

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION  
Qualified Applicator Licensing and Certification Subcategories  
DPR Regulation No. 10-001

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation proposes to amend Title 3, California Code of Regulations (3 CCR) sections 6502, 6511, and 6530, and adopt section 6531. The proposed regulatory action would add existing qualified applicator subcategories to section 6530 for clarity purposes; prohibit applicators qualified to work in subcategory Q - Maintenance Gardener Pest Control (maintenance gardeners) from purchasing or using federally restricted-use pesticides or California restricted materials; establish subcategory P - Microbial Pest Control and require only eight hours of continuing education within the two-year license or certificate period for this subcategory; reduce the amount of required continuing education hours within each two-year license or certificate period from twenty hours to eight hours for subcategory M - Antifouling-Tributyltin and subcategory N - Sewer Line Root Control; and delete an incorrect qualified applicator license (QAL) reference under the continuing education requirements for maintenance gardeners. DPR proposes to revise the following application forms: Qualified Applicator License Application PR-PML-001 (Rev. 04/07), Qualified Applicator Certificate Application PR-PML-001A (Rev. 04/07), Maintenance Gardener Pest Control Business License Application PR-PML-004 (Rev. 09/04), and Pest Control Business License Application PR-PML-042 (Rev. 09/04). These application forms, incorporated by reference, will be revised to reflect the new subcategory P for microbial pest control and subcategory Q for maintenance gardener pest control as well as other editorial changes. Copies of the revised forms are included in the rulemaking file and are available upon request from DPR.

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 June 1, 2010. Comments regarding this proposed action may also be transmitted via e-mail at <dpr10001@cdpr.ca.gov>, or by facsimile (FAX) transmission at (916) 324-1452.

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.<sup>1</sup>

EFFECT ON SMALL BUSINESS

DPR has determined that the proposed regulatory action affects small businesses. Since the proposed regulations simplify the examination process and continuing education requirements for individuals responsible for microbial and maintenance gardener pest control (primarily small businesses), this action may increase the number of pesticide applicators and pest control businesses applying for a license or certificate. The proposed changes list all existing qualified

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<sup>1</sup> 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.

applicator subcategories and provide flexibility by allowing maintenance gardeners who do not purchase or use federally restricted-use pesticides or California restricted materials the option of obtaining a qualified applicator certificate (QAC) in subcategory Q, instead of category B (existing requirement). Currently to operate legally, maintenance gardeners must take and pass the examination for category B. The proposed subcategory Q requires less continuing education hours than category B. The examination for category B is more challenging and comprehensive than is necessary for subcategory Q certification because it requires the knowledge and competency to apply federally restricted-use pesticides or California restricted materials in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) certification requirements. As a result, it is likely that many individuals are discouraged from becoming a certified applicator and obtaining a valid maintenance gardener pest control business license.

By establishing subcategory P, DPR would allow individuals using sanitation service pesticides to become licensed or certified in a subcategory more specific to their pesticide use. Without subcategory P, existing regulations would require individuals to take the examination and complete the continuing education hours required for category A. Category A encompasses all residential, industrial, and institutional pesticide applications and has higher costs than proposed subcategory P. These proposed regulations will provide a more relevant, less burdensome qualified applicator subcategory and examination.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

DPR protects human health and the environment by regulating pesticide sales and use and by fostering reduced-risk pest management. To achieve this goal, DPR strictly oversees the statewide licensing of commercial and private applicators, pest control businesses, and agricultural pest control advisers. In addition to licensing all pest control businesses, DPR's Licensing and Certification Program administers QAL and QAC examinations to license and/or certify qualified applicators that work for pest control businesses. Individuals must obtain either a QAL or QAC if they use or supervise the use of federally restricted-use pesticides or state restricted materials. With the exception of maintenance gardener pest control businesses, a more comprehensive QAL is required if the individual is responsible for both supervising the pesticide applications made by a licensed pest control business and operating the business in a safe and legal manner.

There are currently 11 qualified applicator categories specified in the Food and Agricultural Code (FAC) section 12203 and 3 CCR section 6530. These 11 qualified applicator categories are based on the certified applicator categories specified in FIFRA section 2(e)(1). Title 40 of the Code of Federal Regulations (40 CFR) section 171.3(c), as well as FAC section 12203.1, authorizes DPR to designate subcategories within the qualified applicator categories listed in FAC section 12203. Pursuant to FAC section 12203.1, five subcategories (L - Wood Preservation, M - Antifouling-Tributyltin, N - Sewer Line Root Control, O - Field Fumigation Pest Control, and Q - Maintenance Gardener Pest Control) were established and have been included on DPR's application forms, with the exception of subcategory Q. Currently, applicants become qualified in subcategory Q only after taking the category B examination and requesting DPR to downgrade their license or certificate to subcategory Q. For clarity purposes, DPR proposes to add all five of these subcategories in regulation. DPR also proposes to establish a

