

FINAL STATEMENT OF REASONS AND PUBLIC REPORT
DEPARTMENT OF PESTICIDE REGULATION

Title 3. California Code of Regulations
Amend Section 6400
Designating Chlorpyrifos as a Restricted Material
When Labeled for the Production of an Agricultural Commodity

UPDATE OF THE INITIAL STATEMENT OF REASONS

As authorized by Government Code section 11346.9(d), the Department of Pesticide Regulation (DPR) incorporates by reference the Initial Statement of Reasons prepared for this rulemaking. No changes were made to the proposed regulations nor are any changes necessary to the Initial Statement of Reasons following the 45-day public comment period.

The proposed regulatory action was noticed in the *California Regulatory Notice Register* on September 26, 2014. During the public comment period, DPR received comments on the proposed text. The comments are discussed under the heading "Summary and Response to Comments Received" of this Final Statement of Reasons.

DPR has amended section 6400(e) of Title 3, California Code of Regulations. This action makes a pesticide product containing the active ingredient chlorpyrifos a state-restricted material when labeled for the production of agricultural commodities.

PUBLIC HEARING

No public hearing was scheduled or held.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED

Comments were received from the following:

(1) Jesse Arnold; (2) Stacy Hay; (3) Virginia Wallace; (4) Sheryl Black; (5) Dana Kaiser-Davidson; (6) Linda Lomeli; (7) Elizabeth Contreras; (8) John O'Loughlin; (9) Vanessa Rodriguez; (10) Coral Haslet; (11) T.E. Caballero; (12) Robert M. Gould, M.D., Physicians for Social Responsibility; (13) Bill Allayaud, Environmental Working Group; (14) Kim Leval, Northwest Center for Alternatives to Pesticides; (15) Patricia Pagaling, Transition to Organics; (16) Donald B. Mooney, Better Urban Green Strategies; (17) Lori Anders, Parents for a Safe Environment; (18) James Cochran, Swanton Berry Farms, Inc.; (19) John Wachtel, M.D., The American Congress of Obstetricians and Gynecologists; (20) Vic and Barby Ulmer, Our Developing World; Tracey Brieger and Sarah Aird, Californians for Pesticide Reform; (21) Lauren Ornelas, Food Empowerment Project; (22) Virginia Souders-Mason, Pesticide Free Zone; (23) Mrs. James Denison; (24) Bina Israni; (25) Tricia Hunter, American Nurses Association/California; (26) Lori deLeon, Dolores Huerta Foundation; (27) Debbie Friedman, MOMS Advocating Sustainability; (28) Gail Bateson, Worksafe; (29) Colin Bailey, Environmental Justice Coalition for Water; (30) Abhi Kulkarni, California Walnut Commission;

(31) Jonathan Evans, Center for Biological Diversity; (32) Aimee Diener, California Cotton Ginners and Growers Association; (33) Marcy L. Martin, California Fresh Fruit Association; (34) James R. Cranney, Jr., California Citrus Quality Council; (35) Cynthia L. Cory, California Farm Bureau Federation; (36) Rachel Kubiak, Western Plant Health Association; (37) Hank Giclas, Western Growers; (38) Joseph G. Morse, University of California, Riverside; (39) Vonny M. Barlos, University of California, Cooperative Extension Riverside County; (40) Kelly Covello, Almond Hullers & Processors Association; (41) Spencer Halsey, California Alfalfa and Forage Association; (42) Bob Blakely, California Citrus Mutual; (43, 43A) Brian Bret, Dow AgroSciences; (44) Gerhardt Hubner, California Stormwater Quality Association; (45) Parry Klassen, East San Joaquin Water Quality Coalition; (46) Joseph C. McGahan, Westside San Joaquin River Watershed Coalition; (47) Tracey Brieger and Sarah Aird, Californians for Pesticide Reform (and various organizations); (48) Robert Harrison, California Department of Public Health; (49) Victoria A. Whitney, California Water Resources Control Board; and (50) Sejal Choksi-Chugh, San Francisco Baykeeper.

