

Chapter 5

Permits and Exemptions

Introduction

A permit, like the requirement for a certified applicator, is commonly associated with restricted materials. However, in the case of a permit, this is somewhat inaccurate because there are many exemptions in statute and regulation from the need for a permit for restricted materials, as well as provisions for requiring a permit for non-restricted pesticides.

Some of the exemptions apply to individuals or entities and some are chemical-related. This chapter will discuss who needs a permit and who is exempt under specific circumstances.

Who needs a permit

Generally, the Food and Agricultural Code (sections 14006.5 and 14006.6) provides that permits are required for any possession or use of a restricted material and may be required for the agricultural use of a non-restricted material. However, there are exceptions and procedural requirements that apply in each situation.

Who does not need a permit

Food and Agricultural Code section 14006.6 and 3 CCR section 6414 exempts from permitting:

- Research personnel from colleges and universities
- Researchers using pesticides according to a valid research authorization
- Registrants (manufacturers)
- Pest control dealers
- Pesticide brokers
- Structural pest control businesses
- Commercial warehouses
- Common carriers

Section 14006.6 authorizes DPR to add other permit exemptions by regulation.

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Permit exemptions

Food and Agricultural Code section 14006.7 precludes requiring a permit for possession or use of exempt materials listed in 3 CCR section 6402.

DPR has adopted additional chemical-specific permit exemptions in sections 6414 and 6416:

- Federal Restricted Use Pesticides (not otherwise listed)
- Ground water protection pesticides (not otherwise listed) when used:
 - Outside of a ground water protection area;
 - For certain non-agricultural uses within a ground water protection area; and
 - Anywhere in an approved pest eradication program
- Antifouling paints
- Paints containing tributyltin

Exemptions found in 3 CCR section 6400 are not exemptions from the permit; rather, they are exemptions from restricted status.

CAC authority, permits for federal RUPs

The permit exemption for federal RUPs is conditional, as stated in 3 CCR section 6414(b). By that, we mean that the CAC has the authority to override the general exemption provision in his/her county and require a permit for any or all federal RUPs. The procedure for making the determination needed to justify requiring a permit should follow that described below for requiring a permit for non-restricted pesticides.

CAC authority, permits for non-restricted pesticides

The CAC has the authority (FAC section 14006.6) to require a permit for the agricultural use of a non-restricted pesticide. To implement this provision, the CAC must make a determination that the pesticide cannot be used under local conditions without presenting an “undue hazard.” Once made, the determination is permanent unless a sunset provision limiting the effective period is included. The determination may be cancelled in the same manner as it was established.

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Determination of undue hazard

The CAC's determination of "undue hazard" must describe the excessive or unwarranted hazard that results from the pesticide when used under a specific situation. The determination may apply to the entire county, a particular portion of the county, during particular times, or even the vicinity of the particularly sensitive areas. The statutes do not outline specific procedures for making the determination. However, it is recommended that public notice of the intention to require a permit and the basis be given and an opportunity for comment be provided. Consultation with county counsel may be considered. Mitigation measures or permit conditions should be issued with the permit, not designated in the actual determination.

Non-restricted permits and conditions

When a CAC issues a "permit" for a non-restricted pesticide, the permit may be treated in the same manner as a restricted materials permit within the county of issuance, including the filing of a NOI prior to making applications of the non-restricted "permit" pesticide.

However, the act of issuing a "permit" for a non-restricted pesticide does not make the non-restricted pesticide a "restricted material" as defined in 3 CCR section 6400. This is an important distinction because it means that unless stated otherwise in the permit for the non-restricted material, use of the material by or under the direct supervision of a certified applicator is not required.

If the CAC determines an NOI or certified applicator is necessary to mitigate the undue hazard, he/she must specify the requirement(s) in the permit conditions for the non-restricted pesticide. If desired, the CAC could make general restricted material requirements apply through a general condition that requires compliance with all laws and regulations applicable to "restricted materials."

Notification of action

Although approval by DPR is not required, the CAC is requested to inform DPR of his/her determination, in writing, when requiring a permit for the agricultural use of a non-restricted pesticide. A CAC who requires a permit for a non-restricted pesticide must also inform pest control dealers and businesses of this requirement.

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