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 November 28, 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.

An additional document relied upon was added to the rulemaking file. DPR prepared a "Notice of Addition of Document to Rulemaking File." This document was referenced in the Initial Statement of Reasons, and DPR determined that it should have been included in the rulemaking file.

DPR has amended section 6452.2 of Title 3, California Code of Regulations (3 CCR). The pesticide regulatory program activities that will be affected by the proposal are those pertaining to environmental monitoring and pesticide enforcement. In summary, this regulatory action would revise the total pesticide (fumigant and nonfumigant) volatile organic compound (VOC) emissions benchmarks in the Sacramento Metro, San Joaquin Valley (SJV), South Coast, Southeast Desert, and Ventura ozone nonattainment areas (NAAs), and will delay fumigant limits and allowances in all ozone NAAs except Ventura until 2011.

Identification of Any Significant Adverse Environmental Effect That Can Reasonably Be Expected to Occur From Implementing the Proposal

The levels set in the field fumigant regulations as adopted in January 2008, as amended in September 2008, have not yet been put into play to force reductions in fumigant emissions. Therefore, this "project" will only have an impact on the amount of reductions that may be forced in the future. The maximum potential impact on VOC levels in each NAA resulting from the proposed amendment is represented by the increase in potentially allowed emissions. The significance of that impact can be seen in the context by referring to a State Implementation Plan (SIP) planning document referenced in the Initial Statement of Reasons (ISR) (now attached as a document relied upon for easy reference). In those areas where the upper limit is increased, the additional amount of pesticide VOC emissions allowed is such a small percentage of the total of projected VOC emissions from all sources that it will have little or no impact on the State's efforts or progress in meeting federal ambient air quality standards. This fact, in addition to other considerations as discussed in the ISR and in the response to comments below, outweigh the potential adverse impact and support the exercise of DPR's discretion to proceed with these proposed amendments.

In the SJV, the amended benchmark could potentially allow an additional 2.1 tons per day (tpd), when compared to the emission reduction required by current regulations. As shown by the Emission Inventory Output Tables in the Air Resources Board's (ARB's) 2007 SIP planning documents, this represents only about one-half (0.5) of a percent of the total projected VOC emissions in the SJV in 2009 or 2011. The Staff Report on the Department of Pesticide Regulation's Proposed SIP Commitment for the San Joaquin Valley noticed along with these proposed regulations, identified that the amended regulation will not prevent the State meeting its obligation to reduce total emissions because emission reductions resulting from control measures on other VOC sources are slightly greater than necessary to demonstrate attainment (reaching planned reductions).

In the Ventura NAA, the amended yearly benchmarks leading to a final benchmark in 2012 could allow 0.4 tpd more emissions. As shown by the Emission Inventory Output Tables in ARB's 2007 SIP planning documents, this amount of emissions constitute only about four-fifths (0.8) of a percent of the total projected VOC emissions in the Ventura NAA in 2009 or 2011. When the U.S. Environmental Protection Agency (U.S. EPA) approved the SIP amendment allowing the reductions in Ventura to be phased in over four years, they noted that its review of the air quality analysis in the Ventura County 2007 Air Quality Management Plan showed that the area will maintain reasonable further progress toward meeting the 8-hour National Ambient Air Quality Standards without the benefit of any VOC emissions reductions from pesticides (Federal Register, Vol. 73, No. 139, page 41280, July 18, 2008).

In the Southeast Desert NAA, the amended benchmark could potentially allow 0.3 tpd more emissions. Again, as shown by the Emission Inventory Output Tables in ARB's 2007 SIP planning documents, this represents only about one-third (0.35) of a percent of the total projected VOC emissions in the Southeast Desert NAA in 2009 or 2011. Since well over half of the pesticide VOC emissions in this area are from two fumigants that have virtually no (methyl bromide) or very low (metam sodium) photochemical reactivity that is required for ozone formation, the actual emissions that would contribute to ozone formation will be even less than the 0.3 tpd number would suggest. In addition, the reduction in pesticide emissions resulting from the control on fumigant application methods and the new benchmark level will assure that the SIP requirement for pesticide emissions reductions are achieved.

The formation of two secondary sources of Particulate Matter (PM) have the potential to be minimally impacted by VOC emissions, the formation of secondary ammonium nitrate, and the formation of secondary organic aerosols. ARB's photochemical air quality modeling used to support the development of the SJV's recently adopted 2008 PM2.5 Plan, indicated that secondary ammonium nitrate PM formation in the SJV was driven by emissions of nitrogen oxides and that reductions in VOC emissions are not effective in reducing ammonium nitrate concentrations. Further, photochemical modeling also showed that the secondary organic component (aerosols) contributes less than one-half of one percent to the organic carbon portion of fine PM, or PM2.5.

State Implementation Plan

In November 2007, ARB submitted a new SIP for the SJV that included a pesticide element reflecting the 20 percent reduction from 1991 levels that the district court ordered. That submission has not yet been approved by U.S. EPA. The State proposed a replacement for the pesticide element of that November 2007 submission that is consistent with these regulations. Opportunity to comment and hearings on the new pesticide element was provided in conjunction with this rulemaking.

