

Chapter 10

Due Process Related to Permits

Overview

Introduction

This chapter contains an overview of the due process required when actions are taken to refuse, suspend, or revoke a permit. Whether the action is based on an evaluation of the permit conditions (FAC section 14006.5) or final determinations finding violations of permit conditions, regulation or code, or a lawful order of the CAC (FAC section 14008), the procedures found in FAC section 11512.5 assure due process.

FAC sections 11512.5 14006.5, and 14008 authorize the CAC to refuse, suspend, or revoke a permit (see Chapter 9).

What is due process?

Due process requires that any hearing process affecting an individual's interests be fundamentally fair. It requires an orderly proceeding adapted to the nature of the case that provides the individual with adequate notice of the proposed action and the opportunity to be heard to defend his/her conduct or position.

References

Food and Agricultural Code sections 11512.5, 12825, 14006.5, and 14008

In this chapter

This chapter contains the following topics:

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Due Process Procedures Under FAC section 11512.5	10.2

Section 10.1

Due Process: When FAC section 11512.5 Procedures Apply

**Due process --
refuse, revoke,
suspend**

The due process provisions of FAC section 11512.5 apply whenever the CAC refuses, revokes, or suspends a permit. Suspension and revocation situations are easy to identify. What constitutes a refusal under this provision requires more clarification.

**“Refuse” is the
same as “deny”**

The Merriam-Webster Collegiate® Dictionary, Tenth Edition, defines “deny” as “to refuse to grant.” To “deny” a permit is the same as to “refuse” to issue a permit.

**Due process for
refusals**

The CAC must provide “notice and an opportunity to be heard” or “due process” when refusing a permit, unless the applicant or activity does not meet an objectively determined minimum requirement. Examples include: product not labeled, no certified applicator, incomplete application.

**Opportunity to
correct permit
application**

If the CAC has objectively determined from the person’s application or other information that the person or activity does not meet a requirement necessary to qualify for the permit or if the person has an incomplete application, then the CAC may refuse that person; however, due process requires the applicant be given notice of the application’s defect and provided with an opportunity to correct the error or omission, if possible.

**Refusal based
on evaluation
or violations**

Refusal based upon an incomplete application or failure to meet a minimum qualification for a permit may not require the same procedures to satisfy the due process requirement as actions based on an evaluation made pursuant to FAC section 14006.5 or prior violations of the applicant pursuant to FAC section 14008. Refusals based on these sections should follow the review and appeal process outlined in FAC section 11512.5. The permit applicant should be told the reasons for the refusal and be informed of his/her review and appeal rights pursuant to this section.

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Due Process: When FAC section 11512.5 Procedures Apply, Continued

Sample form

A sample form, *Permit Refusal Based on Evaluation of the Application/ Notice of Intent*, can be used as an abbreviated NOPA to inform the applicant of the general grounds for the CAC's decision and his/her rights provided by the law and to record the refusal for the CAC's files.

The sample form is on the following page. (Changes made to the previous version of the sample form have not been highlighted.)

(THIS FORM MAY BE COPIED UNDER COUNTY LETTERHEAD)

**PERMIT REFUSAL BASED ON EVALUATION OF THE
APPLICATION / NOTICE OF INTENT**

Applicant _____ Permit number _____ Date _____

Pesticide requested _____ Commodity/site _____

Pest _____ Site ID, Location _____

NOTICE OF GROUNDS FOR REFUSAL

(Food and Agricultural Code sections 12825, 14006.5, and 14008)

- There are serious, uncontrollable adverse environmental impacts that cannot be mitigated
- The proposed use is of less value than the benefits obtained
- There is a feasible alternative available that is less damaging to the environment
- There are sensitive sites too near to the proposed application site
- There is a likelihood of problems related to heterogeneous plantings of crops
- There is a likelihood of pest resurgence or secondary pest problems
- There are unsuitable meteorological conditions for use
- The timing is unsuitable in relation to bee activity
- Unpaid fine
- Violations documented by final enforcement orders
- Other _____
- Additional Comments _____

NOTICE OF OPPORTUNITY FOR REVIEW AND APPEAL OF ACTION

(Food and Agricultural Code section 11512.5)

If you do not agree with this action, you may make a written request for a hearing for reconsideration of this decision within 20 days. Your request should include any information you believe is relevant to the issue. You will receive at least ten days advance notice of the time and date set for the hearing. If you do not request a hearing, this action will be final.

You will receive a written decision of the county agricultural commissioner after the hearing. If you requested and appeared at the hearing, you may appeal the decision to the Director of the Department of Pesticide Regulation within ten days. Thereafter, you may request court review of the Director's decision.

Signed _____ Date _____

Section 10.2

Due Process Procedures Under FAC section 11512.5

Due process specifics for refusal, suspension, or revocation

The CAC must provide “notice and an opportunity to be heard” or “due process” when refusing, suspending, or revoking a permit. The following procedure is required to ensure due process under FAC section 11512.5:

If	Then,
the person’s permit is to be refused, suspended, or revoked based on an evaluation of the permit or past finalized enforcement actions,	that person shall be given written notice of the proposed action (NOPA), including the basis for the action, and notice of the right to request a hearing before the CAC within 20 days of receiving the notice. In the case of a suspension (immediate cancellation), the CAC shall inform the permittee, in writing, of the suspension as soon as practical, specifying the reasons for the (immediate) suspension.
a hearing is requested,	the notice of the time and place of the hearing shall be given at least ten days prior to the hearing date. The person will be given the opportunity to present any evidence or argument on his/her own behalf.
a hearing is not requested,	the CAC may take the proposed action without a hearing.
the person’s permit is refused, suspended, or revoked, and he/she had requested and appeared at the hearing,	he/she may appeal the CAC’s decision to the Director within ten days of mailing or personal service of the CAC’s decision.