

FINAL STATEMENT OF REASONS AND PUBLIC REPORT
DEPARTMENT OF PESTICIDE REGULATION

Title 3. California Code of Regulations

Adopt Sections 6448.3 and 6448.4; Amend Sections 6448, 6449.1, 6452, 6452.2, 6624, 6626, and 6881; Adopt New Section 6448.1 and Renumber and Amend Previous Section 6448.1 to 6448.2
Pertaining to Health Risk Mitigation and Volatile Organic Compound Emission Reduction
for 1,3-Dichloropropene

UPDATE OF THE INITIAL STATEMENT OF REASONS

The proposed regulatory action was noticed in the *California Regulatory Notice Register* on November 18, 2022.

During the 60-day public comment period, the Department of Pesticide Regulation (DPR) received comments on the proposed action. The comments are discussed under the subheading “Summary and Response to Comments Received During the 60-Day Comment Period” of this Final Statement of Reasons. For the reasons stated below, DPR modified sections of the originally proposed text which are summarized under the subheading “Changes to the Text of Proposed Regulations.” Furthermore, additional documents were relied upon and added to the rulemaking file.

DPR received comments addressing the modified text during the “15-day” public comment period. These comments are discussed under the subheading “Comments Received During the 15-Day Public Comment Period.” For the reasons stated below, DPR made additional modifications to the originally proposed text which are summarized under the heading “Changes to the Text of Proposed Regulations.”

Additional changes to the text were made after the “15-day” public comment period. A second “15-day” public comment period was provided. DPR received comments addressing the modified text during the second “15-day” public comment period. These comments are discussed under the subheading “Comments Received During the Second 15-Day Public Comment Period.”

Changes to the Text of Proposed Regulations

First Modified Text

- Amended originally proposed subsection 6448(b) as follows: Added “region” as one of the factors used to determine the setback distance. The original proposed factors included fumigation method, season, application rate and application block size. Based on computer modeling, the setback distance varied with these factors and historical weather data for Parlier (Fresno County). Computer modeling indicated that some setback distances are greater using historical weather data for Watsonville (Santa Cruz County). Therefore, DPR proposed two sets of setbacks based on region: one for Inland counties based on Parlier weather data and one for Coastal counties based on Watsonville weather data. The selection of these locations was based on an analysis of weather data that resulted in the largest and most health-protective setback distances using historical data from stations in the regions with highest 1,3-D use. This analysis is described in “Addendum: Modeling for mitigation measures to reduce acute exposure from 1,3-Dichloropropene, II. Revised setback tables.” This report was added as a document relied

upon in support of this revision. Inland and Coastal counties are designated in “1,3-Dichloropropene Field Fumigation Requirements, est. January 1, 2024,” a document incorporated by reference in sections 6448, 6448.2, 6624 and 6626, and are further discussed below. The designation of Inland and Coastal counties is consistent with chloropicrin labeling, facilitating compliance and enforcement for products that contain both 1,3-D and chloropicrin. Based on an amended analysis by the California Department of Food and Agriculture and the University of California, Davis, DPR updated the total annual estimated economic impact of the proposed regulations to reflect the new proposed changes to the setback requirements. The estimated average annual cost for 2017 to 2020 changes from the original estimate of \$1,365,832 to \$1,357,926 with the new proposed revisions as described in a report titled “Addendum to the June 2022 Economic and Pest Management Evaluation of Proposed 1,3-Dichloropropene Regulation” and dated March 13, 2023. The reduction in economic impacts is primarily linked to fewer split application blocks. This report was added as a document relied upon in support of this revision.

