

**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**

AND

NOTICE OF PUBLIC HEARING

Pursuant to the requirements of Government Code section 11346.8(c) and section 44 of Title 1 of the California Code of Regulations (CCR), the Department of Pesticide Regulation (DPR) is providing notice of changes made to the proposed text of sections 6448, 6448.2, 6624, and 6626 of Title 3, CCR and the document, "1,3-Dichloropropene Field Fumigation Requirements, est. January 1, 2024," incorporated by reference in sections 6448, 6448.2, 6624, and 6626. These changes are in response to comments and for the reasons stated below. The public comment period on the originally proposed regulatory action closed on January 18, 2023. The Director finds that the modifications are sufficiently related to the original text of the proposed action. The modified text is being made available to the public for a minimum of 15 days, during which written comments on the modifications will be received as provided in Government Code section 11346.8(c).

DPR will accept written comments relevant to the modifications between May 9, 2023, and 5:00 p.m. on May 31, 2023. Written comments relevant to the modifications may be sent via e-mail <dpr22005@cdpr.ca.gov>; or may be directed to Ms. Lauren Otani, Senior Environmental Scientist (Specialist), Department of Pesticide Regulation, 1001 I Street, P.O. Box 4015, Sacramento, California 95812-4015. FAX: (916) 324-1491. Comments that are submitted via U.S. mail must be postmarked no later than May 31, 2023. Comments regarding this proposed action that are transmitted via e-mail or fax must be received no later than 5:00 p.m. on May 31, 2023.

PUBLIC HEARING

A public hearing has been scheduled for the date and time stated below to receive oral and/or written comments regarding the proposed modifications.¹ This public hearing will occur in a hybrid format with both a physical location and an option to participate from a remote location.

DATE: May 31, 2023
TIME: 9:30 a.m.
PLACE: **Physical Location:**
CalEPA Headquarters Building
Coastal Hearing Room
1001 I Street, 2nd Floor
Sacramento, California 95814

¹ 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.

Remote Location:

Zoom

Webinar ID: 835 6223 4626

Password: 449717

Direct link to join the meeting from a web browser or Zoom client:

<https://us02web.zoom.us/j/83562234626?pwd=K3FMRjVrQTcwbUN3ODM2NUV0MVRKZz09>

One tap to join from a mobile phone: +16694449171,,83562234626#,,,,*449717#

Or call from a landline: +1 669 444 9171 – and enter the Webinar ID and Password (above) when prompted

The hearing will also be accessible via public webcast for persons who would like to watch this hearing without participating, and can be accessed by visiting the following web address:

<https://video.calepa.ca.gov/#/>

A DPR representative will preside at the hearing. Persons who wish to speak at the physical location will be asked to register before the hearing. The registration of speakers will be conducted at the physical location from 8:30 a.m. to 9:30 a.m. Persons who are participating from a remote location and wish to speak will be asked to utilize Zoom’s “raise hand” feature. Persons at the physical location will be called upon first, followed by persons participating from a remote location. Generally, registered persons at the physical location will be heard in the order of their registration and persons participating from a remote location will be heard in the order that they raised their hands in Zoom. Any other person who wishes to speak during the hearing will be afforded the opportunity to do so after persons who have registered at the physical location or who have raised their hands in Zoom have been heard. If a person participating from a remote location experiences technical difficulties during the hearing, they may e-mail written comments to dpr22005@cdpr.ca.gov. 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. Oral comments presented at a hearing carry no more weight than written comments.

Participants will be given instructions on how to provide oral comment once they have accessed the hearing. The hearing will continue on the date noted above until all testimony is submitted. DPR requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony via e-mail.

MODIFICATIONS TO TEXT

- Amend originally proposed subsection 6448(b) as follows: Add “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 indicates that some setback distances are greater using historical weather data for Watsonville (Santa Cruz County). Therefore, DPR proposes 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 is 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 is being 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 has 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 has been added as a document relied upon in support of this revision.

- Amend originally proposed subsections 6448.2(d)(1), (d)(3), and (d)(4) as follows: Modify 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 proposes to add the 12-inch minimum injection requirement back into the regulations as it was previously worded. With these changes, DPR also proposes to renumber existing subsection (A) to (B) and existing subsection (B) to (C).
- Amend 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 newly proposed amendments to subsection 6626(g) discussed below, which add 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.

- Amend 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 proposes to give 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 newly proposed 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.
- Amend "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 are based on two reports being added as documents relied upon in support of the proposed 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 include the following:
 - Amend 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." Make corresponding amendments to newly proposed 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 proposes 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.

- Add a new subsection on page 4 that designates Inland counties and Coastal counties for setback purposes. In subsection 6448(b), DPR is proposing to establish 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 proposes to amend 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 proposes 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.
- Amend all setback tables on pages 14-49 to incorporate the following newly proposed modifications: 1) clarify that the original proposed setback tables (labeled a and b by season) are for Inland counties and add a new set of setback tables for Coastal counties (labeled c and d by season) for each allowed fumigation method; 2) add the specific table number to each table; 3) add 300-foot and 400-foot setback distance options in all tables; 4) modify the application rate increments from 25 pounds per acre to 10 pounds per acre, starting with 80 pounds per acre; 5) modify the table titles to indicate if the table is for Inland or Coastal counties and which field fumigation methods by FFM code; and 6) modify some acreage limits due to more precise computer modeling for the smaller application rate increments and rounding. DPR proposes these changes to clarify which setback table applies for a specific application and adds flexibility for growers and applicators to manage the setback requirements while still achieving the regulatory target concentration.
- Move 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 applies to Tables 8a – 8d.

Current wording of the regulations is indicated by regular type. Originally proposed deletions are indicated by ~~strikeout~~. Originally proposed additions are indicated by underline. New proposed deletions are indicated by *italics and strikeout*. New proposed additions to the text of the originally proposed regulations are indicated by **bold double underline**. The originally proposed text of “1,3-Dichloropropene Field Fumigation Requirements, est. January 1, 2024,” a document incorporated by reference in the regulations, is indicated by regular type with some headings and

titles in bold or underlined for formatting purposes. New proposed deletions are indicated by ~~strikeout~~. New proposed deletions are indicated by wavy underline.

All written comments received by 5:00 p.m. on May 31, 2023, which pertain to the indicated changes, will be reviewed and considered in this rulemaking. Please limit your comments to the modifications of the text.

This Notice of Modifications to Text of Proposed Changes and the text of modified regulations are also available on DPR's Internet Home Page <<http://www.cdpr.ca.gov>>.