new subcategory P - Microbial Pest Control in 3 CCR section 6530. Subcategory P would apply to individuals using registered sanitation service pesticides, such as applications to potable water lines, evaporative condensers, and cooling towers, and the use of sulfur dioxide to sanitize corks and barrels for wine production. However, subcategory P primarily impacts the wine industry because prior to 2007, sulfur dioxide was not labeled as a restricted use pesticide. Now, individuals are required to have a QAL or QAC to purchase or use sulfur dioxide for wine cork and barrel sanitation because it is a federally designated restricted-use pesticide.

DPR also seeks to use subcategory Q to make it less onerous, less costly, and more relevant to the type of work being performed by maintenance gardeners. Currently, maintenance gardeners engaging in pest control for hire incidental to the business must pass a certified commercial applicators examination in category B. Certification in category B requires knowledge of comprehensive study material designed for full-fledged pest control businesses applying federally restricted-use pesticides or California restricted materials. Therefore, many individuals may be discouraged from taking the current qualified applicator examination and obtaining a valid maintenance gardener pest control business license.

Although pesticide use by maintenance gardeners is limited, maintenance gardeners using pesticides are required to obtain a QAL or QAC and be tested to ensure they can use pesticides competently and are knowledgeable of applicable laws and regulations pertaining to pesticide use. DPR intends to establish a more appropriate subcategory for maintenance gardeners using general use pesticides incidental to their business. Maintenance gardeners certified in subcategory Q will be prohibited from using restricted materials, including federally restricted-use pesticides, which are not necessary for incidental pesticide use in maintenance gardening activities. The proposed regulation will relieve maintenance gardeners from taking the more stringent examination to use federally restricted-use pesticides and state restricted materials which are not necessary for their work.

DPR proposes to amend section 6530 to identify all available licensing subcategories and provide a subcategory Q certification option with relevant competency standards and requirements for maintenance gardeners who do not use federally restricted-use pesticides or California restricted materials. The new study guide and examination for subcategory Q will still ensure that maintenance gardeners are properly trained to use general use pesticides that may be applied incidental to their maintenance gardening activities.

DPR proposes a new subcategory P - Microbial Pest Control for pesticide applications in areas such as cooling towers, evaporative condensers, and potable water lines, as well as the use of sulfur dioxide to sanitize corks and barrels used in wine production. The addition of sulfur dioxide for cork and barrel sanitation is in response to the U.S. Environmental Protection Agency's (U.S. EPA's) 2007 decision to make the only registered sulfur dioxide product used to sanitize corks and barrels used in wine production a restricted-use pesticide. By making this product a restricted-use pesticide, individuals making these specific types of pesticide applications must be a qualified pesticide applicator, or under the direction supervision of one. Without subcategory P, these individuals would need to become qualified under category A, which is a broad category that encompasses all residential, industrial, and institutional pest

control activities. Subcategory P provides a more focused subcategory related to microbial pest control activities and would have a more relevant examination than category A.

Additionally, since subcategory M (Antifouling-Tributyltin), subcategory N (Sewer Line Root Control), and subcategory P (Microbial Pest Control) account for very specific pest control activities, DPR proposes to reduce the number of continuing education hours per two-year license or certificate period required by individuals qualified in these subcategories to eight hours, instead of the standard twenty hours that apply to the other broader, more extensive pest control categories.

#### IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts, nor does it require reimbursement by the state pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code because the regulatory action does not constitute a “new program or higher level of service of an existing program” within the meaning of section 6 of Article XIII of the California Constitution. DPR has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action. As a result of this proposed regulatory action, county agricultural commissioners may expect to see a minimal increase in the registrations of maintenance gardener and microbial pest control businesses, corresponding to an increase in revenue. However, fees collected to register these businesses at the county level would offset the minimal increase in workload (on average, four additional pest control businesses per county per year).

#### COSTS OR SAVINGS TO STATE AGENCIES

DPR expects to see an increase in the number of maintenance gardener and microbial pest control businesses as well as individuals applying and taking the exam to obtain a subcategory Q or subcategory P QAC or QAL. The expected increase in revenue is estimated at \$72,995 for fiscal year (FY) 2010/11, \$100,925 for FY 2011/12, and \$128,855 for FY 2012/13.

