

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION
Volatile Organic Compounds in the
San Joaquin Valley Ozone Nonattainment Area
DPR Regulation No. 12-001

NOTICE OF PROPOSED REGULATORY ACTION

AND

NOTICE OF PUBLIC HEARING
ON A PROPOSED OZONE STATE IMPLEMENTATION PLAN AMENDMENT
REGARDING PESTICIDE EMISSIONS IN THE
SAN JOAQUIN VALLEY NONATTAINMENT AREA

The Department of Pesticide Regulation (DPR) proposes to amend Title 3, California Code of Regulations (3 CCR) sections 6452, 6452.2, and 6864; amend section 6452.4 and renumber to 6881; renumber section 6890 to 6864; and adopt sections 6558, 6577, 6880, 6883, 6884, and 6886. The proposed action would require prohibitions on the use of certain nonfumigants on certain crops in the San Joaquin Valley ozone nonattainment area (NAA) during May 1 through October 31 if the volatile organic compound (VOC) emission limit is triggered. These prohibitions would apply to agricultural use products containing abamectin, chlorpyrifos, gibberellins, or oxyfluorfen. Also, when purchasing or using certain products containing these four active ingredients, the proposed action would require a written recommendation from a licensed pest control adviser and require pest control dealers to provide VOC information to the purchaser.

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 June 7, 2012. Comments regarding this proposed action may also be transmitted via e-mail to <dpr12001@cdpr.ca.gov> or by facsimile at 916-324-1452.

A public hearing has been scheduled for the time and place stated below to receive oral 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: June 6, 2012
TIME: 6:00 p.m.
PLACE: Tulare County Agricultural Commissioner's Office - Auditorium
4437 S. Laspina Street
Tulare, California 93274

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.

VOCs 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 federal ambient air quality standards. U.S. EPA designates NAAs in Title 40, Code of Federal Regulations section 81.305.

California's SIP includes an element that requires DPR to track and reduce pesticidal sources of VOCs in five NAAs--Sacramento Metro, San Joaquin Valley, South Coast, Southeast Desert, and Ventura--to meet the ozone standard. The tracking of emissions and control measures are focused on the period between May 1 and October 31, because that is the peak "ozone forming" season in California.

Since 1990, DPR maintains an annual emissions inventory to track pesticide VOC emissions, based on the amount of pesticide products applied (from pesticide use reports) and the VOC content (emission potential) of pesticide products. Most pesticide VOC emissions are from fumigants and products formulated as emulsifiable concentrates. Fumigants are gaseous pesticides, applied in relatively high amounts. Emulsifiable concentrates (nonfumigants) contain solvents that keep pesticides in liquid form, so that mixing and applying the product are easier.

Sacramento Metro and South Coast ozone NAAs have consistently achieved a reduction of pesticide VOC emissions from the 1990 base year. Prior to 2008, San Joaquin Valley, Southeast

Desert, and Ventura NAAs did not always meet the reduction goals. In January 2008, DPR adopted regulations (Office of Administrative Law File No. 2007-1219-01S) to achieve a reduction of pesticide VOC emissions from a baseline level in the five NAAs. Those regulations, in part, focused exclusively on fumigant VOC emissions to achieve reductions through controls requiring "low-emission" application methods and the benchmarks that trigger a cap and allowance system to force reductions if needed.

With the current fumigant controls in place, the emissions inventory indicates that DPR will consistently achieve the SIP reduction goals for the Sacramento Metro, South Coast, Southeast Desert, and Ventura ozone NAAs. However, the emissions inventory indicates that DPR may not consistently achieve the SIP emission level goal of 18.1 tons per day average for the San Joaquin Valley ozone NAA since most pesticide VOC emissions are due to the use of nonfumigants. Fumigants account for approximately one-quarter of the pesticide emissions in the San Joaquin Valley NAA, and nonfumigants account for three-quarters. Since fumigants have a relatively smaller contribution, additional fumigant reductions would have minimal impact on total pesticide VOC emissions. Under the 2009 proposed SIP revision, DPR is obligated to reduce VOC emissions from nonfumigant pesticides. These reductions will be more effective in reducing total pesticide VOC emissions, since nonfumigants make up the majority of pesticide VOC emissions in the San Joaquin Valley ozone NAA.

It is possible that current regulations would require a major decrease or a total prohibition of fumigants, and still not achieve the pesticide SIP goal for the San Joaquin Valley due to increased nonfumigant emissions. Under the current regulations, a fumigant limit is triggered even if emissions exceed a specified level due to an increase in nonfumigants. Therefore, a fumigant limit program is a less efficient reduction measure for the San Joaquin Valley ozone NAA compared to the other NAAs. DPR proposes to replace fumigant limits in the San Joaquin Valley ozone NAA with nonfumigant use restrictions and prohibitions when emissions reach levels five percent or less below the benchmarks or exceeds the benchmark of 6,700,000 pounds (18.1 tons per day average).

