TEXT OF SECOND MODIFIED REGULATIONS

Current wording is indicated by regular type.
Proposed deletions are indicated by ~~strikeout~~.
Proposed additions are indicated by underline.
Proposed deletions in first modification are indicated by ~~*italics and strikeout*~~.
Proposed additions in first modification are indicated by **bold double underline**.
Proposed deletions in second modification are indicated by ~~***bold, italics, and strikeout***~~.
Proposed additions in second modification are indicated by ***bold, double underline, and italics***.

DIVISION 6. PESTICIDES AND PEST CONTROL OPERATIONS
CHAPTER 2. PESTICIDES
SUBCHAPTER 4. RESTRICTED MATERIALS
ARTICLE 4. FIELD FUMIGATION USE REQUIREMENTS

Amend section 6452 to read:

6452. Reduced Volatile Organic Compound Emissions Field Fumigation Methods.

(a) For the Sacramento Metro and South Coast ozone nonattainment areas, the Director may approve use of a field fumigation method not described in sections 6447.3, 6448.1, 6449.1, 6450.1, 6450.2, and 6451.1 if the request is accompanied by scientific data documenting the volatile organic compound (VOC) emissions. The emission rating specified in section ~~6452.4~~ 6881 or the maximum emission rate (emission rating multiplied by the maximum application rate) must be no greater than any one of the methods for the same fumigant described in sections 6447.3, 6448.1, 6449.1, 6450.1, 6450.2, and 6451.1.

(b) For the San Joaquin Valley, Southeast Desert, and Ventura ozone nonattainment areas, upon written request, the Director may approve use of a field fumigation method either not described or excluded from use in sections 6447.3, 6448.1, 6449.1, 6450.1, 6450.2, or 6451.1 if the request meets the following criteria:

(1) The request is accompanied by scientific data documenting the VOC emissions;

(A) The emission rating, as specified in section ~~*6452.4*~~ **6881**, is no greater than any one of the methods for the same fumigant allowed for use in the San Joaquin Valley, Southeast Desert, and Ventura ozone nonattainment areas as specified in sections 6447.3, 6448.1, 6449.1, 6450.1, 6450.2, or 6451.1, or

(B) The maximum emission rate (emission rating multiplied by the maximum application rate) is no greater than any one of the methods for the same fumigant allowed for use in the San Joaquin Valley, Southeast Desert, and Ventura ozone nonattainment areas as specified in sections 6447.3, 6448.1, 6449.1, 6450.1, 6450.2, or 6451.1.

(c) Criteria the Director shall consider includes whether:

(1) the data and information provided are sufficient to estimate emissions;

(2) the results are valid as indicated by the quality control data; and

(3) the conditions studied represent agricultural fields fumigated.

(d) The Director shall publish a notice of interim approval for a field fumigation method on the Department's Web site. The interim approval expires three years after the date of approval.

NOTE: Authority cited: Sections 11456, 12976, 14005, and 14102, Food and Agricultural Code. Reference: Sections 11501, 14006, and 14102.

Amend section 6452.2 to read:

6452.2 ~~Fumigant~~ Volatile Organic Compound Emission Limits.

(a) The Director shall establish field fumigant volatile organic compound (VOC) emission limits in the Annual Volatile Organic Compound Emissions Inventory Report issued pursuant to section ***~~6452.4~~*** ***6881***for the Sacramento Metro, South Coast, Southeast Desert, and Ventura ozone nonattainment areas where the difference between emissions in the most recent inventory report and the benchmarks for that area is five percent or less of the benchmarks or exceeds the benchmarks listed below during the May 1 through October 31 time period:

Ozone Nonattainment Area	Total Agricultural and Structural VOC Emissions Inventory Benchmarks from May 1 to October 31
Sacramento Metro	820,000 lbs. (2.2 tons/day average)
~~San Joaquin Valley~~	~~6,700,000 lbs. (18.1 tons/day average)~~
South Coast	3,200,000 lbs. (8.7 tons/day average)
Southeast Desert	340,000 lbs. (0.92 tons/day average)
~~Ventura in 2011~~	~~1,200,000 lbs. (3.3 tons/day average)~~
Ventura ~~in 2012 and later~~	1,100,000 lbs. (3.0 tons/day average)

(1) ~~Notwithstanding (a), i~~If a VOC emission limit is in effect pursuant to (a) that limit must remain in effect until the commissioner does not condition permits to include a fumigant emission allowance specified in (c)(1) or (d)(1), and does not deny any permit or notice of intent specified in (c)(2) or (d)(2) in order to comply with the fumigant emission limit for two consecutive years.

