addition, DPR, the Structural Pest Control Board (SPCB), and the California Department of Public Health (CDPH) have overlapping mandates pertaining to pest control and related activities. In some instances, due to this overlap, DPR's regulations supersede those of SPCB and CDPH. For these reasons, DPR, as the SLA, coordinates with SPCB and CDPH to ensure pesticide laws and regulations are being implemented consistent with, or more stringent than, federal requirements and to also ensure proposed amendments are not inconsistent nor incompatible with these cooperating agencies established programs.

Incorporated by Reference Forms:

1. Qualified Applicator License Application, LIC-001 (Rev. 07/23)
2. Qualified Applicator Certificate Application, LIC-001A (Rev. 07/23)
3. Pest Control Business License Application, LIC-042 (Rev. 07/23)
4. Agricultural Pest Control Adviser Application, LIC-084 (Rev. 07/23)
5. Pest Control Aircraft Pilot Certificate Application, LIC-005 (Rev. 07/23)
6. Pest Control Dealer Designated Agent License Application, LIC-043 (Rev. 07/23)
7. Pest Control Business Renewal Application, LIC-192 (Rev. 07/23)
8. Individual License/Certificate Renewal Application, LIC-141 (Rev. 07/23)
9. In-Person Continuing Education Approval Request Application, LIC-131A (Rev. 07/23)
10. Interactive Online and Webinar Continuing Education Approval Request Application, LIC-131B (Rev. 07/23)
11. Continuing Education Additional Course Date Request, LIC-132 (Rev. 07/23)
12. Private Applicator Certificate Application, LIC-045 (Rev. 07/23)

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR determined that the proposed regulatory action does not impose a mandate on local agencies or school districts. DPR also determined that there are no costs to any local agency or school district requiring reimbursement pursuant to Government Code section 17500 et seq. 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. DPR establishes an annual work plan with the CACs, which already requires the CACs to conduct pesticide use inspections and investigations and to enforce compliance with California certification and training laws and regulations.

CAC offices use a mix of State and local funding to fund their local pesticide use enforcement programs. The amount of funding the State gives to the CAC's is fixed by FAC section 12841(g)(1)(C), which says DPR must reimburse counties 7.6 mills of mill assessment for costs incurred by the counties for pesticide use enforcement. Pursuant to 3 CCR section 6391,

reimbursement shall be made by April 1 of each year. DPR is not authorized to reimburse the counties more than the amount generated from 7.6 mills. Because the funding level from DPR does not change, the counties' workload from this regulation is redirected at the expense of other lower priority workload.

COSTS OR SAVINGS TO STATE AGENCIES

DPR expects to see an increase in the number of individuals applying for and taking examinations to obtain a Qualified Applicator License (QAL) and/or Qualified Applicator Certificate (QAC) in the new Non-Soil Fumigation category, the revised Soil Fumigation category, and/or existing categories that include activities previously conducted under the subcategories being removed. In addition, this increase in individuals applying and taking examinations also includes current private applicator certificate holders who must obtain a QAC and/or QAL to conduct certain fumigation or “householder” activities. Lastly, DPR expects to receive new continuing education course applications from course sponsors who will be required to align their courses with improved continuing education course requirements. The expected increase in revenue for individuals applying and taking examinations and new continuing education courses is estimated at \$468,645 for fiscal year (FY) 2023/24, \$82,715 for FY 2024/25, and \$0 for FY 2025/26.

Costs to DPR would involve the processing of new licenses and certificates, examination administration, continuing education accreditation, study guide development, examination development, knowledge expectation development, database management, maintenance, and development, additional administrative costs associated with issuing and renewing additional licenses and certificates over the initial implementation and lifetime of the regulation, administrative costs associated with retesting individuals on revised competency standards, and staffing costs to accommodate the increase in workload. The expected cost to DPR is estimated at \$517,302 for FY 2023/24, \$517,302 for FY 2024/25, and \$517,302 for FY 2025/26.

The net impact of the regulation will be an increase to DPR’s costs. Net cost increases are estimated at \$48,657 for FY 2023/24, \$434,587 for FY 2024/25, and \$517,302 for FY 2025/26.

OTHER NONDISCRETIONARY COSTS OR SAVINGS IMPOSED ON LOCAL AGENCIES

There are no other nondiscretionary costs or savings imposed upon local agencies that are expected to result from the proposed regulatory action.

EFFECT ON FEDERAL FUNDING TO THE STATE

DPR determined that no costs or savings in federal funding to the state will result from the proposed action.

EFFECT ON HOUSING COSTS

DPR made an initial determination that the proposed action will have no effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