PUBLIC HEARINGS

DPR scheduled and held two public hearings to receive oral comments on the proposed regulations. The hearings were held in Bakersfield and Sacramento. Transcripts of the hearings and the hearing attendance registers are contained in the rulemaking file.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED

Comments Received During the 45-Day Public Comment Period

No.	Comment and Response	Commentor
1	Science shows that the VOC regulation is not necessary in Ventura. The regulations' effect on ozone is minimal because most of the fumigants used in Ventura County have low reactivity, and therefore do not contribute to ozone formation. ***Some fumigants such as methyl bromide have low reactivity. However, others such as 1,3-dichloropropene have relatively high reactivity and contribute to ozone formation. In addition, the regulation is necessary to meet the State's obligation under the SIP to reduce VOC emissions from agricultural and commercial pesticide use.***	10
2	The amount of VOCs reduced by the regulations will have no impact on ozone. ***See response to comment #1.***	10
3	Ventura has already achieved the 1994 SIP goal--the one-hour standard. ***Ventura is still designated as an ozone NAA because the 8-hour ozone standard has not been achieved.***	10

4	DPR implies that the 1994 SIP has a phase-down schedule only for Ventura, and thus an allocation system is required. The regulation should be applied equitably and consistently to all affected areas. There is no need to arbitrarily exempt Ventura from the same phase-in that is afforded to the other NAAs. ***DPR has not arbitrarily delayed the fumigant limit and allowance system as a back up mechanism in other NAAs while requiring it in Ventura. There are a number of factors that are unique to the Ventura NAA. The sources and trends of pesticide VOC emissions in Ventura are different than the other NAAs, making a fumigant limit and allowances necessary to meet the proposed benchmarks specified in section 6452.2. Ventura growers have reduced fumigant VOC emissions on a per acre basis over the last several years by switching to fumigants and fumigation methods with lower emission rates. Most Ventura growers had already adopted "low-emission" fumigation methods prior to the implementation of DPR's VOC regulations in 2008 that require them. However, the reductions on a per acre basis resulting from the adoption of lower emitting methods in Ventura have been more than offset by an increase in total fumigated acreage, particularly strawberry acreage. Fumigated acreage could continue to increase without a fumigant limit. At the request of the California Strawberry Commission, DPR and the Ventura County Agricultural Commissioner have developed a system to revoke and reallocate unused fumigant allowances to allow greater fumigated acreage, while still complying with the fumigant limit.*** ***In general, methyl bromide fumigations have higher emissions than the other fumigants, and methyl bromide was the dominant fumigant in the Ventura NAA during the 1990s. If all growers used a low-emission methyl bromide fumigation method, the proposed 2009 Ventura benchmark would be exceeded by approximately 100 percent. Most Ventura growers have achieved VOC reductions on a per acre basis and complied with the allowances by switching from fumigating with methyl bromide using tractor-mounted shanks to fumigating with 1,3-dichloropropene and/or chloropicrin using drip chemigation at lower application rates. However, the methyl bromide alternatives and/or fumigation methods may not be effective in controlling some diseases, such as macrophomina crown rot. Some growers may need to increase the acreage fumigated with methyl bromide or increase the application rate of the alternatives to control some emerging diseases, causing an increase in VOC emissions. Therefore, in addition to increases in fumigated acreage, the independent decision of individual growers to switch back to methyl bromide use could result in emissions over the fumigant limit.*** ***In contrast, most growers in the SJV and Southeast Desert NAAs had not switched to low-emission fumigation methods prior to the adoption of the VOC***	10

	regulations in 2008. DPR expects VOC emissions in these NAAs to decrease as a result of the requirement to use low-emission fumigation methods, specified by sections 6447.3, et seq. Moreover, the fumigated acreage in the SJV and Southeast Desert NAAs has remained steady over the last several years. As described in the ISR, DPR also expects additional VOC reductions from nonfumigant pesticides in the SJV. Since nonfumigants account for less than about 15 percent of the emissions in Ventura as opposed to approximately 55-60 percent in the SJV, and only 1.3 percent of the emissions in Ventura are from the reformulated nonfumigant that we anticipate will result in reduced emissions as opposed to about 13 percent of emissions in the SJV, that factor will contribute much more to reducing emissions in the SJV than in Ventura. ***DPR's emission inventory shows that all three NAAs complied with the proposed benchmarks during 2007. For the reasons discussed above, DPR expects pesticide VOC emissions in the SJV and Southeast Desert NAAs to decrease further even without fumigant limits and allowances, and continue to comply with the proposed benchmarks. The expected pesticide VOC emissions for the Ventura NAA are less certain. Information available to DPR indicates that Ventura emissions could increase relative to 2007, and the fumigant limit and allowances are necessary to ensure that the proposed benchmark is achieved.***	
5	Support the proposed revision of the total pesticide VOC emissions benchmarks in the Sacramento Metro, San Joaquin Valley, South Coast, Southeast Desert, and Ventura NAAs. ***No response necessary.***	8
6	Support decision to postpone the grower fumigant allowance system in four NAAs areas until 2011. ***No response necessary.***	1, 3, 5, 6, 8, 9, 10,11, 12
7	Support using the 1990 emissions as a base year to establish benchmarks. ***No response necessary.***	2, 5, 8, 11, 12
8	In the event there is an overestimation in requested fumigant treatments, resulting in excess emission allowances, it remains unclear as to how DPR plans address the unused emission allowances with no identified system for reallocating the emissions. ***DPR and the Ventura County Agricultural Commissioner have developed a system to revoke and reallocate unused fumigant allowances.***	5

