

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION
Field Fumigant Use Requirements
DPR Regulation No. 15-002

NOTICE OF PROPOSED REGULATORY ACTION

AND

NOTICE OF PUBLIC HEARING
ON A PROPOSED OZONE STATE IMPLEMENTATION PLAN AMENDMENT
REGARDING PESTICIDE EMISSIONS IN THE SACRAMENTO METRO,
SAN JOAQUIN VALLEY, SOUTH COAST, SOUTHEAST DESERT,
AND VENTURA NONATTAINMENT AREAS

The Department of Pesticide Regulation (DPR) proposes to amend sections 6000, 6445, 6447, 6447.2, 6447.3, 6448.1, 6449.1, 6450.1, 6452, 6452.2, and 6784 of Title 3, California Code of Regulations. The proposed action would add and revise existing field fumigation methods in the Sacramento Metro, San Joaquin Valley, South Coast, Southeast Desert, and Ventura ozone nonattainment areas (NAAs) when using methyl bromide, 1,3-Dichloropropene (1,3-D), chloropicrin, metam-sodium, and potassium N-methyldithiocarbamate (metam-potassium), and make changes to be consistent with product labeling.

DPR will conduct a public hearing to accept comments on these amendments that may become part of the ozone state implementation plan (SIP). The federal Clean Air Act requires each state to submit a SIP for achieving and maintaining federal ambient air quality standards for ozone. California's SIP contains an element to reduce pesticidal sources of volatile organic compounds (VOCs). These proposed regulations amend and add to regulations that were previously submitted to the U.S. Environmental Protection Agency (U.S. EPA) to support a pending SIP amendment. Opportunity to comment and the hearing on the proposed regulations as part of the SIP amendment are being provided in conjunction with this rulemaking.

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 September 23, 2015. Comments regarding this proposed action may also be transmitted via e-mail to <dpr15002@cdpr.ca.gov> or by facsimile at 916-324-1491.

A public hearing has been scheduled for the time and place stated below to receive oral or written comments regarding the proposed changes.¹

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.

DATE: September 22, 2015
TIME: 6:00 p.m.
PLACE: Kern Agricultural Pavilion
3300 E. Belle Terrace
Bakersfield, California 93307

A DPR representative will preside at the hearing. Persons who wish to speak will be asked to register before the hearing. The registration of speakers will be conducted at the location of the hearing from 5:00 p.m. to 6:00 p.m. Generally, registered persons will be heard in the order of their registration. Any other person who wishes to speak at the hearing will be afforded the opportunity to do so after the registered persons have been heard. If the number of registered persons in attendance warrants, the hearing officer may limit the time for each presentation in order to allow everyone wishing to speak the opportunity to be heard. Oral comments presented at a hearing carry no more weight than written comments.

EFFECT ON SMALL BUSINESS

DPR has determined that the proposed regulatory action does affect small businesses.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

State and federal law mandates that DPR protect human health and the environment by regulating pesticide sales and use and by fostering reduced-risk pest management.

Before planting, farmers use fumigants to control disease, weeds, and pests in the soil. Fumigants are also used to control pests in structures and harvested commodities. Measured in pounds, fumigants represent approximately 20 percent of all agricultural pesticides used in California. Because fumigants are usually applied at a rate of several hundred pounds an acre and are very volatile, fumigants account for an even higher proportion of VOCs emitted by pesticides. In some areas of the state, up to three-quarters or more of the pesticide VOCs are from fumigants. VOCs can contribute to the formation of ground-level ozone, which is harmful to human health and vegetation when present at high enough concentrations. The federal Clean Air Act requires each state to submit a SIP for achieving and maintaining federal ambient air quality standards for ozone. An ozone NAA is a geographical region in California that does not meet either federal or state ambient air quality standards. U.S. EPA designates NAAs in Title 40, Code of Federal Regulations section 81.305. In 1994, California's Air Resources Board and DPR developed a plan to reduce pesticidal sources of VOCs in five NAAs--Sacramento Metro, San Joaquin Valley, South Coast, Southeast Desert, and Ventura--as part of the California SIP to meet the one-hour ozone standard.