- Amended originally proposed subsections 6448.2(d)(1), (d)(3), and (d)(4) as follows: Modified subsections (d)(1)(A), (d)(3)(A), and (d)(4)(A) to specify that the minimum injection point for these methods must be at least 12 inches below the soil surface. This requirement is necessary for the U.S. Environmental Protection Agency (U.S. EPA) to approve the regulations as an amendment to the state implementation plan (SIP) for the Clean Air Act (CAA). The SIP requires DPR to develop and implement regulations to reduce volatile organic compound (VOC) emissions from field fumigants for specified regions (nonattainment areas) that do not comply with the federal air quality standard for ozone. DPR completed this rulemaking in 2008 (Office of Administrative Law [OAL] File Number 07-1219-01S) and U.S. EPA adopted the regulations as part of the SIP, including the 12-inch minimum injection requirement. In a subsequent rulemaking (OAL File Number 16-0104-04S), DPR deleted this requirement as duplicative when U.S. EPA modified 1,3-D product labeling in 2012 to include the 12-inch minimum injection requirement. However, product labeling is only enforced under the Federal Insecticide, Fungicide and Rodenticide Act, not the CAA. The absence of an express 12-inch minimum injection requirement in DPR’s regulations, notwithstanding the federal 1,3-D label requirement of that injection depth, is viewed as a regulatory gap and prohibited by the CAA. To comply with and maintain enforceability under the CAA, DPR added the 12-inch minimum injection requirement back into the regulations as it was previously worded. With these changes, DPR also renumbered existing subsection (A) to (B) and existing subsection (B) to (C).
- Amended originally proposed subsection 6448.4(a) to require DPR to issue an annual report for 1,3-D “as soon as reasonably practicable.” The purpose of this amendment is to ensure the Director issues the annual report in a timely manner and to prohibit unnecessary and unreasonable delays. This amendment is in addition to amendments to subsection 6626(g) discussed below, which added a quarterly reporting requirement for pesticide use reports. By ensuring the annual report is issued as soon as reasonably practicable, this will allow the public to review a report that has undergone in-depth review for accuracy and quality and will allow the public to evaluate the mitigations enacted by this rulemaking package.
- Amended originally proposed subsection 6626(g) to add subsections (1) and (2) that require 1,3-D pesticide use reports to be submitted electronically and DPR to post a summary of 1,3-D pesticide use report data quarterly. Electronic submittal is necessary to enable commissioners and DPR to process pesticide use reports and post data summaries on DPR’s Web site by the specified deadline newly proposed in subsection (g)(2). Applicators currently submit 1,3-D pesticide use reports electronically as part of the township cap requirements. Since a township

cap will no longer be required, some applicators may revert to hardcopy submittal of 1,3-D pesticide use reports. Hardcopies take longer to process because they must be manually transmitted to commissioners, such as through postal mail, whereas electronic submittal allows for automatic submission to commissioners. Additionally, they take longer for commissioners to process and submit to DPR because hardcopies must be checked for completeness and errors rather than automatic software checks incorporated into electronic submittal. DPR is giving commissioners discretion for the exact process to electronically submit 1,3-D use reports. Currently, electronic submittal of 1,3-D pesticide use reports can occur using two different systems: one incorporated into the registrant township cap system and one incorporated into the restricted materials permitting system. Commissioners may prefer one system or allow either system, assuming the registrant continues to make its system available. The data summary in subsection (g)(2) will include preliminary total 1,3-D use amounts by county, township, month, crop, and fumigation method for the preceding quarter. Posting this summary of 1,3-D pesticide use report data quarterly will provide a timely and transparent method to measure the effectiveness of the 1,3-D regulations in mitigating cancer risk to nonoccupational bystanders without a township cap. The 1,3-D data posted will be preliminary because it may not include late pesticide use reports and not all error checks will have been completed. Quarterly posting will allow time to include most late pesticide use reports and complete most error checks. Use data summarized by county and township will provide comparison to use under the current township cap requirements. Use data summarized by month will provide a comparison to use data under the current December prohibition. Use data summarized by crop and fumigation method will show the level of adoption of new fumigation methods with lower emissions. Similar to the annual report, the 1,3-D pesticide use report data will be posted as soon as reasonably practicable to account for delays DPR cannot control and provide time to review and correct major errors in the data. The purpose of this timing requirement is to ensure the 1,3-D pesticide use report data is posted in a timely manner and to prohibit unnecessary and unreasonable delays.

