

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION
Expanding Carbaryl Designation as a Restricted Material
DPR Regulation No. 19-003

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to amend subsection 6400(c) and (e) of Title 3, California Code of Regulations (3 CCR). Pesticide products containing the active ingredient carbaryl are designated as California restricted materials, with some exemptions. The proposed action will make all carbaryl products California restricted materials, with the exception of baits labeled only for agricultural use.

SUBMITTAL OF COMMENTS

Any interested person, or his or her authorized representative, 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 September 10, 2019. Comments regarding this proposed action may also be transmitted via e-mail to <dpr19003@cdpr.ca.gov> or by facsimile at 916-324-1491.

A public hearing is not scheduled. However, one will be scheduled if any interested person submits a written request to DPR no later than 15 days prior to the close of the written comment period.¹

EFFECT ON SMALL BUSINESS

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

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

DPR protects human health and the environment by regulating pesticide sales and use and by promoting reduced-risk pest management. DPR's oversight includes product evaluation and registration; statewide licensing of commercial and private pesticide applicators, pest control businesses, dealers, and advisers; environmental monitoring; and residue testing of fresh produce. This statutory scheme is set forth primarily in Food and Agricultural Code (FAC) Divisions 6 and 7.

Pesticides are registered and licensed for use and sale with the U.S. Environmental Protection Agency (U.S. EPA) prior to being registered in California. DPR's preregistration evaluation is in addition to U.S. EPA's evaluation. Before a pesticide is registered, both agencies require data on a product's toxicology and chemistry to evaluate how it behaves in the environment; its

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.

effectiveness against target pests and hazards it poses to non-target organisms; its effect on fish and wildlife; and its degree of worker and bystander exposure.

Carbaryl is a broad spectrum, carbamate insecticide that inhibits acetylcholinesterase in the nervous system of targeted insects. It is used in both agricultural and non-agricultural (including residential) settings for control of numerous insects and is effective through either ingestion or absorption through bodily contact. Carbaryl products are available in granule (including bait), liquid concentrate, liquid ready-to-use, and dust ready-to-use formulations.

Carbaryl products labeled for most agricultural uses are currently designated as California restricted materials under 3 CCR section 6400, with several exemptions. Under subsection 6400(c), carbaryl products are exempted from designation as California restricted materials if they meet all of the following criteria: (1) formulated as a dust, packaged in containers greater than 25 pounds, and labeled for outdoor use; (2) carbaryl is the only active ingredient; and (3) labeled only for one or more of the following uses: home use, structural pest control, industrial use, institutional use, and use by public agency vector control districts pursuant to section 116180 of the Health and Safety Code. Subsection 6400(e) further exempts other formulations of carbaryl from designation as restricted materials, including: (1) products formulated as a bait; or (2) labeled only for one or more of the following uses: use directly on livestock or poultry, home use, structural pest control, industrial use, institutional use, or use by public agency vector control districts.

In accordance with FAC section 14015, restricted materials can only be possessed or used by, or under the direct supervision of, a certified private applicator or a certified commercial applicator. 3 CCR section 6000 defines certified commercial applicator to include a person holding a valid structural pest control operator or field representative license issued by the Structural Pest Control Board. In California, a person is certified by taking and passing an examination to demonstrate they have the knowledge and proficiency required to use restricted materials, and by maintaining their certification through continuing education courses. Generally, the purchase, possession, and use of a restricted material are allowed only under a permit issued by a local county agricultural commissioner (CAC).

DPR publishes risk characterization documents (RCDs) for pesticide active ingredients to evaluate the extent and likelihood of adverse health effects on humans who may be exposed to a particular amount of a pesticide. In 2014, DPR's RCD for carbaryl identified several exposure scenarios of concern, including scenarios exempted from the restricted materials designation in subsections 6400(c) and (e). These exposures of concern were associated with the following scenarios: residential handler exposure during application of home use carbaryl products via backpack or dust application equipment; residential adult and toddler exposure via reentry onto turf treated with carbaryl products; and residential toddler exposure via hand-to-mouth transfer, object-to-mouth transfer, or soil ingestion.

FAC sections 14004.5 and 14005 authorize the Director to adopt a list of restricted materials based upon criteria, including danger of impairment of public health. A California-restricted material can only be sold in stores that have a DPR-issued dealer license authorizing the sale of restricted materials, and can only be purchased by certified applicators and, if purchasers are not

structural pest control applicators, those with a restricted materials permit issued by the CAC. This proposed action will further limit the purchase and use of all carbaryl products to only certified applicators from a DPR-licensed pest control dealer, and will require a restricted materials permit for application of all products containing carbaryl, except when formulated as a bait and labeled only for the production of agricultural plant commodities.

DPR proposes to amend subsections 6400(c) and (e) to make all carbaryl products that could lead to residential and bystander exposure when applied in and around residences California restricted materials.

DPR proposes to delete carbaryl from subsection 6400(c)(2), thus removing the exemption for carbaryl products formulated as a dust and packaged in containers of more than 25 pounds from being designated as a restricted material. By removing carbaryl exemptions listed in subsection 6400(c)(2), inhalation and dermal exposure risks for residents and bystanders would be reduced or eliminated when products containing carbaryl are applied in and around homes; industrial sites, such as restaurants and retail nurseries; institutional sites, such as schools and hospitals; or when it is applied for vector control. Such products would need to be applied by a certified applicator who is trained to be aware of the precautions and dangers related to use of the product.

