

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION
Field Fumigant Use Requirements
DPR Regulation No. 10-004

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 6445.5, 6448.1, 6449.1, 6450.1, 6452.2, 6452.3, 6452.4, 6536, and 6626 of Title 3, California Code of Regulations. This 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 1,3-Dichloropropene, chloropicrin, metam-sodium, or potassium N-methyldithiocarbamate (metam-potassium); amend triggers for fumigant limits in NAAs and the allowance system used to enforce the fumigant limits; and clean-up sections pertaining to licensing and pesticide use reporting requirements related to volatile organic compounds (VOCs).

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 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 November 17, 2010. Comments regarding this proposed action may also be transmitted via e-mail <dpr10004@cdpr.ca.gov> or by facsimile transmission at (916) 324-1452.

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

DATE: November 16, 2010
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 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.

¹ If you have special accommodation or language needs, please notify DPR. TTY/TDD speech-to-speech users may dial 7-1-1 for the California Relay Service.

In January 2008, DPR adopted regulations to achieve a 20 percent reduction of pesticide VOC emissions from 1991 levels in the five NAAs. Those regulations, in part, focus exclusively on fumigant emissions to achieve reductions through controls on application methods and the benchmarks that trigger a cap and allowance system to force reductions if needed.

On July 18, 2008, U.S. EPA revised California's SIP to allow an additional 1.3 tons per day (tpd) of VOCs from pesticides in Ventura in 2008. (73 Federal Register 41277, 41278.) That SIP revision requires a portion of the additional 1.3 tons of emission allowed in 2008 to be reduced each year thereafter until the total 20 percent reduction is reached in Ventura until 2012. In September 2008, DPR amended the regulations to make it consistent with the phase-in of 1.3 tpd in Ventura approved by U.S. EPA.

In 2009, ARB submitted a revised SIP to U.S. EPA for the San Joaquin Valley that included a pesticide VOC emissions limit of 18.1 average tpd, reflecting the 12 percent reduction from 1990 levels required by the SIP. The proposed SIP revision also includes a commitment to implement restrictions that reduce VOC emissions from non-fumigant pesticides by 2014. That submission has not yet been approved by U.S. EPA.

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

DPR proposes to amend sections 6448.1, 6449.1, and 6450.1 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.

DPR proposes to amend section 6452.2 to revise the trigger for fumigant limits from 80 percent of the benchmark to five percent of the benchmarks (equivalent to 95 percent) or exceeds the benchmarks, and provide flexibility to implement the fumigant limit even if the trigger level is not reached. Also, DPR proposes to provide the county agricultural commissioners and Director two additional options for enforcing fumigant limits.

DPR proposes to amend sections 6445.5, 6452.4, 6536, and 6626 to "clean-up" sections pertaining to the Annual VOC Emissions Inventory Report, and licensing and pesticide use reporting requirements related to VOCs.

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 will result from the proposed regulatory action. These proposed revisions potentially give flexibility in achieving the fumigant limit with fewer resources for county agricultural commissioners

COSTS OR SAVINGS TO STATE AGENCIES

DPR has determined that no 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. The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

IMPACT ON THE CREATION, ELIMINATION, OR EXPANSION OF JOBS/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 within 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.

AUTHORITY

This regulatory action is taken pursuant to the authority vested by FAC sections 11456, 11502, 12976, 13145, 14005, and 14102.

REFERENCE

This regulatory action is to implement, interpret, or make specific FAC sections 11501, 11708, 11733, 14001, 14006, 14011.5, 14102, and 14151.

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, the proposed text of the regulation, and a public hearing; and inquiries regarding the rulemaking file may be directed to:

Linda Irokawa-Otani, Regulations Coordinator
Office of Legislation and Policy
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 above:

Randy Segawa, Environmental Program Manager
Environmental Monitoring Branch
(916) 324-4137

This Notice of Proposed Action, the Initial Statement of Reasons, the proposed text of the regulation, the proposed amendment to the ozone state implementation plan regarding pesticide emissions in the San Joaquin Valley NAA, and staff report 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 11346.5(a)(19) 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