(b) The Director shall calculate the field fumigant VOC emission limits specified in (a) by subtracting the nonfumigant pesticide VOC emissions from the total agricultural and structural VOC emissions inventory benchmarks. Nonfumigant pesticide product emissions will be the summation of the pounds of each pesticide product used multiplied by the VOC content (emission potential) for the specific product.

(c) For the Ventura ozone nonattainment area, the commissioner shall ensure that the fumigant limits specified in (a) are not exceeded during the May 1 through October 31 time period using one or more of the following methods for field soil fumigations:

(1) Condition permit to include fumigant emission allowances.

(2) Deny any permit or notice of intent that would cause the fumigant limit to be exceeded.

(3) Condition permit to prohibit or require any of the methods allowed by sections 6447.3(a), 6448(c), 6449.1(b), 6450.1(d), or 6452 during the May 1 through October 31 time period.

(d) For ozone nonattainment areas other than Ventura, the Director shall select one or more of the following methods to ensure the fumigant limits specified in (a) are not exceeded during the May 1 through October 31 time period:

(1) The Director establishes a fumigant emission allowance for each permittee, based on information provided the commissioners within the ozone nonattainment area. The total allowances in each ozone nonattainment area must not exceed the fumigant limit established for that area. Commissioners shall issue permits or amend existing permits to comply with the fumigant emission allowance(s) established by the Director. Commissioners shall deny any notice of intent that does not comply with the permittees' fumigant emission allowances.

(2) Commissioners deny any permit or notice of intent that would cause the fumigant limit to be exceeded.

(3) Commissioners condition permits to prohibit or require any of the methods allowed by sections 6447.3(a), 6448(c), 6449.1(b), 6450.1(d), or 6452 during the May 1 through October 31 time period.

(e) No person may apply a field fumigant during the May 1 through October 31 time period in an ozone nonattainment area for which a fumigant emission limit has been established pursuant to ~~this section~~ (a), unless their restricted material permit includes conditions specified in (c) or (d), or notice of intent is approved in writing.

(f) For the San Joaquin Valley ozone nonattainment area, if the difference between emissions in the most recent emissions inventory report and the 6,700,000 pound (18.1 tons per day) benchmark for this area is five percent or less of the benchmark or exceeds this benchmark during the May 1 through October 31 time period, the provisions of section 6884 shall apply.

NOTE: Authority cited: Sections 11456, 12976, 14005, and 14102, Food and Agricultural Code. Reference: Sections 11501, 14006, and 14102, Food and Agricultural Code.

CHAPTER 3. PEST CONTROL OPERATIONS
SUBCHAPTER 1. LICENSING
ARTICLE 5. AGRICULTURAL PEST CONTROL ADVISER LICENSES

Adopt section 6558 to read:

6558. Recommendation for Use of Nonfumigants in the San Joaquin Valley Ozone Nonattainment Area.

~~*If a licensed agricultural pest control adviser is asked to provides a written recommendation pursuant to section 6883, the*~~ **A** licensed pest control adviser shall not recommend a use in violation with the provision in section 6884. **If a licensed agricultural pest control adviser recommends the use of a high-volatile organic compound nonfumigant product implementing an exception under section 6884(b), the exception must be identified.** A pest control adviser must retain a recommendation for a high-volatile organic compound product for at least two years.

NOTE: Authority cited: Sections 11456, 12976, and 14102, Food and Agricultural Code. Reference: Sections 11501, 12003, and 14102, Food and Agricultural Code.

ARTICLE 6. PEST CONTROL DEALER LICENSES

Adopt section 6577 to read:

6577. Sales of Nonfumigants for Use in the San Joaquin Valley Ozone Nonattainment Area.

(a) When sale~~s~~ of a high-volatile organic compound (VOC) nonfumigant product with agricultural uses, specified in the Annual Volatile Organic Compound Emissions Inventory Report required in section 6881, is made to or for the operator of the property with an operator

identification number issued by a county agricultural commissioner in the San Joaquin Valley ozone nonattainment area, the licensed pest control dealer shall provide the following VOC information, in writing, at time of purchase or delivery:

High-volatile organic compound nonfumigant products containing abamectin, chlorpyrifos, gibberellins, or oxyfluorfen as a primary active ingredient are subject to additional use restrictions during May 1 through October 31 when used in the San Joaquin Valley ozone nonattainment area on the following crops: alfalfa, almond, citrus, cotton, grape, pistachio, and walnut. Use prohibitions that may apply are found in Title 3, California Code of Regulations, section 6884. The operator of the property must obtain a written recommendation of a licensed pest control adviser prior to use on these crops during this time period.

