

FINAL STATEMENT OF REASONS AND PUBLIC REPORT
DEPARTMENT OF PESTICIDE REGULATION

Title 3. California Code of Regulations
Amend Section 6400
Pertaining to Expanding Carbaryl Designation as a Restricted Material

UPDATE OF THE INITIAL STATEMENT OF REASONS

The proposed regulatory action was noticed in the *California Regulatory Notice Register* on July 26, 2019. During the public comment period, the Department of Pesticide Regulation (DPR) received comments on the proposed text. The comments are discussed under the heading “SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE COMMENT PERIOD” of this Final Statement of Reasons.

No changes were made to the proposed regulations following the public comment period.

Expanding the restricted material designation of carbaryl, with the exception of baits labeled only for agricultural use, was an agenda item discussed at the September 21, 2018 meeting of the Pesticide Registration and Evaluation Committee (PREC). This committee includes representatives from public agencies who have jurisdiction over activities or resources that may be affected by the use of pesticides. A copy of the PREC minutes are contained in the rulemaking file. Additionally, numbers in the Economic and Fiscal Impact Statement (STD. 399) were provided by a document relied upon, *Economic Impact Analysis for Rulemaking Expanding Carbaryl Designation as a Restricted Material* (Asci et al., 2019).

DPR has amended Title 3, California Code of Regulations (3 CCR) subsections 6400(c) and (e). Pesticide products containing the active ingredient carbaryl are currently designated as California restricted materials, with some exemptions. In summary, this action makes all carbaryl products California restricted materials, with the exception of baits labeled only for agricultural use.

This regulation will go into effect on August 1, 2020.

PUBLIC HEARING

No public hearing was scheduled or held.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE COMMENT PERIOD

- *Kimberly Dickinson, Central Garden & Pet Company*

Comment no. 1: After public comments close and California reviews all public comments will the noticing be issued early 2020?

Response: If this proposed regulatory action is approved by the Office of Administrative Law, a copy of the Final Statement of Reasons, which will include responses to all relevant comments, will be posted to DPR's Internet Home Page at <<http://www.cdpr.ca.gov>> or made available upon request. This regulatory action will become effective on August 1, 2020.

Comment no. 2: Will the noticing and implementation include details on retailer responsibility for products on retail shelf containing Carbaryl?

Response: DPR intends to provide additional information, including information about who can sell restricted materials, to retailers, brokers, dealers, and registrants several months prior to the effective date. See response to comment no. 3.

Comment no. 3: Will retailers be allowed a sell-through period for products on the retail shelf after noticing or implementation?

Response: Once this regulation is filed with the Secretary of State, there will be a period between the Secretary of State filing and the effective date for sell-through of existing stocks. DPR will not allow an additional sell-through period for products on the retail shelf following the effective date, consistent with 3 CCR section 6302. Once a product is designated as a restricted material, it may only be sold by licensed pesticide dealers to an end-user who has a permit issued by the county agricultural commissioner. In addition, a restricted material can only be possessed or used in California by, or under the direct supervision of, a certified private applicator or certified commercial applicator under a permit issued by the county agricultural commissioner. Accordingly, once this regulation goes into effect, it will be illegal for entities that are not licensed pesticide dealers to sell affected carbaryl products to end-users.

Comment no. 4: If product is found on the retail shelf after implementation what course of action will California take?

Response: DPR may bring administrative and civil enforcement actions to address any unlawful sales and/or purchase of restricted materials, pursuant to Food and Agricultural Code sections 12998, 12999.4, and 12999.5.

• *Dillon Gabbert, Bayer U.S. LLC, Environmental Science*

Comment no. 5: What timeline would you expect current stocks to change over to Restricted Use status?

Response: See response to comment no. 1.

Comment no. 6: What would the impact be on products currently in the channels of trade?

Response: Once a pesticide is designated as a California restricted material in regulation, there are limitations on who can sell, purchase, and use these products. See response to comment no. 3.

Comment no. 7: Would it be possible to have a sell through period to clear inventory?

Response: See response to comment no. 3.

Comment no. 8: If a sell through period would be allowed, how long would you anticipate that to be?

Response: See response to comment no. 3.

• *James McFadden, Central Garden & Pet*

Comment no. 9: The current proposal to change Carbaryl's status to restricted use carries no provision for disposal of current stocks of product. We would like to request that California allow 1 year for disposal of current stocks of material on shelf. This allowance is necessary to avoid confusion in the marketplace and to consumers who may buy the product.