As mentioned above, most pesticide VOC emissions in the San Joaquin Valley NAA are from nonfumigant products formulated as emulsifiable concentrates. The liquid products have higher emission potentials, while solid products (e.g., dusts, powders, and granules) have lower emission potentials. In 2005, DPR initiated a reevaluation (regulatory process to request actions by pesticide manufacturers and formulators [registrants]) for several hundred nonfumigant products. The reevaluation required registrants to submit plans for reformulating the inert ingredients in the products to reduce VOC emissions. Some registrants responded to the reevaluation or earlier informal DPR requests by successfully reformulating several products.

Pesticide products containing abamectin, chlorpyrifos, gibberellins, or oxyfluorfen have consistently been among the highest nonfumigant VOC contributors in the San Joaquin Valley ozone NAA. Although products with lower VOC emissions are available for these active ingredients, current voluntary efforts to use lower VOC products may not consistently achieve the SIP reduction goals. Therefore, restrictions on nonfumigant VOC emissions in the San Joaquin Valley NAA are needed to: ensure that the SIP reduction goal is achieved in a worst-case year; comply with the SIP commitment to implement restrictions on nonfumigant pesticides by 2014; and reduce the regulatory burden on fumigants and avoid triggering a fumigant limit.

DPR will need to balance four factors to achieve the needed VOC reductions from the nonfumigant restrictions--active ingredients, setting product emission potential limits, crops, and exemptions. DPR proposes to designate products with agricultural uses containing abamectin, chlorpyrifos, gibberellins, or oxyfluorfen as their primary active ingredient as a "low-VOC" or "high-VOC" contributor based on the product's emission potential. DPR proposes to require nonfumigant use prohibitions on certain crops in the San Joaquin Valley ozone NAA when using these active ingredients during May 1 through October 31 if the VOC emission limit is triggered. With a few exceptions, products that are designated as "high-VOCs" will not be allowed to be applied to alfalfa, almonds, citrus, cotton, grapes, pistachios, and walnuts during this time period.

Additionally, when agricultural use of a high-VOC product is allowed, DPR proposes to require a written recommendation from a licensed pest control adviser (PCA) as a condition use on the seven crops during May 1 through October 31. A PCA recommendation is currently optional for all pesticides. The operator of the property and the PCA will be required to retain a copy of the recommendation for two years after the application. Also, whenever selling certain high-VOC products, a licensed pest control dealer will be required to provide written VOC information to the purchaser who has an operator identification number issued by a county agricultural commissioner (CAC) in the San Joaquin Valley ozone NAA.

Adoption of these regulations will provide a benefit to public health and the environment by continuing to reduce VOC emissions in the San Joaquin Valley ozone NAA.

These proposed regulations are not inconsistent or incompatible with existing state regulations.

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 have a significant cost impact on representative private persons or businesses. The prohibition of the relevant high-VOC products on the seven crops could affect nearly 17,000 producers in the San Joaquin Valley ozone NAA. The total cost for producers from using low-VOC products instead of high-VOC products on the relevant crops is estimated to be about \$1.58 million annually. The average change in expenditures differs by crop, ranging from an average annual savings of \$39 for citrus producers to an average additional annual cost of \$359 for almond producers. Costs may fluctuate as pesticide product prices change, but in the long-run, it is likely that prices will fall after newer low-VOC products have been on the market for some time. If the emissions trigger level for the San Joaquin Valley NAA is not exceeded, producers would face no high-VOC pesticide restrictions and thus no additional costs.

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 San Joaquin Valley ozone NAA.

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.

DPR has identified several alternatives to the proposed regulatory action. DPR could deny or cancel registrations for high-VOC products and limit registrations to low-VOC products statewide, year-round. This would extend the costs outlined above to agricultural producers across the state and increase aggregate costs substantially. Alternatively, DPR could reclassify the active-ingredients in high-VOC products as restricted materials, which means that high-VOC products would undergo the permitting process and would be evaluated by individual agricultural commissioners for use within each county. This process would limit costs associated with switching from high-VOC to low-VOC products to counties that are close to meeting the VOC trigger level. However, administrative costs for CACs would be increased across the state and unnecessary regulatory burden would be placed on growers across the state who would need to obtain a restricted materials permit to use the high-VOC products.

AUTHORITY

This regulatory action is taken pursuant to the authority vested by Food and Agricultural Code sections 11456, 12111, 12976, 14005, and 14102.

REFERENCE

This regulatory action is to implement, interpret, or make specific Food and Agricultural Code sections 11501, 12003, 14006, 14021, 14023, 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:

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

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