DPR adopted regulations to achieve a reduction of pesticide VOC emissions from 1990 levels in the five NAAs. The regulations, in part, focus exclusively on fumigant emissions to achieve reductions from pesticides during the May 1 through October 31 peak ozone season through controls on application methods, and established a process to allow the use of interim field fumigation methods as part of DPR's efforts to reduce VOC emissions and to provide the necessary flexibility for innovations that reduce emissions to occur.

In 2012, U.S. EPA approved updated labels for soil fumigants currently registered to include new requirements for buffer zones and related measures. The revised labels include buffer zone credits for tarpaulins that greatly reduce the emissions of the fumigants in the soil, also known as totally impermeable film (TIF) tarpaulins. On the labels, they are referred to as tarpaulins that have been tested for permeability and determined by U.S. EPA to qualify for at least 60 percent buffer zone reduction credit.

Within the five NAAs during May 1 through October 31, only the fumigation methods specified in sections 6447.3, 6448.1, 6449.1, and 6450.1 are allowed except some of these methods classified as “high-emission” are prohibited in the San Joaquin Valley, Southeast Desert, and Ventura NAAs. As mentioned above, under specific criteria pursuant to 3 CCR 6452, the Director may grant interim approval of fumigation methods that reduce VOC emissions. The interim method approved must be accompanied by scientific documentation showing VOC emissions are not higher than other “low-emission” methods allowed in a NAA. The interim approval expires three years after the date of the approval unless adopted by regulation. If these interim methods are not put into regulation, the benefit of further emission reduction from use of the TIF tarpaulin will not be received. Section 6452 sets different standards by which to evaluate whether a new fumigation method will be allowed: one for the Sacramento Metro and South Coast ozone NAAs; and one for the San Joaquin Valley, Southeast Desert, and Ventura ozone NAAs. Sacramento Metro and South Coast have a less stringent standard because no further VOC reductions from pesticides are needed in these ozone NAAs. Both “low-emission” and “high-emission” methods can be used in these two areas. Only “low-emission” methods are allowed in the San Joaquin Valley, Southeast Desert, and Ventura ozone NAAs during the May-October peak ozone season. The key information is the emission rating (percent of the fumigant applied that is emitted to the air) and the emission rate (emission rating multiplied by the maximum application rate). Either the emission rating or the emission rate can be no greater than the current methods allowed within the ozone NAAs by the regulations. The maximum emission rating allowed in the San Joaquin Valley, Southeast Desert, and Ventura ozone NAAs for methyl bromide is 48 percent, and for chloropicrin and 1,3-D it is 44 percent.

In the past several years, DPR reviewed several studies that estimated fumigant emissions from applications that used TIF tarpaulins. Except for the type of tarpaulin, fumigations with TIF tarpaulins are identical to other methods specified by DPR’s VOC regulations. DPR determined that the TIF tarpaulin fumigation methods meet the standard for an interim method, and approved interim use of the TIF tarpaulin methods using methyl bromide, chloropicrin, or 1,3-D. DPR defined TIF tarpaulins as those for which labeling assigns a buffer zone credit of 60 percent.

The proposed regulatory action pertains to the following five fumigant active ingredients. Common brand names and/or alternative chemical names are given in parentheses as an aid to identification-- methyl bromide, 1,3-D (Telone, Inline), chloropicrin, metam-sodium (Vapam, Sectagon) , and potassium N-methyldithiocarbamate (also known as metam-potassium [K-Pam]).