9	The proposed regulation exempts the Ventura NAA until 2012 from the trigger mechanism, which requires a field fumigant VOC emissions limit and an allowance system if the projected inventory exceeds 80 percent of the benchmark. This exemption would require the imposition of an allowance system in 2009, 2010 and 2011, even if emissions in Ventura NAA is projected to be well below the benchmark. As DPR acknowledges in the ISR, implementation of the allowance system is costly in terms of time and resources of state and local government. If the allowance system is not necessary to achieve the required reductions, it is an unjustifiable expense. For these reasons, a trigger mechanism should be in place for the Ventura NAA. ***See response to comment #4.***	5, 6, 9
10	While the proposed amendment revises inventory benchmarks and timelines for fumigants it is notable that DPR signals in the "notice of proposed regulatory action" that "measures to reduce non-fumigants in the San Joaquin Valley ozone NAA should be implemented before" the allowance system is triggered. ***No response necessary.***	12
11	Section 6452.2(b) imposes disproportionate responsibility for the overall pesticide VOC emission reduction upon the fumigant pesticide. Nonfumigant pesticide VOCs must share their proportionate responsibility for VOC reductions. ***No response necessary. However, reformulation of nonfumigant pesticides to reduce VOC content is being pursued through the reevaluation process. While DPR proposes to make the benchmarks no more stringent than the SIP goals, there are recent product reformulations and DPR's commitment to take other actions that will further reduce pesticide VOC emissions from nonfumigant products, particularly in the SJV. See ISR pp. 2-3.***	8
12	The proposed regulation violates the SIP because the SIP requires a 20 percent reduction from 1990 levels by 2005 in the San Joaquin Valley, and DPR proposes a mere 12 percent reduction. ***The SIP for the one-hour ozone standard requires a 12 percent reduction in pesticide VOC emissions from 1990 levels in the SJV ozone NAA. See 1996 letter from James D. Boyd to David Howekamp, incorporated by reference in the SIP at 40 CFR section 52.220(c)(236)(i)(A)(1), 62 Fed. Reg. 1150, 1170 (Jan. 8, 1997).*** ***The proposed regulation amends the benchmark in section 6452.2 for the SJV NAA to reflect a 12 percent, rather than a 20 percent, reduction of pesticide VOC emissions from the 1990 levels. The purpose of this "benchmark" is to***	7, 15, 16, T-1s, T-6s, T-7s

	trigger a scheme that would cap fumigant VOC emissions in the SJV NAA and allocate fumigant emissions to growers through permit conditions. This scheme is not a practical way to reduce overall pesticide VOC emissions in the SJV NAA, where fumigant emissions contribute only about one-third of the total pesticide VOC emissions. The purpose of changing the benchmark is to prevent unnecessary implementation of the cap and allowance system. See ISR pages 3-4. DPR believes the restrictions on fumigant application methods will assure that benchmark levels are not to be exceeded in the short term. However, the provision for triggering the cap and allowance system was retained as a contingency measures beginning in 2011 to assure that the 12 percent reduction will be maintained. ***There are two more effective and practical methods to reduce pesticide VOC emission in the SJV NAA than relying on the fumigant cap and allowance scheme: (1) use of lower VOC emitting methods and technologies for applying fumigant pesticides, and (2) the reformulation of nonfumigant pesticides to lower their VOC content. Lower emitting fumigation methods are already required in the SJV NAA by regulation (3 CCR, sections 6447.3 -6451.1). Reformulation of nonfumigant pesticides to reduce VOC content is being pursued through the reevaluation process. While DPR proposes to make the benchmarks no more stringent than the SIP goals, there are recent product reformulations and DPR's commitment to take other actions that will further reduce pesticide VOC emissions from nonfumigant products, particularly in the SJV. See ISR page. 2-3.***	
13	Proposed regulation violates the SIP because it delays implementation of fumigant emission limits to 2011, instead of maintaining the current 2008 implementation. ***See response to comment #12.***	7, T-3
14	Proposed regulation violates the SIP because it applies to the May 1 to October 31 time period, while the SIP requires annual reductions. ***The 1994 ozone SIP does not require annual reductions. See 1996 letter from James D. Boyd to David Howekamp, incorporated by reference in the SIP at 40 CFR section 52.220(c)(236)(i)(A)(1). The SIP requires reduction of VOC emissions from pesticides, which are ozone precursors, in the summer. Controlling ozone precursor emissions during the summer high ozone months is done for other emission sources as well and so is not unique to pesticides. For example, section 211 of the Clean Air Act sets specifications for gasoline sold in certain ozone NAAs during the summer.***	7, 15, T-8s
15	The San Joaquin Valley needs to be consistent with the rest of the state in reducing emissions from VOC-emitting pesticides by at least 20 percent based on the 1990 levels, before May 2009. ***See response to comment #12.***	Form letters (binder 2), postcards, 14

