

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION
Health Risk Mitigation for 1,3-Dichloropropene
DPR Regulation No. 24-001

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to adopt Title 3, California Code of Regulations (3 CCR) section 6448.5 and amend sections 6000, 6448, 6448.2, 6448.4, 6624, and 6626. The pesticide regulatory program activities affected by the proposal are those pertaining to restricted materials and pesticide use enforcement. In summary, the proposed action restricts the use of 1,3-dichloropropene (1,3-D) to mitigate the potential 40-year working lifetime cancer risk to occupational bystanders¹. The proposed action establishes buffer zone distances (distances from the edge of a treated area where certain activities are restricted) and requires DPR to include an evaluation in the 1,3-D Annual Report of whether the 1,3-D air concentration in any township exceeds the acceptable level of 0.21 part per billion (ppb) and to develop appropriate measures to reduce exposures if target air concentration levels are exceeded. DPR also proposes to repeal the document “1,3-Dichloropropene Field Fumigation Requirements, Est January 1, 2024,” and adopt the document “1,3-Dichloropropene Field Fumigation Requirements, Rev. January 1, 2026,” which is incorporated by reference in existing sections 6448, 6448.2, 6624, and 6626. A copy of this document is included in the rulemaking file.

SUBMITTAL OF COMMENTS

Any interested person may present comments in writing about the proposed action to the agency contact person named below. DPR will accept written comments that are submitted via U.S. mail and postmarked no later than January 24, 2025. Comments regarding this proposed action that are transmitted via SmartComment online public comment portal at <https://cdpr.commentinput.com?id=gCFatJfYB> or by facsimile at 916-324-1491 must be received no later than January 24, 2025. DPR and the Office of Environmental Health Hazard Assessment (OEHHA) will jointly review the comments timely received.

PUBLIC HEARINGS

Three in-person public hearings and one virtual public hearing have been scheduled for the dates and times stated below to receive oral and/or written comments regarding the proposed action.² A presentation on the proposed regulations will be given prior to the start of each in-person hearing at 5:45 p.m. and prior to the virtual hearing at 9:45 a.m. The in-person hearing will commence at 6:00 p.m. and the virtual hearing will commence at 10:00 a.m.

¹ An occupational bystander is an individual working in the vicinity of fields treated with 1,3-D but is not directly handling, mixing, or applying the pesticide.

² If you have questions, comments, or require additional information, please contact the contact person named below. If you require reasonable accommodation or language assistance to participate, please provide notice at least 10 business days before the public meeting by contacting DPR’s Reasonable Accommodation Coordinator at 916-322-4553. TTY/TDD speech-to-speech users may dial 7-1-1 for the California Relay Service.

The three in-person public hearings will be held as follows:

DATE: Wednesday, January 8, 2025
TIME: 6:00-8:00 p.m.
PLACE: Visalia Veteran's Memorial
609 W Center Ave.
Visalia, California 93291

DATE: Thursday, January 16, 2025
TIME: 6:00-8:00 p.m.
PLACE: National Steinbeck Center
1 Main Street
Salinas, California 93901

DATE: Tuesday, January 21, 2025
TIME: 6:00-8:00 p.m.
PLACE: Chico Women's Club
592 East 3rd Street
Chico, California 95928

A DPR representative will preside over the in-person hearings. DPR and OEHHA staff will also be present at the in-person hearings. 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 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 all registered persons wishing to speak the opportunity to be heard. As stated above, in addition to accepting oral comments at the public hearing, DPR will accept written comments during the public hearing as well as via SmartComment, U.S. mail, and FAX. The format of submitting a public comment – orally or in writing – does not impact DPR and OEHHA’s consideration of, or weight given to, the comment.

The virtual public hearing will be held as follows:

DATE: Friday, January 10, 2025
TIME: 10:00 a.m.
PLACE: Zoom (Virtual)
Webinar ID: 845 7679 6884
Direct link to join the meeting from a web browser or Zoom client:
<<https://us02web.zoom.us/j/84576796884>>
One tap to join from a mobile phone: +16699009128,,84576796884#
Or call from a landline: +1 669 900 9128 – and enter the Webinar ID (above) when prompted

A DPR representative will preside over the virtual hearing. DPR and OEHHA staff will also be present at the virtual hearing. Persons joining the hearing through the web browser or Zoom client who wish to make comments orally during the hearing may raise their hand using the Zoom functions and make oral comments when called upon. Persons calling into the Zoom

meeting who wish to make a comment orally during the hearing may raise their hand by dialing *9 on their phone's dial pad. This will indicate to DPR representatives that the person on the phone has raised their hand. Generally, persons will be heard in the order in which they raised their hand. Participants will also be given instructions on how to provide oral comment once they have accessed the hearing. If persons experience technical difficulties during the hearing, persons may electronically submit written comments through SmartComment online comment portal at <https://cdpr.commentinput.com?id=gCFatJfYB>. DPR will also accept written comments that are submitted via U.S. mail and postmarked on the day of the hearing. If the number of persons in attendance warrants, the hearing officer may limit the time for each oral comment in order to allow everyone wishing to speak the opportunity to be heard. The format of submitting a public comment – orally or in writing – does not impact DPR or OEHHA’s consideration of, or weight given to, the comment.