DPR proposes to amend sections 6447.3, 6448.1, and 6449.1 to add and revise existing field fumigation methods that may be used in the five ozone NAAs during the May 1 through October 31 time period. The addition of new methods, as well as amending existing methods, would result in no greater emission than any of the fumigant methods currently allowed. Additionally, FAC section 12973 states that use of a pesticide shall not be in conflict with the

label. Since many of the same requirements in DPR's regulations are now included on the fumigant labels it is not necessary to repeat the requirements in regulation. DPR proposes revising the regulations to remove language that is required by the labels. Also, DPR proposes minor clarifying and grammatical changes throughout the proposed regulations.

Adoption of these regulations will provide a benefit to public health and the environment by continuing to reduce VOC emissions in the Sacramento Metro, San Joaquin Valley, South Coast, Southeast Desert, and Ventura ozone NAAs.

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

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts, nor does it require reimbursement by the state pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code, because the regulatory action does not constitute a "new program or higher level of service of an existing program" within the meaning of section 6 of Article XIII of the California Constitution. DPR has also determined that no nondiscretionary costs or savings to local agencies or school districts are expected to result from the proposed regulatory action.

CAC offices will be the local agencies responsible for enforcing the proposed regulations. DPR anticipates that there will be no fiscal impact to these agencies. DPR negotiates an annual work plan with the CACs for enforcement activities.

COSTS OR SAVINGS TO STATE AGENCIES

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

EFFECT ON HOUSING COSTS

DPR has made an initial determination that the proposed action will have no effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

DPR has made an initial determination that 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 has made an initial determination that the adoption of this regulation will not have a significant cost impact on representative private persons or businesses. Providing additional alternative fumigation methods could allow an additional 700 acres (mostly strawberries) to be grown in the Ventura NAA, with the potential of increasing net annual income by \$11 million. However, the new fumigant labels have increased buffer zones to address exposure concerns which have resulted in a decrease in acres fumigated from 23,702 in 2012 to 15,760 in 2013. While the use of TIF tarps would allow 700 more acres to be fumigated without going over the fumigant limit, the new buffer zone restrictions designed to limit exposure may prohibit some or all of that increased acreage allowed by the use of TIF tarps under the interim method now being proposed as an amendment to the VOC regulations.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Adoption of these regulations will provide a benefit to public health and the environment by continuing to reduce VOC emissions in the Sacramento Metro, San Joaquin Valley, South Coast, Southeast Desert, and Ventura ozone NAAs.

Impact on the Creation, Elimination, or Expansion of Job/Businesses: DPR has determined it is unlikely 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.

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 or would be as effective and less burdensome to affected private persons or businesses 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.

As stated above, the interim methods expire three years after the date of approval. If the interim methods are not adopted, the current regulations that prohibit TIF tarpaulins for use with methyl bromide would require growers and applicators to use standard polyethylene tarpaulins, and therefore, further reduction in VOC emissions for each acre fumigated would not be achieved. This is contrary to DPR's goal for VOCs and U.S. EPA's goal for stratospheric ozone depletion. Also, 1,3-D and chloropicrin (and MITC generating products) fumigation methods can currently use TIF tarpaulins but the reductions achieved cannot be applied to meet our SIP requirements.

AUTHORITY

This regulatory action is taken pursuant to the authority vested by Food and Agricultural Code sections 11456, 12976, 12981, 14005, and 14102.

REFERENCE

This regulatory action is to implement, interpret, or make specific Food and Agricultural Code sections 11501, 12981, 14006, and 14102.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

DPR has prepared an Initial Statement of Reasons and has available the express terms of the proposed action, all of the information upon which the proposal is based, and a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulation may be obtained from the agency contact person named in this notice. The information upon which DPR relied in preparing this proposal and the rulemaking file are available for review at the address specified below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the comment period, DPR may make the 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:

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

Note: In the event the contact person is unavailable, questions on the substance of the proposed regulatory action may be directed to the following person at the same address as noted below:

Pam Wofford, Environmental Program Manager
Environmental Monitoring Branch
916-324-4297

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 proposed text can be made available in 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

Date