16	Backsliding to 12 percent violates the EPA-approved SIP and the Clean Air Act. ***See response to comment #12.***	Form, T-1s
17	It is unfair that the proposed reductions in the San Joaquin Valley to be at 12 percent instead of the original 20 percent reductions. ***See response to comment #12.***	T-1, T-2, T-4, T-2s, T-4s
18	The SIP requires a reduction by 2005, not 2011. The proposal says wait until 2011 to apply these regulations. These regulations should have been adopted in 1997. The reductions should have been achieved in 2005. ***See response to comment #12.***	T-3, T-3s
19	Support 20 percent reduction. ***No response necessary.***	T-11, T-12, T-13, T-14, 13, 15
20	DPR needs to meet 20 percent reduction of VOCs, implement those regulations now, and for year-round reductions. ***See response to comment #14.***	T-3, T-3s
21	In the winter, VOC forms pesticides contributing to fine particulate matter pollution, what is known as PM 2.5, and in the summer VOCs from pesticides contribute smog. Pesticide use controls are needed all year around and not just during the smog season between May and October. The SIP requires year-round controlled air pollution. ***The formation of two secondary sources of PM have the potential to be minimally impacted by VOC emissions, the formation of secondary ammonium nitrat,e and the formation of secondary organic aerosols. ARB's photochemical air quality modeling used to support the development of the SJV's recently adopted 2008 PM2.5 Plan, indicated that secondary ammonium nitrate PM formation in the SJV was driven by emissions of nitrogen oxides and that reductions in VOC emissions are not effective in reducing ammonium nitrate concentrations. Further, photochemical modeling also showed that the secondary organic component (aerosols) contributes less than one-half of one percent to the organic carbon portion of fine PM, or PM2.5.***	T-4

22	DPR violated the California Environmental Quality Act (CEQA) by failing to adequately analyze the impacts of the proposed regulations ***DPR has adequately analyzed the impacts of the proposed regulation in the public report and in the manner required by its regulations that are certified as the functional equivalent of an environmental impact report. The action here is the exercise of DPR's discretion to modify a portion of previously passed regulations designed to benefit the environment. The portions of the current regulations that DPR proposed to modify have not yet been used to impact the environment. DPR precisely quantified the maximum potential decrease in the benefit resulting from the proposed modification over the current regulations, discussed the impact of that change, explained that there is no alternative that would mitigate that impact and accomplish the purpose of the modification, and explained why it is nevertheless proposing to make the modifications.*** ***The environmental concern at the heart of this regulatory action is the emission of VOCs from fumigant pesticides that contribute to ground level ozone formation and their reduction as required by the federal Clean Air Act. As outlined in the ISR, the Clean Air Act requires each state to submit a SIP to achieve and maintain the federal ambient air quality standard for ozone in areas of the state where it has not been met (NAAs). ARB has the responsibility to prepare and submit this plan to assure compliance with federal law (Public Resources Code [PRC] section 39602). The state may choose what emission reductions will be obtained from commercial and agricultural pesticide users, and what emission reductions from other sources in order to achieve the standard Train v. National Resources Defense Council, Inc., 421 U. S. 60 at 79 (1975), Riverside Cement Co. v. Thomas, 843 F.2d 1246 (9th Cir. 1988). The state's plan includes reductions from pesticides as one component of its overall plan to meet the federal standards in each NAA. This action neither contradicts the pesticide component of the SIP, nor impacts the ability of the state to reach the federal ambient air quality standards for ozone as required under the Clean Air Act.*** ***In January 2008, DPR adopted regulations to meet its SIP obligation to reduce VOC emissions from pesticides as those obligations were interpreted and ordered by the Federal District Court in El Comité de Earlimart v. Helliker. The regulations contained maximum levels of total pesticide emissions for each NAA as dictated by the District Court and put restrictions and controls in place on fumigant pesticides designed to reach the court mandated levels by 2008.[1] In***	4, T-6

[1] The regulatory action taken January 2008 added sections 6445, 6445.5, 6448, 6448.1, 6449, 6449.1, 6450, 6450.1, 6450.2, 6451, 6451.1, 6452, 6452.1, 6252.2, 5652.3, 6452.4, 6536; amended 6450, 6450.1, 6450.2, and 6450.3, and renumbered to 6447, 6447.1, 6447.2, and 6447.3; and amended sections 6000, 6400, 6450, 6450.1, 6450.2, 6450.3, 6502, 6624, 6626, and 6784 of Title 3, California Code of Regulations.

