

FINAL STATEMENT OF REASONS AND PUBLIC REPORT  
DEPARTMENT OF PESTICIDE REGULATION

Title 3, California Code of Regulations  
Amend Section 6452.2  
Pertaining to Field Fumigant Emission Limits

UPDATE OF THE INITIAL STATEMENT OF REASONS

The originally proposed regulatory action was noticed in the *California Regulatory Notice Register* on February 8, 2008.

During the 45-day public comment period, the Department of Pesticide Regulation (DPR) received comments on the originally proposed text. The comments are discussed under the heading “Summary and Response to Comments Received” of this Final Statement of Reasons. Based upon comments received from the public and for reasons below, DPR modified the text from that originally proposed. These changes and the reasons for them are found below under the heading “Changes to the Text of Proposed Regulations.” The modifications were sufficiently related to the originally proposed text of the regulation so that the public was placed on adequate notice that the changes could have resulted. Additional documents relied upon were also added to the rulemaking file.

DPR received comments addressing the modified text during the 15-day public comment period. These comments are discussed under the subheading “Comments Received During the 15-Day Public Comment Period” in this Final Statement of Reasons.

Also, additional documents relied upon were added to the rulemaking file. DPR prepared a “Notice of Addition of Documents to Rulemaking File.” No comments were received.

DPR has amended section 6452.2 of Title 3, California Code of Regulations (3 CCR) to make it consistent with the revised ozone State Implementation Plan (SIP) approved by the U.S. Environmental Protection Agency (U.S. EPA). The pesticide regulatory program activities affected are those pertaining to environmental monitoring and pesticide enforcement. In summary, this action would allow a phase-in implementation of the volatile organic compound (VOC) fumigant emissions reduction in the Ventura ozone nonattainment area (NAA) between 2008 and 2012.

On July 18, 2008, U.S. EPA revised California’s SIP by reducing the amount of the VOC emission reductions required from pesticides in Ventura in 2008 by 1.3 tons per day (73 Federal Register 41277, 41278). That SIP revision is steadily phased out by its own terms so that by 2012, the 20 percent pesticide VOC reduction goal in Ventura is reinstated. On August 20, 2008 the Ninth Federal Circuit Court of Appeals vacated a federal district court’s order that DPR achieve a 20 percent reduction from 1991 emissions in Ventura in 2008. This rule amends the regulations to conform to the current SIP.

*Changes to the Text of Proposed Regulations*

DPR made changes that are sufficiently related to the originally proposed text.

- Revised the total pesticide (fumigant and nonfumigant) VOC emissions benchmarks in the Sacramento Metro, South Coast, Southeast Desert, and Ventura ozone NAAs found in subsection (a) to revert back to those currently in effect. The originally proposed regulation amended those benchmarks to reflect a 20 percent emission reduction from 1990 VOC emission data, instead of 1991 data as originally calculated. These modifications were made to conform to the recently vacated federal district court order. However, DPR will continue to use the benchmarks based on the 1991 emissions in this regulation to avoid delaying implementation of the rule and the relief provided by the phase-in.
- DPR proposed to allow a phase-in implementation of the final benchmark emission target in subsection (a) in Ventura between 2008 and 2012. However, the proposed benchmarks in subsection (c) have been revised to reflect emissions reductions based on the 1991 emission data for the same reasons indicated above.

*Cost Impacts On Representative Private Persons Or Businesses*

In the initial Notice of Proposed Regulatory Action, DPR has made an initial determination that adoption of this regulation would have no significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposal reduced the adverse economic impact from current regulation. The revised overall emission limit for the Ventura NAA in 2012 would allow for more acreage to be treated.

The revised overall benchmark emission limit in the Ventura NAA of 1,110,000 pounds in 2012 equated to a 14 percent increase in acreage. Therefore, the estimate of acreage loss from current regulation decreased by 1,100 acres, resulting in a cost savings. The estimated value of the crops grown on those 1,100 fumigated acres was \$9.2 million.

DPR revised its analysis based on the modifications made to the originally proposed regulation. Since the benchmark in the Ventura NAA reverts back to those currently in effect, the impacted acreage will remain the same and, therefore, will not result in any cost savings.