| No. | Comment/Response | Commenter |
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| 1 | Supports DPR's proposal to designate chlorpyrifos as a restricted material. <i>DPR agrees.</i> | 1, 44, 48, 49 |
| 2 | Stop the use of chlorpyrifos. <i>The restricted materials designation on products labeled for the production of an agricultural commodity will limit the purchase and use of chlorpyrifos to certified applicators and those under their direct supervision. DPR believes limiting the use of chlorpyrifos to trained applicators will provide an effective mechanism to implement appropriate mitigation measures, including specific training and certification requirements, and facilitate county agricultural commissioner (CAC) on-site evaluation to ensure worker safety and environmental protections, thereby preventing possible unintended exposures when using chlorpyrifos.</i> | 2-11, 23, 24 |
| 3 | The proposal to make chlorpyrifos a restricted use pesticide is the first step, but it's not enough. There is enough evidence to support cancellation of all uses. <i>See response to comment no. 2.</i> | 3, 4,12-19, 21, 22, 25-29, 31, 50 |
| 4 | Interim steps should be taken to protect the health of all Californians, including adding mitigations such as prohibiting hazardous application methods such as orchard blaster and aerial applications, and requiring protective buffer zones around sensitive sites such as schools. <i>This proposal is designating chlorpyrifos as a restricted material when labeled for the production of an agricultural commodity. This proposal does not address mitigation measures, and therefore this comment is outside the scope of the proposed rulemaking - no response is necessary.</i> | 3, 4, 12-28, 31, 47, 50 |

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| 5 | <p>DPR should work with other state government departments to ensure that farmers in California are given adequate support to transition away from chlorpyrifos and move towards agro ecological pest management.</p> <p><i>DPR contracted with the University of California Statewide Integrated Pest Management Program (UC IPM) to gather and review data on the technical and practical needs for chlorpyrifos in agriculture, and to identify critical uses for this pesticide. The project identified high use crops and identified insect pests for which chlorpyrifos is currently used, and characterized what uses were critical (pests for which there are no or few alternatives to chlorpyrifos). The project also identified areas that needed additional work in order to develop alternatives to chlorpyrifos that will work with IPM programs.</i></p> | 3, 4, 12-28, 31, 47, 50 |
| 6 | <p>Immediately finish DPR's human health risk assessment, ensuring it incorporates the extra safety factor of 10 to ensure adequate protection for children.</p> <p><i>DPR has relied upon other data contained in this rulemaking file to designate chlorpyrifos as a restricted material. DPR continues to evaluate additional studies and if DPR determines that additional mitigation measures are necessary, DPR will consider taking appropriate regulatory action in a separate rulemaking or through permit conditions.</i></p> | 3, 4, 12, 13, 15-22, 25-29, 31, 47, 50 |
| 7 | <p>Recent studies have linked prenatal chlorpyrifos exposure to increased risk of learning disabilities and autism spectrum disorder; low birth weights and reduced head circumference of newborns, a factor related to children's subsequent cognitive abilities; reduced perceptual reasoning, working memory and poorer intellectual development in seven year old children; and poorer mental and motor development at three years of age.</p> <p><i>DPR is aware of these studies, and continues to review data. If DPR determines that additional mitigation measures are necessary, they will be addressed in a separate rulemaking.</i></p> | 5-13, 15-29, 47, 50 |
| 8 | <p>Complete DPR's chlorpyrifos re-evaluation process by the end of 2015.</p> <p><i>This comment is outside the scope of the proposed rulemaking - no response necessary.</i></p> | 12, 13, 15-29, 31, 47, 50 |
| 9 | <p>Set and adhere to timelines for phasing out and canceling all remaining uses of chlorpyrifos.</p> <p><i>DPR is not intending to phase-out or cancel chlorpyrifos at this time. See response to comment no. 2.</i></p> | 12-20, 22, 25-29, 31, 47, 50 |