	August 2008, the court order in El Comité de Earlimart v. Helliker was overturned. In September 2008, the state proposed and adopted a regulation implementing a U.S. EPA-approved amendment to the SIP allowing a phase-in of the reductions of pesticide emissions to meet the maximum emission level for all pesticides in the Ventura NAA over four years rather than forcing reductions down to that level in one year as ordered by the court. [2] ***The action proposed here is the modification of the current total pesticide emissions benchmarks used to trigger a cap and allocate scheme for fumigant emissions if necessary to meet the State's legal obligations under the Clean Air Act. Specifically, the CEQA "project" is the amendment of section 6452.2 of field fumigant emission reduction regulations adopted in January 2008, as amended in September 2008. The field fumigant regulations as a whole were designed to reduce and maintain VOC emissions from all pesticides in specific areas of the state below specific levels by placing restrictions on field fumigant application methods, instituting a cap and allocation system on fumigant emissions in Ventura[3], and putting a mechanism in place to restrict fumigant emissions in other areas of the state if total emissions in those areas exceed the benchmark levels This action proposes no change to application method restrictions on fumigants, but only to adjust the benchmark levels to which the existing Ventura fumigant cap and allowance system and the back-up fumigant cap system in the other areas are keyed. The change in those levels or "benchmark,s, as discussed in the ISR, is a precise measure of the maximum potential impact of this action on the pesticide program's contribution to the State's continuing effort to improve air quality and meet ambient air standards of ozone. The benchmarks in the current regulations have not yet been used to force or maintain emissions in any NAA.*** ***The regulations, both as currently written and if amended, will force future emission reductions from fumigant pesticides by the implementation of a cap and allowance process designed to keep total emissions under benchmark levels set in the regulations (as written reflecting the overturned court order or if amended, as determined by the SIP) for all pesticides (fumigant and nonfumigant). The purpose of this amendment is to limit the reductions in fumigant emissions now forced by cap and allowance systems in Ventura, and potentially triggered in other areas in the years to come, to only those required to meet the current SIP requirements for all pesticide emissions. This is designed to leave further reductions as required by future SIP amendments to be obtained from restrictions on nonfumigant. There is no alternative to accomplish this purpose other than this proposed regulatory change to adjust***	

[2] In September 2008, DPR adopted this change to section 6452.4. This amendment allows more emissions than the previous regulations for each year until the 2011.

[3] Ventura is the only NAA where restrictions on fumigant applications methods are not sufficient to reach the benchmark level, and allowances are necessary.

	the total pesticide emissions benchmark levels in the current regulations. DPR has an obligation to reduce overall VOC emissions from all pesticides under the Clean Air Act, but retains complete discretion to do so in a manner it believes is most efficient and responsible provided it meets the obligation. This is discretion that was temporarily suspended by a now overturned court order that forced greater reductions than the SIP and in a timeframe that forced DPR to target only fumigant pesticides. ***The levels set in the field fumigant regulations as adopted in January 2008, as amended in September 2008, have not yet been put into play to force reductions in fumigant emissions. Therefore, this "project" will only have an impact on the amount of reductions that may be forced in the future. The maximum potential impact on VOC levels in each NAA resulting from the proposed amendment is represented by the increase in potentially allowed emissions. The significance of that impact can be seen in the context by referring to a SIP planning document referenced in the ISR (now attached as a document relied upon for easy reference). In those areas where the upper limit is increased, the additional amount of pesticide VOC emissions allowed is such a small percentage of the total of projected VOC emissions from all sources that it will have little or no impact on the State's efforts or progress in meeting federal ambient air quality standards. This fact, in addition to other considerations as discussed in the ISR, outweigh the potential adverse impact and support the exercise of DPR's discretion to proceed with these proposed amendments.*** ***In the SJV, the amended benchmark could potentially allow an additional 2.1 tpd, when compared to the emission reduction required by current regulations. As shown by the Emission Inventory Output Tables in ARB's 2007 SIP planning documents, this represents only about one-half (0.5) of a percent of the total projected VOC emissions in the SJV in 2009 or 2011. The Staff Report on the Department of Pesticide Regulation's Proposed SIP Commitment for the San Joaquin Valley noticed along with these proposed regulations, identified that the amended regulation will not prevent the state meeting its obligation to reduce total emissions because emission reductions resulting from control measures on other VOC sources are slightly greater than necessary to demonstrate attainment (reaching planned reductions).*** ***In the Ventura NAA, the amended yearly benchmarks leading to a final benchmark in 2012, could allow 0.4 tpd more emissions. As shown by the Emission Inventory Output Tables in ARB's 2007 SIP planning documents, this amount of emissions constitute only about four-fifths (0.8) of a percent of the total projected VOC emissions in the Ventura in 2009 or 2011. When U.S. EPA approved the SIP amendment allowing the reductions in Ventura to be phased in over four years, they noted that its review of the air quality analysis in the Ventura County 2007 Air Quality Management Plan showed that the area will***	

	maintain reasonable further progress toward meeting the 8-hour National Ambient Air Quality Standards without the benefit of any VOC emissions reductions from pesticides (Federal Register, Vol. 73, No. 139, page 41280, July 18, 2008). ***In the Southeast Desert, the amended benchmark could potentially allow 0.3 tpd more emissions. Again, as shown by the Emission Inventory Output Tables in ARB's 2007 SIP planning documents, this represents only about one-third (0.35) of a percent of the total projected VOC emissions in the Southeast Desert in 2009 or 2011. Since well over half of the pesticide VOC emissions in this area are from two fumigants that have virtually no (methyl bromide) or very low (metam sodium) photochemical reactivity that is required for ozone formation, the actual emissions that would contribute to ozone formation will be even less than the 0.3 tpd number would suggest. In addition, the reduction in pesticide emissions resulting from the control on fumigant application methods and the new benchmark level will assure that the SIP requirement for pesticide emissions reductions are achieved.*** ***The formation of two secondary sources of PM have the potential to be minimally impacted by VOC emissions, the formation of secondary ammonium nitrate and the formation of secondary organic aerosol ARB's photochemical air quality modeling used to support the development of the SJV's recently adopted 2008 PM2.5 Plan, indicated that secondary ammonium nitrate PM formation in the SJV was driven by emissions of nitrogen oxides and that reductions in VOC emissions are not effective in reducing ammonium nitrate concentrations. Further, photochemical modeling also showed that the secondary organic component (aerosols) contributes less than one-half of one percent to the organic carbon portion of fine PM, or PM2.5.***	
23	DPR's statement of overriding considerations is not supported by substantial evidence in Ventura and the San Joaquin Valley. ***DPR has provided adequate facts to support its policy decision to proceed with these amendments to the field fumigant regulations despite the fact that higher fumigant emissions from pesticides may be allowed in the future under the proposal. An overarching consideration is that the current benchmark levels have not yet been used to force or maintain fumigant emission levels. When the proposed benchmarks are used to implement a cap and allowance process, they will operate to improve the environmental status quo, not worsen it. Further, the change in benchmarks will not impact state's progress toward meeting federal ambient air quality standard for ozone.***	4, 7, T-6