PUBLIC HEARING

DPR scheduled and held a public hearing to receive oral comments on the proposed regulations. The hearing was held in Oxnard. A transcript of the hearing and the hearing attendance register are contained in the rulemaking file.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED

*Comments Received During the 45-Day Public Comment Period*

<b>No.</b>	<b>Comment and Response</b>	<b>Commentor</b>
1	<p>We are not pleased that DPR has delayed the adoption of regulations seeking a reduction in the use of fumigants that contribute to the formation of smog. We know that these regulations were implemented by a court order. DPR proposes to weaken the regulations by extending the reduction use of fumigants in Ventura for another four years, if the court order is overruled.</p> <p><i>This regulation will provide the time to complete research that will further reduce fumigant emissions by changing application methods. If successful, this will allow farming to continue in all current agricultural areas. The only way to meet the required reductions without this phase-in is to discontinue fumigation on several thousand acres and convert the land to nonagricultural uses. DPR believes that the minimal impact of the phase-in is preferable to the unknown environmental impact of conversion of land to nonagricultural uses.</i></p>	1-156
2	<p>DPR analysis determined that the new proposed regulations could worsen air quality in the years ahead in Ventura. Also the same analysis exaggerates the use of fumigants by saying that high-value crops such as strawberries require yearly fumigation. This cannot be true, because we know growers who fumigate every other year, and growers with organic practices who don't fumigate at all.</p> <p><i>The Ventura County crop report and pesticide use report data for 2006 indicate that at least 90 percent of the harvested strawberry acreage was fumigated.</i></p>	1-156
3	<p>Support of the regulation only as it relates to Ventura County and not any other counties. Supports DPR's proposed regulation to permit a phase-in of the 20 percent emissions reduction, similar to that set forth in the amended Appendix H to the 1995 State Implementation Plan as currently under consideration by the U.S. Environmental Protection Agency.</p> <p><i>DPR agrees.</i></p>	T-1, 160

4	<p>It's a regulation that's on a contingency and not sure if there's even any legal basis for it to be proposed contingently. DPR should withdraw this proposal.</p> <p><b><i>Regulation is not on a contingency. DPR may propose a regulation before deciding whether to adopt it at all; and may inform the public why it might choose not to finalize the proposal.</i></b></p>	T-5
5	<p>Strongly disagree with proposed timeline and limits, including use of 1990 levels, as being deleterious to human health, as well as being contrary to the court order.</p> <p><b><i>DPR has revised the proposed regulation to continue using 1991 as the base year.</i></b></p>	158, T-8
6	<p>DPR does not have the legal authority to use the 1990 emissions as a baseline or to allow until 2012 for phase-in implementation of the final emission target. DPR does not explain the basis for its authority to propose, as a contingency, a regulation that has already been determined to be unlawful. We urge the Department to withdraw the proposal.</p> <p><b><i>See responses to Comments 4 and 5. The phased-in implementation is consistent with the State Implementation Plan and is otherwise lawful.</i></b></p>	157
7	<p>Wish to express the ambiguity of the language in the Notice “. . . consistent with its legal obligations.” Since the proposed rulemaking should comport with the clarity requirement under the Administrative Procedures Act, the proposed rulemaking should specify the meaning of “consistent with its legal obligation.”</p> <p><b><i>The referenced “clarity requirement” is a standard under which the Office of Administrative Law reviews an adopted, repealed, or amended regulation (see Government Code section 11349.1). The regulation is clear.</i></b></p>	160
8	<p>I object to the proposed amendment.</p> <p><b><i>No response necessary.</i></b></p>	159, T-2, T-3, T-4, T-6
9	<p>Help us achieve a healthier and safer environment for us all. Health is more important. We would like to ask that less pesticides are used.</p> <p><b><i>No response necessary.</i></b></p>	T-7, T-9, T-10