- Amended “1,3-D Field Fumigation Requirements, est. January 1, 2014,” the document incorporated by reference in sections 6448, 6448.2, 6624, and 6626. The amendments were based on two reports that were added as documents relied upon in support of the modifications (“Modeling broadcast-strip TIF applications with 40% tarp coverage” and “Addendum: Modeling for mitigation measures to reduce acute exposure from 1,3-Dichloropropene, II. Revised setback tables”). The amendments included the following:
 - Amended the list of topics on page 2, revising the title of Table 8 from “50% TIF with 18-inch injection depth method” to “40% TIF with 18-inch injection depth method” and the title of Table 9 from “50% TIF with 24-inch injection depth method” to “40% TIF with 18-inch injection depth method.” Made corresponding amendments to pages 13 and 41-49 to modify the title and description of these fumigation methods, and to change the setback requirements to reflect the change to 40% TIF. DPR proposed these modifications to allow partial totally impermeable film (TIF) tarping for orchards with large trees. Trees with larger canopies, such as walnuts, require larger spacing between planting rows while the width of TIF tarpaulins remains fixed. The standard width of rows with TIF tarpaulins will remain 11 feet, while the standard width of untarped areas will increase from 11 feet to 16 feet.
 - Added a new subsection on page 4 that designates Inland counties and Coastal counties for setback purposes. In subsection 6448(b), DPR established setbacks based on region, and this subsection clarifies those “regions.” Due to different weather conditions, setback requirements for Inland counties will differ from Coastal counties. Therefore, it is necessary

to establish which counties are considered Inland and which counties are considered Coastal. The designated Inland and Coastal counties are consistent with chloropicrin buffer zone requirements where Coastal counties are those that border the Pacific Ocean. Using the same designation already used for chloropicrin requirements will facilitate compliance and enforcement for pesticide products that contain both chloropicrin and 1,3-D. DPR also amended the list of allowed fumigation methods on page 13 by adding a 24-inch GPS targeted fumigation method and its field fumigation method (FFM) code of 1227. This fumigation method is the same as the currently allowed 18-inch GPS targeted fumigation method, but with a deeper minimum injection depth required. DPR proposed to allow this method because it is compatible with current fumigation equipment and procedures while reducing emissions by using a lower broadcast-equivalent application rate.

- Amended all setback tables on pages 14-49 to incorporate the following modifications: 1) clarified that the original proposed setback tables (labeled a and b by season) are for Inland counties and added a new set of setback tables for Coastal counties (labeled c and d by season) for each allowed fumigation method; 2) added the specific table number to each table; 3) added 300-foot and 400-foot setback distance options in all tables; 4) modified the application rate increments from 25 pounds per acre to 10 pounds per acre, starting with 80 pounds per acre; 5) modified the table titles to indicate if the table is for Inland or Coastal counties and which field fumigation methods by FFM code; and 6) modified some acreage limits due to more precise computer modeling for the smaller application rate increments and rounding. DPR proposed these changes to clarify which setback table applies for a specific application and add flexibility for growers and applicators to manage the setback requirements while still achieving the regulatory target concentration.
- Moved the note for Table 8 regarding differences between fumigation methods FFM 1249 and 1250 from the end of Table 8b to the beginning of Table 8a for clarity because the note applied to Tables 8a – 8d.

Second Modified Text

- Amended section 6448.4(a) to specify that the annual report for 1,3-Dichloropropene shall be issued for each calendar year by October 1 of the following year or as soon thereafter as is reasonably practicable, starting with a report covering calendar year 2024. It is necessary to specify that the report will be issued for each calendar year by October 1 or as soon thereafter as is reasonably practicable, to provide members of the public with the expected date of the report's release. The Annual 1,3-Dichloropropene Report will include analyses of pesticide use data provided by applicators via County Agricultural Commissioners and DPR air monitoring data provided via the California Department of Food and Agriculture analytical laboratory. DPR selected October 1 to provide sufficient time for the department to receive and analyze the data and draft the report. Laboratory analysis of air monitoring samples currently takes approximately six months, and DPR will need approximately three months to review, analyze and prepare a report of the data. Any additional time needed for the laboratory analysis or the department's review, analysis or reporting of the laboratory and pesticide use data may impact the report release date.
- DPR moved and renumbered the proposed requirements for the content of the Annual 1,3-D Report to subsection (b). As a result of this renumbering, the originally proposed cross-reference to subsection (a)(1) was renumbered to (b)(1) and originally proposed subsection (b) was renumbered to subsection (c).