The virtual hearing will also be accessible via public webcast for persons who would like to watch this hearing without participating. The public webcast can be accessed by visiting the following web address: <https://video.calepa.ca.gov/#/>

LANGUAGE ACCESS

Spanish language interpretation will be provided at the in-person public hearings on January 8, 2025, January 16, 2025, and January 21, 2025, and at the virtual hearing on January 10, 2025. To request interpretation in another language or sign language services, please email your request to languageaccess@cdpr.ca.gov or call 916-322-4553 by December 23, 2024. For requests received after December 23, 2024, DPR will make a best effort to accommodate the request.

EFFECT ON SMALL BUSINESS

DPR has determined that the proposed regulatory action does affect small business³.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

DPR's mission is to protect public health and the environment by regulating pesticide sales and use, and by fostering reduced-risk pest management. DPR's oversight includes product evaluation and registration; statewide licensing of commercial and private applicators, pest control businesses, dealers, and advisers; enforcement; and continuous evaluation of registered pesticides to ensure the protection of human health and the environment. DPR’s program of continuous evaluation includes environmental monitoring and data collection. DPR also performs human health risk assessments of registered pesticides to carry out its statutory responsibilities. Upon completion of a risk assessment, DPR determines whether the use of a particular pesticide results in an unacceptable risk to human health or the environment, and may implement additional mitigation or control measures on the pesticide’s sale, distribution and use through a variety of regulatory tools, such as conditions on registration, passing regulations, or cancellation. This statutory scheme is set forth primarily in Food and Agricultural Code (FAC) Divisions 6 and 7.

1,3-D is a fumigant used to control nematodes, insects, and disease organisms in soil. Under existing regulations, 1,3-D is designated as a restricted material (3 CCR section 6400(e)). As a

³ Government Code section 11342.610

restricted material, the purchase and use of 1,3-D is allowed only under a restricted materials permit from the local county agricultural commissioner (CAC). Before issuing a permit, the CAC must evaluate the permit application to determine whether the intended use may cause a substantial adverse environmental impact based on local conditions at the application site. Depending on the results of this review, the CAC may deny the permit or impose permit conditions including the use of specific mitigation measures. As part of the permit for any restricted material, applicators must provide a notice of intent to the CAC before any application. The notice of intent includes application-specific information, such as the number of acres being treated and date the application is intended to commence.

Additionally, 1,3-D is listed as a toxic air contaminant (TAC) in 3 CCR section 6860(b) based on its designation as a hazardous air pollutant under the federal Clean Air Act. As a TAC and hazardous air pollutant for which a risk assessment has been completed, DPR must determine the "need for and appropriate degree of control measures" pursuant to FAC section 14023(f). Control or mitigation measures that DPR develops for TACs must follow the requirements specified by FAC section 14024, including consulting with specified agencies.

Existing regulations in 3 CCR sections 6648 and 6448.2 also incorporate a range of mitigation measures to address the risks associated with 1,3-D. These include employing low-emission fumigation methods, enhancing soil moisture levels, limiting application block size and rates, and maintaining setbacks from occupied structures. These measures take into account seasonal variations (winter and non-winter) and regional factors (coastal and inland) to effectively mitigate both acute and long-term cancer risks to non-occupational bystanders associated with exposure to 1,3-D.

The proposed regulations will place additional and more stringent restrictions on the use of 1,3-D for production agricultural purposes by establishing requirements for buffer zones (distances from the edge of a treated area where certain activities are restricted). The proposed regulations will also require DPR to include an evaluation in the 1,3-D Annual Report to determine if the 1,3-D air concentration in any township exceeds the acceptable level of 0.21 ppb and develop appropriate mitigation measures to reduce exposures if air concentration levels are exceeded.

The broad objective of the proposed regulations is to mitigate the potential 40-year working lifetime cancer risk to occupational bystanders from the use of 1,3-D. These proposed regulations to address potential cancer risks to occupational bystanders from 1,3-D use were developed jointly and mutually by DPR and OEHHA, and are based on OEHHA's health-based recommendations consistent with FAC section 12980 et seq. Adoption of these regulations will provide a benefit to public health by mitigating the potential working lifetime cancer risk to no greater than 1 in 100,000 for occupational bystanders from 1,3-D use.