*Comments Received During the 15-Day Public Comment Period (April 9-24, 2008)*

1-B	<p>The proposed subsection 6452.2(c) appears to fail the test of clarity. Although DPR has noted that the subject regulation will not be implemented unless it is “. . . consistent with its legal obligations . . .”, one is left to surmise the method of implementation.</p> <p><b><i>See response to Comment 7.</i></b></p>	1B
2-B	<p>DPR's efforts to proportionally reduce a grower's fumigant allocation across the board within a county have the unintended consequence of penalizing conscientious growers that must employ low-emission application methods. DPR has yet to address our concerns about providing for a reallocation system in the event that emission benchmarks have not been exceeded. Despite every effort made by growers to comply with DPR's VOC fumigant regulations, the possibility exists that County Agricultural Commissioners would be placed in a situation where they would need to halt pesticide applications within their county based on their assessment that pesticide emissions may be exceeded.</p> <p><b><i>These comments are outside the scope of the proposed regulation.</i></b></p>	2B

ALTERNATIVES DETERMINATION

The Director has determined that no alternative considered by DPR would be more effective in carrying out the purpose for which this regulation is proposed, or would be as effective and less burdensome to affected private persons or businesses than the proposed regulatory change.

The proposed and existing regulations to limit emissions from field fumigations are the only feasible means to achieve DPR's legal obligations. In Ventura, the field fumigants methyl bromide, chloropicrin, 1,3-dichloropropene, and metam-sodium comprise approximately 85 percent of the pesticide VOC emissions. Conversely, emissions from other pesticide sources comprise approximately 15 percent of the pesticide VOC emissions. Since pesticide VOC emissions must eventually be reduced approximately 30 percent from 2006 levels in order to achieve the required reductions (20 percent reduction from 1991 levels), regulations or limits on sources other than field fumigants would not be effective mitigation measures. For example, structural fumigations have virtually no VOC emissions since the primary structural fumigant, sulfuryl fluoride, is not a VOC. Additionally, nursery fumigations comprise less than one percent of the pesticide VOC emissions and only nurseries that fumigate no more than one acre are exempted from the regulations. Restrictions on nonfumigant pesticides would have uncertain impacts. Restrictions on a few nonfumigants could cause other pesticides to increase in use, with possible increases in VOC

emissions, possible unacceptable exposures, or other unexpected impacts. Moreover, even if VOC emissions from all nonfumigants were reduced to zero, compliance with the SIP obligation would still not be achieved without reductions from field fumigants.

The phase-in specified by this regulation is designed to provide time to develop alternative fumigation methods with lower emission rates, and minimize the loss of agricultural land. With the adoption of this regulation, there should be minimal short-term limits and impacts on field fumigations. For 2008, the regulation establishes a fumigant limit of 3.3 tons per day. Field fumigant emissions in 2006 were approximately 3.1 tons per day, so the limit should result in no acreage losses in 2008, other than those that occurred before the adoption of the regulation. If the fumigant and nonfumigant emissions remain the same as 2006, the fumigant limit in 2009 would be approximately 3.0 tons per day, requiring approximately three percent reduction in field fumigant emissions.

IDENTIFICATION OF ANY SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECT THAT CAN REASONABLY BE EXPECTED TO OCCUR FROM IMPLEMENTING THE PROPOSAL

DPR no longer proposes to revise the benchmarks in section 6452.2(a). Therefore, there are no regulation changes and no changes to the environmental impacts in the Sacramento Metro, South Coast, and Southeast Desert NAAs. This regulation only affects the Ventura NAA.

The environmental impact for the Ventura NAA is about the same as originally proposed. Two changes offset each other so that DPR still estimates a short-term increase of 0.85 tons per day in reactive VOCs. DPR no longer proposes to revise the Ventura NAA benchmark. The reversion to the original benchmark will lead to a decrease in VOC emissions. However, this is offset by greater emissions of reactive VOCs in 2006; earlier estimates were based on 2004 data. DPR still intends to implement the proposed regulation in order to mitigate unreasonable risks of economic dislocation and irreparable environmental harm posed by the existing requirements, as described in the Initial Statement of Reasons.

POSTING REQUIREMENT

Section 6110 of Title 3 of the California Code of Regulations states in part that, "The public report shall be posted on the official bulletin boards of the Department, and of each commissioner's office, and in each District office of the DPR [Division of Pest Management, Environmental Protection and Worker Safety] for 45 days." DPR has posted its Initial Statement of Reasons and Public Report on its official bulletin board, which consists of the Department's Internet Home Page <<http://www.cdpr.ca.gov>>. In addition, copies were provided to the offices listed above for posting.