DPR has adopted 3 CCR sections 6448.3 and 6448.4; amended sections 6448, 6449.1, 6452, 6452.2, 6624, 6626, and 6881; and adopted new section 6448.1, and renumbered and amended previous section 6448.1 as section 6448.2. In summary, this action restricts the use of 1,3-dichloropropene (1,3-D) to mitigate the potential 72-hour acute risk and 70-year lifetime cancer risk to non-occupational bystanders. The mitigation measures further reduce the emissions of 1,3-D as a volatile organic compound (VOC). This action allows the use of 1,3-D only for the production of agricultural commodities, effectively prohibiting other uses that are not currently registered; establishes mandatory setbacks (distances from occupied structures where 1,3-D cannot be applied); sets limits on the application rate and acres treated for individual field soil fumigations; places restrictions on multiple field soil fumigations that do not meet distance or time separation criteria; limits the allowed methods to apply 1,3-D, including establishing criteria for acceptable types of tarpaulins that can be used; requires an annual report from DPR that includes evaluations of 1,3-D use and air monitoring results; and requires the inclusion of certain information in existing pesticide use records and pesticide use reports. In addition, the document “1,3-Dichloropropene Field Fumigation Requirements, Est. January 1, 2024” has been incorporated by reference in sections 6448, 6448.2, 6624, and 6626. This document is being incorporated by reference because it totals 50 pages in length and would be cumbersome, unduly expensive, and otherwise impractical to publish them in the California Code of Regulations.

PUBLIC HEARING

DPR scheduled and held a public hearing on January 18, 2023. A transcript of the January 18, 2023 hearing is contained in the rulemaking file.

DPR also scheduled and held a public hearing on May 31, 2023 to receive comments on the proposed modifications described in the Notice of Modifications to Text of Proposed Changes in the Regulations Pertaining to Health Risk Mitigation and Volatile Organic Compound Emission Reduction for 1,3-Dichloropropene on May 9, 2023. A transcript of the May 31, 2023 hearing is contained in the rulemaking file.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING 60-DAY COMMENT PERIOD

See Attachment A.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 15-DAY COMMENT PERIOD

See Attachment B.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE SECOND 15-DAY COMMENT PERIOD

See Attachment C.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR has determined that the regulatory action does not impose a mandate upon local agencies or school districts.

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 adopted regulations, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of the law. This regulatory action is necessary to reduce and mitigate the potential acute and cancer risk of 1,3-D to non-occupational bystanders and reduce VOC emissions to reduce ozone levels.

POSTING REQUIREMENT

3 CCR section 6110, states in part that, “The public report shall be posted on the official bulletin board of the Department 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>>. The documents incorporated by reference in this rulemaking were available upon request directly from the Department.

ADDENDUM TO THE FINAL STATEMENT OF REASONS

In section 6448.1(a)(1), DPR incorporated the American Society for Testing and Materials (ASTM) method E2945-14 (2014) by reference. This is a nonsubstantive change and has no regulatory effect as the method used is not changing.

DPR separated section 6448.1(c)(3) into section (c)(4). This is a reorganization of the text and has no regulatory effect.

In section 6624(e), DPR deleted “effective January 1, 2002,” because it does not match the existing text in the California Code of Regulations. This is a nonsubstantive change and has no regulatory effect.

On pages 32, 37, 41 and 46 of “1,3-Dichloropropene Field Fumigation Requirements, est. January 1, 2024,” a document incorporated by reference in sections 6448, 6448.2, 6624 and 6626, DPR revised a cross-reference. The cross-reference was changed from 6448.1(a)(2) to 6448.1(a) to more precisely align with the text in section 6448.1(d). This is a nonsubstantive change and has no regulatory effect.