Costs to DPR would involve processing new licenses and certificates, examination administration, continuing education accreditation, study guide renewal, database management, and additional administrative costs associated with issuing and renewing 2,850 additional licenses over the lifetime of the regulation. The increase is expected to be gradual for the first five years with an estimated 570 additional licenses/certificates coming in each year. License and certificate renewals would be processed starting year two. The expected cost to DPR is estimated at \$79,800 for FY 2010/11, \$119,700 for FY 2011/12, and \$159,600 for FY 2012/13.

The net impact of the regulation will be to increase DPR’s costs. Net cost increases are estimated at \$6,805 for FY 2010/11, \$18,775 for FY 2011/12, and \$30,745 for FY 2012/13.

### EFFECT ON FEDERAL FUNDING TO THE STATE

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

### EFFECT ON HOUSING COSTS

DPR has 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 estimated lifetime cost of the regulation is estimated at \$2.2 million.

### COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

DPR has made an initial determination that the adoption of this regulation will have a cost impact on representative private persons or businesses engaged in microbial pest control since the regulatory action made necessary by new federal regulation will bring unlicensed individuals and businesses into compliance. However, maintenance gardeners not using federally restricted-use pesticides or California restricted materials would be subject to a less intensive qualified applicator examination and less continuing education requirements than before, creating a small decrease in cost compared to cost of complying with the existing requirements. Although subcategory P is a new subcategory that applies to wineries using sulfur dioxide to sanitize corks and barrels, the subcategory is in response to U.S. EPA's action to make the only registered pesticide product for this use a restricted-use pesticide, thus requiring users of sulfur dioxide for this purpose to become qualified pesticide applicators. Instead of requiring these individuals to take a comprehensive category A examination, DPR proposes to create a more specific subcategory related to microbial pest control with a less intensive examination and less continuing education hours than required by category A. While becoming a qualified pesticide applicator is a new cost to wineries, the cost of becoming qualified in subcategory P is less than the cost of category A, thus creating a small cost reduction. In lieu of winery employees obtaining a QAC to perform the microbial pest control activities in house, some wineries may opt to contract with a licensed microbial pest control business for a fee.

### IMPACT ON THE CREATION, ELIMINATION, OR EXPANSION OF JOBS

DPR has determined it is unlikely that the proposed regulatory action will impact the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business with the State of California. The proposed regulatory action seeks to establish a separate subcategory for maintenance gardeners who do not use federally restricted use pesticides or California restricted materials, which may increase the

number of certified maintenance gardeners in California. DPR believes any increase of jobs and businesses is unlikely and any increase in licensed maintenance gardener pest control businesses and qualified applicators would be due to unlicensed businesses seeking to become qualified maintenance gardeners with the less costly subcategory Q. DPR's proposal to establish subcategory P is in response to U.S. EPA's recent regulatory action allowing only certified pesticide applicators, or those under their direct supervision, to purchase or use sulfur dioxide for wine cork and barrel sanitation. DPR does not expect new winery sanitation businesses will be created. Instead, businesses currently servicing wineries would likely add cork and barrel sanitation to their portfolio of available services. However, these interested businesses (estimated at 25) would need to obtain a pest control businesses license and employ a QAL to supervise and be responsible for the pesticide applications.

#### CONSIDERATION OF ALTERNATIVES

DPR must determine that no reasonable alternatives 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 or would be as effective and less burdensome to affected private persons or businesses than the regulatory action.

#### AUTHORITY

This regulatory action is taken pursuant to the authority vested by FAC sections 11456, 11502, 12203.1, 12976, 14001, 14005, 14102, 14151, and 14153.1.

#### REFERENCE

This regulatory action is to implement, interpret, or make specific FAC section 11501, 11701, 11704, 12203, 14001, 14015, 14102, and 14153.

#### AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

DPR has prepared an Initial Statement of Reasons and has 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 regulations permanent if they remain substantially the same as described in the Informative Digest. If DPR does make substantial changes to the regulations, 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 regulation action; requests for a copy of the Initial Statement of Reasons, the proposed text of the regulation, and a public hearing; and inquiries regarding the rulemaking file may be directed to:

Linda Irokawa-Otani, Regulations Coordinator  
Department of Pesticide Regulation  
1001 I Street, P.O. Box 4015  
Sacramento, California 95812-4015  
916-445-3991

Questions on the substance of the proposed regulatory action, particularly technical or historical questions concerning this proposal, may be directed to:

Ann Hanger, Environmental Scientist  
Pest Management and Licensing Branch  
Department of Pesticide Regulation  
916-445-8411

#### AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons mandated by Government Code 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 may be accessed at <<http://www.cdpr.ca.gov/docs/legbills/rulepkgs.htm>>.

#### DEPARTMENT OF PESTICIDE REGULATION

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Director

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Date