DPR has made an initial determination that the adoption of this regulation will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposed regulations will bring California certification and training regulations into alignment with the recently revised regulations in 40 CFR Part 171. The estimated lifetime cost of the proposed regulation is \$12.6 million (lifetime cost is over a 10-year period). DPR made this determination based on the economic impact report titled, “Economic Impact Analysis for California Rulemaking Pertaining to the Certification and Training of Pesticide Applicators,” listed in the “Documents Relied Upon” section of the Initial Statement of Reasons for this proposed regulatory action which is available from DPR.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The proposed regulations will bring California certification and training regulations into alignment with the revised federal regulations in 40 CFR Part 171. However, in some areas, DPR’s proposed regulations are more restrictive than 40 CFR Part 171, or will require a higher standard to be met. As a result, individuals and businesses who currently use fumigants (soil and non-soil), hold commercial applicator subcategories, hold a private applicator certificate and perform ‘householder’ activities, or sponsor CE courses may be impacted by the proposed regulations. Under the proposed regulations, these individuals or businesses may need to apply for and take examinations to obtain the new QAL and/or QAC Non-Soil Fumigation category, the revised Soil Fumigation category, or additional categories needed to continue conducting activities currently conducted under subcategories (which will no longer be available); apply for and take examinations to continue ‘householder’ activities currently under a private applicator certificate; or meet improved CE course standards. In the short-term, the estimated initial cost to individuals (1,100) is \$594 and the estimated initial cost to businesses (2,858) ranges from \$45 to \$1,800. Furthermore, the estimated annual cost to individuals ranges from \$438 to \$594 and the estimated annual cost to businesses ranges from \$33 to \$1,534. In the long-term, according to the *Economic Impact Analysis for California Rulemaking Pertaining to the Certification and Training of Pesticide Applicators* prepared by Dr. Serhat Asci and Dr. Srinu Konduru and dated October 1, 2021, individuals (548,154) are anticipated to incur initial and annual costs of \$3.85 and businesses (123,783) are anticipated to incur initial and annual costs of \$3.00 to comply with the proposed regulations. These long-term estimates were calculated using Impact Analysis for Planning (IMPLAN) software and data, and estimates the long-term impact faced by California at large.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Impact on the Creation, Elimination, or Expansion of Jobs/Businesses: DPR has determined that the proposed regulatory action will not create any jobs and eliminate 15 jobs in California; is unlikely to result in the creation of new businesses or the elimination of existing businesses; and is unlikely to result in the expansion of businesses currently doing business with the State of California. The proposed regulations are designed to bring California certification and training regulations into alignment with the revised federal regulations in 40 CFR Part 171.

The proposed regulations will provide a benefit to certified applicators, pest control businesses, dealers, advisers, and noncertified applicators handling restricted materials as well as the public and environment. For example, noncertified applicators will receive improved training on how to handle restricted materials and on the safe use of any equipment used for handling or applying pesticides, and all certified applicators will meet revised minimum competency standards, where applicable. These changes will reduce improper applications and accidental exposure or poisonings. Better trained applicators (certified or noncertified) will be better able to understand and follow pesticide use requirements, ensuring that applications are made properly and follow requirements of pesticide product labeling, California laws and regulations, and any restricted material permit conditions.

CONSIDERATION OF ALTERNATIVES

DPR must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of the law.

AUTHORITY

This regulatory action is taken pursuant to the authority vested by FAC sections 11456, 11502, 11502.5, 11702, 12005, 12024, 12111, 12203.1, 12781, 12976, 12981, 13145, 14001, 14005, 14102, 14151 and 14153.1.

REFERENCE

This regulatory action is to implement, interpret, or make specific FAC sections 11401.2, 11407, 11408, 11456, 11501, 11502.5, 11701, 11702, 11703, 11704, 11705, 11707, 11708, 11733, 11791, 11901, 11902, 11903, 11904, 11905, 11908, 11909, 12021, 12024, 12103, 12104, 12105, 12106, 12110, 12116, 12201, 12202, 12203, 12252, 12400, 12401, 12404, 12971, 12972, 12973, 12980, 12980.1(c), 12981, 12991, 13145, 13186, 14001, 14006, 14006.6, 14010, 14011, 14011.5, 14015, 14035, 14091, 14092, 14093, 14095, 14096, 14102, and 14153.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

DPR prepared an Initial Statement of Reasons and is making available the express terms of the proposed action, all of the information upon which the proposal is based, and a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulation may be obtained from the agency contact person named in this notice. The information upon which DPR relied in preparing this proposal and the rulemaking file are available for review at the address specified below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the comment period, DPR may make the regulation permanent if it remains substantially the same as described in the Informative Digest. If DPR does make substantial

changes to the regulation, the modified text will be made available for at least 15 days prior to adoption. Requests for the modified text should be addressed to the agency contact person named in this notice. DPR will accept written comments on any changes for 15 days after the modified text is made available.

AGENCY CONTACT

Written comments about the proposed regulatory action; requests for a copy of the Initial Statement of Reasons, and the proposed text of the regulation; and inquiries regarding the rulemaking file may be directed to:

Lauren Otani, Senior Environmental Scientist (Specialist)
Department of Pesticide Regulation
1001 I Street, P.O. Box 4015
Sacramento, California 95812-4015
916-445-5781

Note: In the event the contact person is unavailable, questions on the substance of the proposed regulatory action may be directed to the following back-up person at the same address as noted below:

Laurie Brajkovich, Environmental Program Manager I
Enforcement Headquarters Branch
916-603-7796

This Notice of Proposed Action, the Initial Statement of Reasons, and the proposed text of the regulation are also available on DPR's Internet Home Page <<http://www.cdpr.ca.gov>>. Upon request, the documents can be made available in another language, or an alternate form as a disability-related accommodation.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons mandated by Government Code section 11346.9(a) may be obtained from the contact person named above. In addition, the Final Statement of Reasons will be posted on DPR's Internet Home Page and accessed at <<http://www.cdpr.ca.gov>>.