(b) In addition to the requirements in section 6562, each licensed pest control dealer shall indicate on the invoice that the ~~*requirement in (a) was met*~~ **information required in (a) was provided**.

NOTE: Authority cited: Sections 11456 and 12111, Food and Agricultural Code. Reference: Section 11501, Food and Agricultural Code.

CHAPTER 4. ENVIRONMENTAL PROTECTION
SUBCHAPTER 2. AIR
ARTICLE 2. VOLATILE ORGANIC COMPOUNDS

Renumber section 6890 to 6864:

~~6890~~ 6864. Criteria for Identifying Pesticides as Toxic Air Contaminants.

A pesticide shall be identified as a toxic air contaminant if its concentrations in ambient air are greater than the following levels (for the purposes of this section, a threshold is defined as the dose of a chemical below which no adverse effect occurs):

(a) For pesticides which have thresholds for adverse health effects, this level shall be ten-fold below the air concentration which has been determined by the Director to be adequately protective of human health.

(b) For pesticides which do not have thresholds for adverse health effects, this level shall be equivalent to the air concentration which would result in a ten-fold lower risk than that which has been determined by the Director to be a negligible risk.

NOTE: Authority cited: Section 11456, Food and Agricultural Code. Reference: Sections 14021 and 14023, Food and Agricultural Code.

Adopt section 6880 to read:

6880. Criteria to Designate Low-Volatile Organic Compound (VOC) or High-VOC Nonfumigant Pesticide Products.

(a) The Director shall designate in the Annual VOC Emissions Inventory Report all nonfumigant products with agricultural uses containing the following **primary** active ingredients as low-VOC if the product has less than or equal to the product VOC emission potential listed below. All other products **containing the primary active ingredients below** with active or inactive registrations shall be designated as high-VOC.

Product Primary Active Ingredient*	Product VOC Emission Potential (percent **by weight**)
Abamectin	35
Chlorpyrifos	25
Gibberellins	25
Oxyfluorfen	15

*If a product contains more than one active ingredient, the primary active ingredient is the one present at the highest percentage in a product. These criteria do not apply to products that contain an active ingredient listed above, but not as the primary active ingredient, including products with one or more active ingredients present at the same percentage.

NOTE: Authority cited: Sections 11456, 12976, and 14102, Food and Agricultural Code. Reference: Sections 11501 and 14102, Food and Agricultural Code.

Renumber section 6452.4 to 6881 and amend to read:

~~**6452.4.**~~ **6881. Annual Volatile Organic Compound Emissions Inventory Report.**

(a) The Director shall issue an annual emissions inventory report for the Sacramento Metro, San Joaquin Valley, South Coast, Southeast Desert, and Ventura ozone nonattainment areas. The emissions inventory report must:

(1) report the total agricultural and structural (fumigant and nonfumigant) pesticide volatile organic compound (VOC) emissions for the previous years. Nonfumigant pesticide product emissions will be the summation of the pounds of each pesticide product used multiplied by the VOC content (emission potential) for the specific product. Fumigant product emissions will be the summation of the pounds of each pesticide product used multiplied by the emission potential for that specific product and VOC emission rating for the application method, as specified in (~~5~~4);

(2) evaluate compliance with the total pounds of agricultural and structural VOC emissions specified in section 6452.2;

(3) establish fumigant emissions limits pursuant to section 6452.2 for the upcoming year;

(4) establish an emission rating for each field fumigation method described in sections 6446.1, 6447.3, 6448.1, 6449.1, 6450.1, 6450.2, 6451.1, or 6452. The emission rating will be expressed as a percentage of the amount of fumigant applied. The Director shall base the emission rating upon available scientific data documenting the VOC emissions~~.~~;

(5) establish prohibitions on high-VOC nonfumigant products pursuant to section 6452.2(f), and if applicable, determine if prohibitions pursuant to section 6884(c) remain in effect;

(6) establish a list of the nonfumigant products that are designated as low-VOC pursuant to section 6880;

(7) establish a list of the actively registered nonfumigant products that are designated as high-VOC pursuant to section 6880.

(b) A draft emissions report shall be made available to the public for comment. A 45-day public comment period will be provided to allow for submission of written statements or arguments to the Director for review before finalizing the Annual Volatile Organic Compound Emissions Inventory Report. The emissions report will be posted on the Department's Web site.