23 (cont)	***In addition, DPR has included as a document relied upon an economic analysis (October 9, 2008 memo from Fereidun Feizollahi to Linda Irokawa-Otani) detailing the calculations that show the potential for reduction of lost profits in Ventura resulting from the additional emissions allowed by the amended regulations. Potential losses resulting from the current regulations in Ventura would be reduced by approximately $7.5 million in 2012 (when the lowest level to which the allowances are keyed is reached). Given that the increase in pesticide emissions allowed is slight compared to total emissions, and that such an increase will have no impact on the state's ability to reach its planned progress to meet federal ambient air quality standards, DPR believes its decision to proceed with this action to amend the field fumigant regulations to conform the benchmark target to the SIP requirement is a rational exercise of its regulatory discretion.*** ***In SJV, the ISR noted that changing the benchmark to the level required by the current SIP would likely mean that allocation of fumigant emissions would not be necessary to achieve the regulatory target in the near term, saving DPR and the county agricultural commissioner's approximately $1.08 million to administer the allocation system over two years. Further, only about one-third of emissions in the SJV are from fumigants pesticides (see Neal memo attached as a document relied upon). Forcing an allocation of fumigants emissions alone to achieve reductions beyond that currently required by the SIP would create the potential for economic disruption in fumigant use, without a corresponding impact on nonfumigants pesticides that contribute two-thirds of the pesticide emissions. Given that increase in pesticide emissions potentially allowed is such a small amount of total VOC emissions in this NAA, and that it will have no impact on the State's ability to reach its planned progress to meet federal ambient air quality standards, the more rational and responsible regulatory approach is to obtain any further reductions from nonfumigants. On this basis, DPR has determined that it is a reasonable exercise of its discretion to proceed with the proposed amendment.*** ***Not only will the benchmark change not impact the state's plan to reduce ozone, the potential of allowing a higher level of fumigant emissions will be substantially offset by other facts discussed in the ISR[4]. As noted, further pesticide emission reductions will likely result from the registration in August 2008 of the reformulated nonfumigant pesticide chlorpyrifos product, Lorsban Advanced. Chlorpyrifos pesticides contributed about 13 percent of pesticide emissions in the SJV in 2007 (see Neal to Segawa memo). As described in the ISR, the new product could decrease emissions approximately 45 percent per***	

[4] Commentor confuses evidence of a potential adverse environmental impact with evidence supporting a decision that overriding considerations justify proceeding despite that potential environmental impact. An analysis of the economic cost of not proceeding is certainly relevant to the latter, as is an assessment of how likely it is that the potential impact would materialize, how adverse it would be if it did, and what options will be available in the future to mitigate it.

	acre due to the difference in VOC content. Also, as discussed in the ISR, other programs designed to encourage practices and product reformulation are anticipated to reduce emissions from nonfumigants. Finally, DPR has submitted a proposed SJV SIP amendment to implement restrictions on nonfumigant pesticides to assure VOC reductions by 2014, as noticed and incorporated in this rulemaking. It is anticipated that fumigant controls will keep emissions below SIP-required levels in the near term, and developing restrictions on nonfumigants that are workable and effective requires careful development. There are hundreds more nonfumigant VOC-contributing products than fumigant products, and the regulatory tool provided by the restricted material permit system used in the field fumigant regulations is currently unavailable to DPR to control the emissions of the vast majority nonfumigant products.	
24	The ISR does not include a description of the alternative to the activity. ***The current field fumigant regulations are designed to achieve and maintain a level of emissions from fumigant pesticides only. The purpose of the "activity" (the amendment of the regulations) is to limit the reduction of pesticide VOC emissions maintained or forced from fumigant pesticides to those levels necessary to comply with the pesticide component of the SIP, leaving any further reductions to be obtained from future restrictions on the use of nonfumigant pesticides. There is no feasible alternative other than that proposed that will accomplish this purpose and the commentor suggests none.*** ***The commentor only suggests making no change or putting the level somewhere between the benchmark imposed by a now vacated court order and that required by the SIP. The discussion in the ISR explaining why the amendments are being proposed despite the fact that it potentially could allow fumigant emissions at higher levels than the current regulations sets forth facts that support DPR's determination that the benefits to changing the benchmarks to the levels required by the SIP outweigh the potential adverse environmental impact. Setting benchmarks anywhere between the two levels (SIP and court ordered) as suggested would diminish the outlined benefits of the proposed change that would be outweighed by any increased benefit from pesticide VOC reductions to total VOC emissions.***	4, 7, T-6
25	The ISR does not include a description of mitigation measures to minimize the significant adverse effect that the activity will have on the environment. ***As noted in the ISR, there are no feasible mitigation measures. DPR is working on further controls of nonfumigant emissions that would mitigate the adverse impact it identified. However, as the commentor noted, those controls have not been implemented, and are not enforceable, and DPR cannot, and does not, rely on them as a "mitigation measure." See ISR page 10.***	4, 7, T-6