If there is no provision for existing stocks, California risks causing great confusion for both retailers and consumers. The correct status of the material may not be known by retailers, and so many questions will be generated. An orderly disposal of existing stocks would allow the marketplace to adjust to the new status of carbaryl without significant disruption of the marketplace.

Response: See responses to comment nos. 1, 2, and 3.

• *Anne Katten, California Rural Legal Assistance Foundation; Margaret Reeves, Pesticide Action Network; Caroline Cox, Center for Environmental Health; and Jane Sellen and Sarah Aird, Californians for Pesticide Reform*

Comment no. 10: Support DPR's proposal to make all carbaryl products restricted materials except those formulated as baits for production agricultural use.

Response: DPR agrees.

Comment no. 11: Proposal falls far short of providing adequate protection to pesticide handlers, farmworkers or the general public from carbaryl.

Response: Expanding the restricted material designation to include all carbaryl products (except those formulated as baits and labeled for production agricultural use only) will limit the purchase and use of carbaryl to certified applicators and those under their direct supervision. Limiting the use of carbaryl to trained applicators provides an effective mechanism to implement appropriate mitigation measures, including specific training and certification requirements, thereby preventing possible unintended exposures when using carbaryl. As stated in the Initial Statement of Reasons, the proposed amendments focus on making all carbaryl products that could lead to residential and bystander exposure when applied in and around residences California restricted materials. The proposed rulemaking does not address agricultural use, so this comment is outside the scope of the proposed rulemaking.

Comment no. 12: Proposal should prohibit all home and yard uses of carbaryl because merely classifying the pesticide as a restricted material will not adequately prevent post-application exposure to treated lawns and home surfaces.

Response: The proposal will expand the restricted material designation to include all carbaryl products (except for products formulated as baits and labeled for production agricultural use only). As a result, DPR anticipates that fewer carbaryl applications will be made to residential areas, reducing the potential for post-application exposures.

Comment no. 13: Expand proposal to make agricultural baits containing carbaryl restricted materials so there will be no exceptions and less chance of misuse of these baits.

Response: As stated in the Initial Statement of Reasons, the proposed amendments focus on making all carbaryl products that could lead to residential and bystander exposure when applied in and around residences California restricted materials. The proposed rulemaking does not address agricultural use, so this comment is outside the scope of the proposed rulemaking.

Comment no. 14: Proposal does nothing to control exposures of concern to other pesticide handlers and farmworkers identified in the 2014 Carbaryl Risk Characterization Document (RCD).

Response: See response to comment no. 13.

Comment no. 15: Carbaryl was designated as a restricted material for most agricultural uses many years ago but that designation has not resulted in reduced use, indicating that less harmful pest control measures are not being considered as part of the permitting process.

Response: The restricted use designation limits the purchase and use of carbaryl to certified applicators and those under their direct supervision for agricultural uses. This may not necessarily result in reduced overall use. However, residential uses and agricultural uses are not analogous. When carbaryl products are no longer commercially available, homeowners will be limited to purchasing alternative products or hiring a licensed applicator to apply carbaryl. As a result, DPR anticipates that fewer carbaryl applications will be made to residential areas, reducing the potential for exposure.

Comment no. 16: DPR needs to take aggressive steps to enforce through the permitting process the obligation to use less harmful pest control measures whenever possible.

Response: This comment is outside the scope of the proposed rulemaking.

MANDATE 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.

ALTERNATIVES DETERMINATION

The Director has determined that no alternative considered by DPR would be more effective in carrying out the purpose for which these regulations are 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. By making all carbaryl products California restricted materials, with the exception of baits labeled only for agricultural use, carbaryl will only be sold to, purchased by, possessed or used by, a person who holds a restricted material permit issued by the local county agricultural commissioner (CAC). The permit requirement will provide an effective mechanism to facilitate CAC oversight of carbaryl use by certified applicators. The statewide designation allows CACs to develop and adopt permit conditions based on local or regional conditions.

POSTING REQUIREMENT

3 CCR section 6110, states in part that, “The public report shall be posted on the official bulletin boards of the Department, and of each commissioner's office, and in each District office of the DPR [Division of Pest Management, Environmental Protection and Worker Safety] 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>>. In addition, copies were provided to the offices listed above for posting.