(c) Low-VOC agricultural use products registered after the release of the Annual VOC Emissions Inventory Report and contain abamectin, chlorpyrifos, gibberellins, or oxyfluorfen as the primary active ingredient, will be listed in a supplemental report and posted on the Department's Web site. The products designated as low-VOC will be based upon the criteria established in section 6880.

NOTE: Authority cited: Sections 11456, 12976, 14005, and 14102, Food and Agricultural Code. Reference: Sections 11501 and 14102, Food and Agricultural Code.

Adopt section 6883 to read:

6883. ~~*Pest Control Adviser*~~ Recommendation Requirements in the San Joaquin Valley Ozone Nonattainment Area.

In the San Joaquin Valley ozone nonattainment area, the operator of the property shall not apply a high-volatile organic compound nonfumigant product specified in section 6881 during May 1 through October 31 to one of the following crops unless they obtain the written recommendation of a licensed agricultural pest control adviser: alfalfa, almond, citrus, cotton, grape, pistachio, and walnut. The operator of the property shall retain the written recommendation for at least two years after the application occurs.

NOTE: Authority cited: Sections 11456, 12976, and 14102, Food and Agricultural Code. Reference: Sections 11501, 12003, and 14102, Food and Agricultural Code.

Adopt section 6884 to read:

6884. San Joaquin Valley Ozone Nonattainment Area Use Prohibitions.

Pursuant to section 6452.2(f), the following shall apply to agricultural uses of high-volatile organic compound (VOC) products specified in the Annual VOC Emissions Inventory Report required in section 6881 containing abamectin, chlorpyrifos, gibberellins, or oxyfluorfen as the primary active ingredient in the San Joaquin Valley ozone nonattainment area during the May 1 through October 31 time period.

(a) No person may apply a nonfumigant product that has been designated as a high-VOC pursuant to section 6880 and as specified in the Annual VOC Emissions Inventory Report required by section 6881 on the following crops: alfalfa, almond, citrus, cotton, grape, pistachio, and walnut. If the product is not listed as a low-VOC, it cannot be used.

(b) Notwithstanding (a), the following exceptions for use of high-VOC products are permitted:

(1) Use of chlorpyrifos products to control aphids on cotton.

(2) Use of gibberellins products when applied **at** an application rate of ~~*eight*~~ **16** grams of active ingredient per acre or less.

(3) Use of oxyfluorfen products when applied at an application rate of 0.125 (⅛) pounds of active ingredient per acre or less.

(~~3~~ **4**) Uses for which the U.S. Environmental Protection Agency has issued an emergency exemption from registration under Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act.

(~~4~~ **5**) Uses registered as a Special Local Need under Section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act.

(~~5~~ **6**) Applications made by or under the direction of the U.S. Department of Agriculture, the California Department of Food and Agriculture, or county agricultural commissioner to control, suppress or eradicate pests.

(~~6~~ **7**) Applications using precision spray technology meeting the criteria of the California Office of the Natural Resources Conservation Service's Environmental Quality Incentives Program.

(c) If prohibitions for high-VOC nonfumigant products are in effect pursuant to section 6452.2(f), those prohibitions must remain in effect until the hypothetical VOC emissions shown in the Annual VOC Emissions Inventory Report comply with the limit specified in section 6452.2(f) for at least two consecutive years. The hypothetical VOC emissions during a year of prohibitions shall be calculated for each active ingredient used on each crop specified in section 6884. The hypothetical emissions shall be calculated by assuming the relative mixture of high and low-VOC products used in the current year of prohibitions would have been the same as in the most recent year without prohibitions. The VOC emissions are then calculated using that product mixture for the amount of active ingredient used in the current year.

The following formula represents how the hypothetical VOC emissions described above would be calculated for each pesticide-crop combination:

$$\text{Hypothetical emissions for a pesticide-crop combination listed in section 6884 during May-Oct for the year of prohibitions} = \frac{\text{(Emissions for the pesticide-crop combination during May-Oct for the most current year without prohibitions)} \times \text{(Pounds active ingredient for the crop during May-Oct for the year of prohibitions)}}{\text{Pounds active ingredient for the crop during May-Oct for the most current year without prohibitions}}$$

The total hypothetical VOC emissions will be the summation of the hypothetical emissions for each pesticide-crop combination, plus the actual VOC emissions for the remaining pesticides and crops not listed in section 6880.