	It may be helpful to remember that the alternatives and mitigation available are more limited in this case than in a typical "project," such as building a housing development, where the purpose of the project and its potential environmental impacts are unrelated. In those situations, there may be numerous ways to change the project design or how it is implemented to mitigate significant adverse impacts that have been identified that will still serve the projects purpose. In this instance, the "project" is the modification of a regulation that the agency has adopted to implement restrictions on fumigants to reduce the adverse environmental impact of their use by entities subject to the agency's regulatory authority. This project involves changing the level of environmental benefit to which the agency is keying its environmental regulations based on its federal obligation rather than an overturned court order, and doing so as part of its CEQA certified regulatory program. The potential adverse impact of the project (allowing more pesticide VOC emissions) and the purpose of the project (limiting the potential emission VOC reductions required of fumigant pesticides) are closely related.	
26	DPR does not qualify for certification under the PRC section 21080.5 and must submit an Environmental Impact Report because its regulations do not meet the criteria set forth for a certified program under that section. ***The Secretary of the Resources Agency certified DPR's pesticide regulatory program, including the procedure outlined in 3 CCR section 6110, as meeting the criteria outlined in PRC section 21080.5 in December 1979. PRC section 21080.5 provides "that an action or proceeding to attack, review, set aside, void, or annul a determination of the Secretary of the Resources Agency to certify a regulatory program pursuant to this section on the basis that the regulatory program does not comply with this section shall be commenced within 30 days from the date of certification by the secretary." The commentor's request that DPR be stripped of it certification is not only unsubstantiated, but barred by statute.*** ***Under DPR's certified pesticide regulatory program, DPR is required to prepare a public report when the Director proposes to adopt, amend, or repeal a regulation of the regulatory program, and allow 45 days for the public to review each proposal, a requirement that essentially dove-tails with the rulemaking process required by the Administrative Procedure Act. The Secretary of the Resources Agency determined that section 6110 satisfies the requirements of PRC section 21080.5. Therefore, the section 6110 report is the document DPR is to use as a substitute for an environmental impact report or negative declaration. In this rulemaking, the public report was combined with the initial statement of reasons and the combined document was identified as "Initial Statement of Reasons and Public Report." DPR has met all the requirements of***	4, 7

	3 CCR section 6110 and CEQA. DPR analyzed the potential adverse effects, explained that there are no alternatives or measures to mitigate them that would still accomplish the objective of the regulation, discussed the relevant facts, and decided that overriding concerns justify proceeding with the action.	
27	DPR proposal states that the state will save 1.2 million dollars by not setting limits on the use of these fumigants and the usage will decrease naturally. The dollars DPR saves do not take into account the human costs to children and the residents of our communities who will continue to become ill from the emissions of these toxins in our air. ***The purpose of these regulations is to reduce VOC emissions, and resulting ozone concentrations, not reduce toxic exposure. Separately from these regulations, DPR evaluates and mitigates toxic exposure to pesticides, including fumigants.***	T-7
28	12 and 20 percent pesticide reduction in SJV is not enough. ***See response to comment #12.***	14, T-8, T-9, T-10, T-8s
29	Proposed regulation violates the SIP because the SIP requires reductions by 2005, not 2011. ***See response to comment #12.***	15, T-3s
30	Proposed Regulation should account for the possibility that EPA will exempt Methyl Bromide or other pesticides from the definition of "VOC." Commentor suggests a provision that would subtract any exempted pesticide and recalculate the corresponding emission limits. ***DPR agrees that if methyl bromide and/or MITC were removed from the SIP inventory, the benchmarks would no longer be meaningful targets. However, if the underlying assumptions made when developing the pesticide measure no longer apply, a reevaluation of the existing commitment based on the new situation would be appropriate.*** ***If a change as substantial as removing two significant VOC sources in current pesticide VOC emission inventories occurs, the most rational and appropriate action would be to revise the SIP pesticide emission reduction commitment and amend the regulations based on the new circumstances. While that revision and amendment was pending, the fumigant application method restrictions, which are the primary emission limits in the proposed SIP, would still control all fumigants to the same degree and would still be a federally enforceable SIP control measure.***	7, 15, T-3s

	Commentor's suggested provision is unwise and inappropriate insofar as it is essentially a way to bypass the public process, including review of potential adverse environmental effects, and careful consideration of the best currently available information which should accompany any future SIP revisions and rulemaking*s.*	
31	California's Administrative Procedure Act, Government Code sections 11346 *et seq.*, requires government regulations to be "necessary," that is, to they must be "needed to effectuate the purposes of" the statutes that authorize their adoption. Government Code section 11349(a). The proposal to cap and allocate field fumigants is not needed, and will not effectuate the purposes of the Food and Agricultural Code or the CAA, because it will not reduce ozone. The restrictions on field fumigants pose a significant threat to agriculture with no corresponding benefit to air quality. They should be repealed. ***See response to comment #4.***	10

