

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION
Pest Control Aircraft Pilot Certification
DPR Regulation No. 18-003

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to amend sections 6502 and 6540 of Title 3, California Code of Regulations (3 CCR). The proposed action will amend forms, Aircraft Pilot Pest Control Certificate Application DPR-PML-005 (Rev. 01/18) and Individual License /Certificate Renewal Application DPR-PML-141 (REV. 6/15), incorporated by reference, to make them consistent with the recently amended state law, Food and Agricultural Code (FAC) sections 11901, 11902, 11905, and 11910. Proposed changes to the forms will differentiate Manned and Unmanned Pest Control Aircraft Pilot certificates and add the subcategory of Vector Control Technician. The Individual License/Certificate Renewal Application is also used by pest control advisers, qualified applicators, and dealer designated agents. The proposed action will also update pilot supervision requirements to clarify that manned aircraft apprentice pilots must be supervised by a manned aircraft journeyman pilot and obtain their required apprentice hours operating a manned aircraft in pest control. Copies of these forms are included in the rulemaking file and are available upon request.

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 December 3, 2018. Comments regarding this proposed action may also be transmitted via e-mail to <dpr18003@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.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

DPR protects human health and the environment through the regulation of pesticide sales and use, and by fostering reduced-risk pest management. DPR's strict oversight begins with product evaluation and registration; and continues through statewide licensing of commercial and private applicators, pest control businesses, and consultants; environmental monitoring; and residue testing of fresh produce. This statutory scheme is set forth primarily in FAC Divisions 6 and 7. DPR's Licensing and Certification Program administers examinations and licenses, certifies pest control dealer designated agents, qualified applicators, agricultural pest control advisers, and

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.

pilots operating in pest control. The Licensing and Certification Program also licenses pest control businesses, including maintenance gardener pest control businesses, pest control dealers, and pesticide brokers. DPR must ensure that people selling, possessing, storing, handling, applying, and recommending the use of pesticides are knowledgeable in their safe use.

Currently, the Pest Control Aircraft Pilot Certificate (Certificate) covers all pilots operating any aircraft in pest control, including: pilots employed by a licensed pest control business, pilots employed by vector control agencies or districts, and pilots who perform pest control on their own property. The current application for a Certificate, Aircraft Pilot Pest Control Certificate Application DPR-PML-005 (Rev. 01/18), incorporated by reference within 3 CCR section 6502, requires submission of a valid Federal Aviation Administration (FAA) Commercial Pilot's Certificate and a current Medical Certificate issued by the FAA. Both are specific to flying a manned aircraft.

Additionally, Individual License /Certificate Renewal Application DPR-PML-141 (REV. 6/15), incorporated by reference within 3 CCR section 6502, is currently required when pest control aircraft pilots, and certain other individuals, apply for renewal of their license. This form requires pilots to submit a copy of their valid medical certificate issued by the FAA, a document specific to operating a manned aircraft. Furthermore, existing 3 CCR section 6540 describes the requirements for journeyman pilots supervising apprentice pilots and allows a journeyman pilot to supervise an apprentice pilot regardless of whether they are manned or unmanned aircraft pilots.

Recently, Assembly Bill 527 (Caballero) (Chapter 404, Statutes of 2017) amended the law to set new and more appropriate criteria for the operation of unmanned aircraft systems (UAS) in pest control. As amended, the law requires a person operating a manned aircraft in pest control to hold a Manned Certificate. Additionally, it is unlawful to operate UAS in pest control unless the pilot holds either a Manned or Unmanned Certificate from DPR. The operators of UAS in pest control must be FAA certified or otherwise authorized by the FAA to operate UAS approved by the FAA to conduct pest control. Finally, after a hearing, the Director may refuse to issue a Certificate for specified reasons including, if the person is not qualified, does not hold the required certificate or authorization from the FAA, or has violated state or federal law (FAC section 11910).

Assembly Bill 527 also added an additional certification category for the Unmanned Aircraft Pilot Certificate: Vector Control Technician. The 'Vector Control Technician' designation requires the applicant to hold a certification by the Department of Public Health in Mosquito Control pursuant to Health and Safety Code section 2052(1)(a) prior to taking the Unmanned Aircraft Pilot Vector Control Technician certification examination administered by DPR. The Vector Control Technician applicant must pass the DPR examination demonstrating their ability to legally and safely conduct aerial pest control operations before a Certificate is issued (FAC section 11905).

The recent changes to statute require DPR to revise the Aircraft Pilot Pest Control Certificate Application form DPR-PML-005 (REV. 01/18) and the Individual License/Certificate Renewal Application form DPR-PML-141 (REV. 6/15). To ensure that manned aircrafts continue to be

operated safely in pest control, DPR also proposes to make changes to the requirements for apprentice pilot supervision set in 3 CCR section 6540. While additional Certificate types will be offered, the fees associated with new applications and examinations are not changing. Allowing pilots to operate UAS in pest control is not new; DPR is simply differentiating between manned and unmanned aircraft pilots as is consistent with state law. The applicant requirements for unmanned aircraft pilots operating in pest control will be more appropriate by requiring they meet the FAA mandates for the operation of UAS in pest control.

Adoption of this regulation will provide a benefit to public health and the environment. It will increase protection of residents, workers, and the environment by ensuring that all pilots meet FAA and state requirements for operating aircrafts by demonstrating the safe operation of UAS in pest control.

During the process of developing this regulation, DPR conducted a search of any similar regulations on this topic and concluded that the proposed regulation is not inconsistent or incompatible with existing state regulations. DPR is the only agency that has the authority to regulate the sale and use of pesticides.

Incorporated by Reference Forms:

Pest Control Aircraft Pilot Certificate Application, DPR-PML-005 (Rev. 07/18)
Individual License/Certificate Renewal Application, DPR-PML-141 (Rev. 07/18)

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

COSTS OR SAVINGS TO STATE AGENCIES

DPR determined that no savings or increased costs to any state agency will 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 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.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

DPR is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action because a private person or business can already operate UAS in pest control with the current Aircraft Pilot Pest Control license.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Impact on the Creation, Elimination, or Expansion of Job/Businesses: DPR determined it is not likely 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.

Adopting this regulation will benefit public health and the environment. It will increase protection of residents, workers, and the environment by ensuring that all pilots meet FAA and State requirements for operating aircrafts by demonstrating the safe operation of UAS in pest control.

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 and 11502.5.

REFERENCE

This regulatory action is to implement, interpret, or make specific FAC sections 11502.5, 11703, 11707, 11903, 11904, 11908, and 11909.

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, Environmental Scientist
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 above:

Jill Townzen, Special Advisor
Pesticide Programs Division
916-324-6174

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>>.

DEPARTMENT OF PESTICIDE REGULATION


Director