(d) *If* ~~*T*~~**the Director** ~~*can remove*~~ ***makes a determination that the removal of*** **an active ingredient** ~~*listed*~~ **designated as a high-VOC in section 6880*, or the removal of a crop in subsection (a), or the addition of an exception in subsection (b)*** ~~*based on a determination that the removal*~~ **will not affect the ability *comply with the limit*** ~~*to meet the pesticide VOC benchmark*~~ **specified in section 6452.2(f) *(17.2 tons per day)*** ~~.~~***, then*** ~~*T*~~**the Director may** ~~*propose*~~ ***approve the interim*** **removal *and/or addition using the Annual VOC Emissions Inventory process described below in (e).*** ~~*through the rulemaking process.*~~

(1)**The Director's determination *to remove an active ingredient* shall be based on*:***

(A)* the decrease in its use and emissions**~~*,*~~ ***;~~*and that*~~

(B) the decrease *is being* caused by factors that are likely to persist*,; and*

(C) on a calculation of the inventory using the assumption that all applications to the crops listed in subsection (b) would have used the product(s) containing the removed pesticide that would result in the highest VOC emissions for the two most recent years of the pesticide VOC emission inventory.

(e)(2) The Director*'s determination to can* remove a crop *in subsection (a) shall be* based on*: a determination that the removal will not affect the ability to meet the pesticide VOC compound benchmark specified in section 6452.2(f). The Director may remove the crop through the rulemaking process. The Director's determination to remove a crop shall be based on*

(A) the decrease in use and emissions from products specified in section 6880 *on this crop;, and that*

(B) the decrease *is being* caused by factors that are likely to persist*; and*

(C) on a calculation of the inventory using the assumption that all applications to the removed crop would use the products containing the primary active ingredients listed in section 6880 that result in the highest VOC emissions for the two most recent years of VOC emissions inventory.

(3) The Director's determination to add an exception shall be based on the estimated VOC emissions that would result from allowing the exception based on the two most recent years of the pesticide VOC emissions inventory and study information. The study must:

(A) specify the maximum application rate (pounds per acre) of the high-VOC product of the added exception; and

(B) estimate the maximum number of acres that could be treated with a high-VOC product for the added exception during May-October, and the method to estimate the number of acres.

(C) No exception would be allowed unless the study shows a greater amount of an active ingredient must be applied using a low-VOC product to achieve the same efficacy as a high-VOC product.

(f)Using the Annual VOC Emissions Inventory Report process described below, the Director can add an interim exception to subsection (b). The exception must be based on a determination that the addition of a specific exception to the limitation(s) in subsection (a) will not affect the ability to meet the pesticide VOC compound benchmark specified in section 6452.2(f). The Director's determination to allow an exception shall be based on an acceptable study that shows a greater amount (pounds per acre) of an active ingredient of a low-VOC product must be applied to achieve the same efficacy as a high-VOC product. The criteria for an acceptable study are specified in section 6195.

(1)(e) The Director shall publish the proposed *interim removal of an active ingredient or crop, or the addition of an* exception in the draft *VOC* emissions report specified in section 6881(b)*. The report must include a description of the calculations used to determine that the limit specified in section 6452.2(f) would not have been exceeded in the two most recent years, with the removal or addition. The report must also include a description of the changes in cropping patterns, pest management practices, product registration, regulatory requirements, or other factors that have caused a decrease in use and emissions, and are likely to persist.* A 45-day public comment period will be provided to allow for submission of written statements or arguments to the Director for review before finalizing the Annual VOC Emissions Inventory Report. The emissions report will be posted on the Department's Web site. The *interim exception removal or addition must be evaluated each year in the Annual VOC Emissions Inventory Report and may only remain in effect up to expires* three years

~~from the date of the Annual VOC Emissions Inventory Report~~ unless implemented through state and federal rulemaking.

NOTE: Authority cited: Sections 11456, 12976, and 14102, Food and Agricultural Code. Reference: Sections 11501 and 14102, Food and Agricultural Code.

Adopt section 6886 to read:

6886. Dealer Responsibilities for the San Joaquin Valley Ozone Nonattainment Area.

Each licensed pest control dealer of a high-volatile organic compound (VOC) nonfumigant product specified in the Annual VOC Emissions Inventory Report, shall provide VOC information, in writing, to the purchaser at time of purchase or delivery pursuant section 6577 if the sale is made to or for the operator of the property with an operator identification number issued by a county agricultural commissioner in the San Joaquin Valley ozone nonattainment area.

NOTE: Authority cited: Sections 11456 and 12111, Food and Agricultural Code. Reference: Section 11501, Food and Agricultural Code.