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 state agency that has the authority to regulate the use of pesticides.

Document Incorporated By Reference:

1,3-Dichloropropene Field Fumigation Requirements, Rev. January 1, 2026

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR determined that the proposed regulatory action does not impose a mandate on local agencies or school districts. DPR also determined that there are no costs to any local agency or school district requiring reimbursement pursuant to Government Code section 17500 et seq. There are no other nondiscretionary costs or savings imposed upon local agencies that 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. CACs currently evaluate, condition, and enforce 1,3-D restricted materials permits, and the proposed regulations should result in a similar permitting workload.

COSTS OR SAVINGS TO STATE AGENCIES

The proposed regulatory action is anticipated to result in costs to DPR. Under the proposed regulations, DPR will be required to include an evaluation in the annual report to determine if the 1,3-D air concentration in any township exceeds the acceptable level of 0.21 ppb and develop appropriate measures to reduce exposures if air concentration levels are exceeded. DPR estimates that this will result in a cost of \$432,527 in the 2026-2027 Fiscal Year (FY), and a total of \$918,887 in the two subsequent FYs (2027-2028 and 2028-2029).

EFFECT ON FEDERAL FUNDING TO THE STATE

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

EFFECT ON HOUSING COSTS

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

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

DPR 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

In reasonable compliance with the proposed action, growers using 1,3-D for the production of an agricultural commodity are anticipated to incur costs. The proposed regulation suggests implementing buffer zones to increase the distance between 1,3-D applications and occupational bystanders as a method to reduce exposure. It also proposes using totally impermeable film (TIF) tarps for 1,3-D applications, as they do not require a buffer zone. The initial compliance costs for the proposed buffer zone distances and duration periods, along with the annual cost of acquiring written agreements from neighboring properties, are estimated at \$84,136 - \$125,971 for the initial year and \$71,664 - \$103,866 annually after the first year. The total statewide cost for

businesses to comply with this regulation over its lifetime is estimated to be \$493,458 over five years. These estimates are based on the assumption that neighboring properties will allow the proposed buffers on their land. These estimates do not include the use of any additional TIF tarp.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Creation or Elimination of Jobs within the State of California: The proposed action will not likely create or eliminate jobs within California. DPR proposes to establish buffer zones for a certain amount of time for several fumigation methods, and the proposed requirements are similar to current requirements for other fumigants. These changes will not lead to the creation or elimination of jobs within California.

Creation of New Businesses or the Elimination of Existing Businesses within the State of California: The proposed action would not create new businesses or eliminate existing businesses currently doing business within the State of California. The proposed regulations require minimal changes in processes, services, and equipment for compliance, and the changes can easily be achieved by existing businesses. Therefore, the proposed regulations will not lead to the creation or elimination of existing businesses within California.

The Expansion of Businesses Currently Doing Business within the State of California: The proposed action will not likely result in an expansion of businesses currently doing business within the State of California. The proposed regulation requires minimal changes in processes, services, and equipment for compliance, and the changes can easily be achieved by existing businesses. Therefore, the proposed regulations will not lead to expansion of businesses within California.

The Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment: The proposed action is designed to reduce and mitigate the potential cancer risk of 1,3-D to occupational bystanders. DPR has established a specific target concentration of 0.21 ppb for 1,3-D. The proposed regulations are anticipated to be protective of occupational bystanders by reducing exposure to high concentrations of 1,3-D, thereby lowering the associated cancer risk.

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

AUTHORITY

This regulatory action is taken pursuant to the authority vested by FAC section 11456, 12981, 12976, 14005, and 14024.

REFERENCE

This regulatory action is to implement, interpret, or make specific FAC sections 11501, 12980, 12981, 14006, and 14024.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

DPR prepared an Initial Statement of Reasons and is making 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 regulations; and inquiries regarding the rulemaking file may be directed to:

Ann Schaffner, Environmental Program Manager I
Worker Health and Safety Branch
Department of Pesticide Regulation
1001 I Street, P.O. Box 4015
Sacramento, California 95812-4015
916-323-7614

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

Jagjinder Sahota, Environmental Program Manager II
Worker Health and Safety Branch
916-324-4116

This Notice of Proposed Action, the Initial Statement of Reasons, and the proposed text of the regulations are also available on DPR's Internet Home Page <<http://www.cdpr.ca.gov>>. Upon request, the documents can be made available in another language, or 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>.