DPR also proposes to narrow the exemptions in 6400(e) to just bait formulations labeled only for agricultural use. Most of the current, unrestricted products containing carbaryl are sold for home use only and are in a bait form that can be used on lawns. By making these non-agricultural baits California restricted materials, the risk of adults and toddlers being exposed to carbaryl-treated turf is reduced since these products will not be available for homeowners and other untrained individuals in such areas, and will only be used by a certified applicator who is trained to be aware of reentry restrictions for carbaryl-treated turf.

By making products labeled for home use, structural pest control, or institutional use California restricted materials, the potential for residential and bystander exposure will be reduced for scenarios such as reentry onto carbaryl-treated turf; loading and application by non-supervised applicators (such as homeowners or residents) of carbaryl products using a dust formulation; and residential toddler exposure via hand-to-mouth transfer, object-to-mouth transfer, or soil ingestion. As carbaryl products would only be applied by trained and certified applicators, exposures from these scenarios will either be completely eliminated or significantly lowered.

This proposed action will also make products labeled for use on livestock or poultry, industrial use, or use by public agency vector control districts California restricted materials, since there are no currently registered carbaryl products labeled for these uses. If a new use for livestock, poultry, industrial sites, or vector control is submitted to DPR, product evaluation would be completed to determine if the product can be used safely.

By making all carbaryl products California restricted materials (except baits labeled only for agricultural use), these products can only be sold to, purchased by, possessed by, and used by persons holding a restricted materials permit issued by their local CAC (with the exception of structural pest control operators who will not be required to obtain a permit pursuant to FAC

section 14006.6). The permit requirement provides an effective way for CACs to oversee the use of carbaryl by all other certified applicators. This permit system is unique to California and allows for more specific restrictions, in addition to state restrictions, to be put in place based on site-specific characteristics to address issues that may vary based on site.

In addition to eliminating direct general consumer use of carbaryl, designating most carbaryl products as California-restricted materials will allow DPR to collect critical information to help fulfill its responsibility to continuously evaluate the impact of carbaryl use and take additional steps to mitigate exposure, if necessary. General consumers have no obligation to report pesticide use. However, certified applicators that use carbaryl under a permit or apply products used for the production of an agricultural commodity and applicators licensed by the Structural Pest Control Board must report use as required by Business and Professions Code section 8505.17. Such reports, to the extent that they indicate who, where, and in what amount these products are being used, could inform decisions to further mitigate any reported adverse impacts.

The specific benefit anticipated from the regulation is increased protection of public health through the reduction of potential unintended exposures to residential bystanders. Eliminating most current exemptions to the restricted materials designation for carbaryl would ensure that only trained applicators are utilizing these products, reducing the likelihood of unintended exposures to homeowners and children, and residential handlers who currently use carbaryl.

During the process of developing these regulations, DPR conducted a search of any similar regulations on this topic and has concluded that these proposed regulations are neither inconsistent nor incompatible with existing state regulations. DPR is the only California state agency that has the authority to regulate the sale and use of pesticides. No other California state agency has the authority to designate pesticides as restricted materials. DPR is not aware of any California state agencies regulating the use of carbaryl.

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 establishes an annual work plan with the CACs, which already requires the CACs to conduct pesticide use inspections and investigations and to enforce compliance with California pesticide laws and regulations.

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 is unlikely to have a significant cost impact on representative private persons or businesses. The agency is not aware of any cost impacts that a representative private business would necessarily incur in reasonable compliance with the proposed action. However, DPR recognizes that when homeowners no longer have access to carbaryl products, they may have to buy alternative products, which will cost an additional \$0.20 per individual annually over the lifetime of the regulation. These additional costs faced by homeowners should not significantly affect or have any adverse economic impact on their entire disposable household income.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Impact on the Creation, Elimination, or Expansion of Jobs/Businesses: DPR has determined the proposed regulatory action will create an additional 1.9-3.9 jobs, but not eliminate any jobs in California; is unlikely to result in the creation of new businesses or the elimination of existing businesses; and has the potential to create more business for businesses currently selling alternative products and for pest control businesses within the State of California.

Benefit to the environment, worker safety, and the health of California residents: Eliminating most current exemptions to the restricted materials designation for carbaryl would ensure that only trained applicators are utilizing these products, reducing the likelihood of unintended exposures to homeowners and children, and residential handlers who currently use carbaryl.

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 sections 14004.5 and 14005.

REFERENCE

The proposed regulations implement, interpret, or make specific FAC sections 14004.5 and 14005.

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:

Lauren Otani, Environmental Scientist
Department of Pesticide Regulation
1001 I Street, P.O. Box 4015
Sacramento, California 95812-4015
916-445-5781

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:

Anna Bellini, Environmental Scientist
Worker Health and Safety Branch
916-445-3270

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 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>>.

DEPARTMENT OF PESTICIDE REGULATION



Acting Director