State Implementation Plan

32	Support DPR's decision to amend the pesticide element of 2007 SIP, pending final approval by U.S.EPA, which would reflect a 12 percent reduction that would be consistent with the Ninth Circuit's decision. Concurs with DPR's proposed rule to cap VOC fumigant emissions at 18.1 tpd. ***No response necessary.***	3, 6, 9
33	The proposed SIP revision interferes with attainment of the 1-hour Ozone Standard in SJV. ***The proposed amendment does not change the goal of the existing pesticide SIP measure in the SJV one-hour ozone SIP – to reduce pesticide reactive organic gas emissions by 12 percent from the 1990 levels. The revision implements the existing SIP. See Staff Report on the Department of Pesticide Regulation's Proposed SIP Commitment for San Joaquin Valley, pages 2 and 4.***	7, 15
34	The proposed SIP relies on Control Strategies that are not SIP-approved rules. ***To clarify, DPR is proposing to submit 3 CCR sections 6447-6452.1 (low emitting fumigation methods) for inclusion in the SIP. In addition, the proposed SIP amendment includes a commitment to implement nonfumigant controls and a commitment to ensure the SJV inventory of VOC emissions from agricultural and***	7, 15

	commercial structural pesticide use does not exceed 18.1 tpd. See Department of Pesticide Regulation Proposed SIP Commitment for San Joaquin Valley.	
35	Proposed SIP is not enforceable because it leaves the total tonnage at DPR's discretion. ***The estimated emission reductions, under the heading "Estimated Emission Reductions," are an estimate of emission reductions that the measure will provide, not a commitment. DPR's proposed SIP commitment is found under the heading "Staff Proposed SIP Commitment." See Department of Pesticide Regulation Proposed SIP Commitment for San Joaquin Valley, page 2. That commitment includes a backstop provision to hold the line at 18.1 tpd, regardless of pest pressures, cropping patterns, or other factors affecting commercial pesticide use and regardless of how many reductions the fumigant or nonfumigant controls have already produced.***	7, 15
36	Controls based on a set baseline introduces the possibility of noncomparable calculations. The SIP should confirm that the base year and subsequent years will always be compared using the same methodology. ***DPR proposes to use the emissions estimation methodology described in the most recent inventory summary (November 5, 2008 memorandum from Neal to Segawa, pages 2-4) to establish the pesticide VOC emission levels both in 1990 and subsequent years, and to evaluate compliance with the 1994 SIP pesticide element for SJV, which was approved in 1997. See Department of Pesticide Regulation Proposed SIP Commitment for San Joaquin Valley, page 2.*** ***Regarding fumigant pesticides, page three of the Neal memorandum specifies that "[e]mission ratings for application methods not found on Tables A1-2 through A1-6 pertaining to the 1990 application methods may be modified based on more recent data." To clarify, emission ratings for application methods that were used in 1990 may not be modified, absent a SIP revision. Similarly, regarding nonfumigant pesticides, DPR will not revise the emission potentials (VOC content) of formulations that were used in the base year, absent a SIP revision. This was not specifically referenced in the Neal memorandum, but follows from the decision to freeze the baseline.*** ***When the 1994 Pesticide Plan was drafted, DPR had not yet established the baseline emissions, which is why it was necessary to express the commitment in terms of a percentage reduction. Now DPR has a 1990 inventory that is not likely to need further significant or frequent refinement. DPR's proposed methodology shifts the focus away from refining the baseline inventory and limits, and toward gauging compliance with the SIP based on real world reductions; reductions in emissions that result from the use of new, low VOC formulations and new, low VOC-emitting***	7

	application methods that were not used in 1990. See Staff Report on the Department of Pesticide Regulation's Proposed SIP Commitment for San Joaquin Valley, page 2.	
37	EPA has not approved DPR's fumigant regulations as part of a SIP. DPR does not plan on submitting the regulations to EPA to be incorporated as part of the SIP. This is a violation of the Clean Air Act. These measure must be included as part of the SIP and may not be adopted as a separate rule, which is what DPR is attempting to do with these modifications. ***See response to comment #34.***	T-5
38	DPR's decision not to fulfill its legal duty to submit the regulations as part of the SIP is that neither the regulations nor the SIP is enforceable. ***See response to comment #34. Also, DPR's proposed SIP commitment is found under the heading "Staff Proposed SIP Commitment." See Department of Pesticide Regulation Proposed SIP Commitment for San Joaquin Valley, page 2. That commitment includes a backstop provision to hold the line at 18.1 tpd, regardless of pest pressures, cropping patterns, or other factors affecting commercial pesticide use and regardless of how many reductions the fumigant or nonfumigant controls have already produced.***	T-5

Comment Received During the 15-Day Public Comment Period (February 12-27, 2009)

1-B	The air quality is not improving and far too many toxic chemicals are used to make the air, water, soil healthy, etc. ***No response necessary.***	1B

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.

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.