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| 10 | <p>Support DPR's efforts to safeguard the general population, however contend that any wide ranging measures be based on sound science and available data.</p> <p><i>This proposal is designating chlorpyrifos as a restricted material when labeled for the production of an agricultural commodity. This proposal does not address mitigation measures, and therefore this comment is outside the scope of the proposed rulemaking - no response is necessary.</i></p> | 30 |
| 11 | <p>U.S. Environmental Protection Agency (EPA) Human Health Assessment is currently underway and this proposed regulation should be informed by that process rather than precede it.</p> <p><i>DPR has been consulting with U.S. EPA as both agencies go through the risk assessment and management processes. Both DPR and U.S. EPA are reviewing the same data sets. Although completed risk assessments often precede DPR actions, it is not a necessary requirement in all cases. Additionally, DPR has the authority (FAC section 14004.5) to designate a pesticide as a restricted material based on being a hazard to the environment or danger of impairment of public health. Determining that a pesticide poses a hazard to the environment or public does not require DPR to complete a risk assessment.</i></p> | 30, 32, 33, 35, 37, 40 |
| 12 | <p>DPR's risk assessment on chlorpyrifos should be allowed to run its course before any wide ranging measures are implemented.</p> <p><i>Although completed risk assessments often precede DPR actions, it is not a necessary requirement in all cases. See response to comment no. 11.</i></p> | 30, 32, 34, 40 |
| 13 | <p>The requirement of filing notices of intent (permitting process) with the CACs will add unnecessary burden on the famers without any real added benefits as most chlorpyrifos products are already federally restricted material and require an applicator permit for use.</p> <p><i>Currently, not all chlorpyrifos products are federally restricted. Even for those that are federally restricted, only federally restricted products that contain a California restricted material require a restricted materials permit (3 CCR section 6414(b)).The proposed regulation would make all chlorpyrifos products labeled for production of an agricultural commodity California restricted, thereby requiring a permit and a notice of intent to apply the product. This process allows the CAC to evaluate use in the specific local conditions of each application site and determine if additional protections are needed.</i></p> | 30, 34 |
| 14 | <p>DPR should consider alternative risk so one concern is not replaced by another. DPR should investigate the weighted risk of chlorpyrifos versus its alternatives.</p> <p><i>A weighted risk analysis of alternatives is not required to support the listing of a chemical as a restricted material. Nevertheless, in 2014 as part</i></p> | 30, 32, 37 |

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| | <p><i>of the process of addressing the concerns with chlorpyrifos and its current use, DPR contracted with the UC IPM to convene industry leaders to work together to create commodity-specific guidelines regarding chlorpyrifos and its utility in Integrated Pest managements systems in four important California crops. Participants included industry representatives, UC Cooperative Extension specialists, pest control advisers, growers, and project staff from DPR and UC IPM. Data and other information were gathered on chlorpyrifos's role in pest management systems in alfalfa, almond, citrus, and cotton, and critical uses were identified. As part of this process DPR asked their crop teams to assess the impacts of alternative active ingredients (AIs) and characterize the best way to balance safety issues between chlorpyrifos and alternative AIs. More information on the results of this contract can be found at:</i></p> <p>http://www.cdpr.ca.gov/docs/pestmgmt/crit_uses.htm</p> | |
| 15 | <p>DPR has not clarified in great detail how it intends to develop "suggested permit conditions that may impact future chlorpyrifos uses. Urge DPR to seek stakeholder input as and when such conditions are developed. Concern restriction will be overly restrictive and impractical.</p> <p><i>This comment is outside the scope of the proposed regulations.</i></p> | 30, 37, 40 |
| 16 | <p>DPR has not allowed enough time for recent chlorpyrifos label changes, including setbacks to sensitive sites, to have any time to show progress that are now been implemented by growers.</p> <p><i>Although U.S. EPA has implemented additional label changes to chlorpyrifos products to protect sensitive sites based on application method and droplet size, these new label amendments do not address all of DPR's concerns associated with the use of chlorpyrifos in California. New label amendments are intended to address concerns relating to "sensitive sites" which are defined on the label as "areas frequented by non-occupational bystanders." While DPR supports these new label restrictions, they do not address the specific concerns DPR has with respect to surface water and air monitoring detections.</i></p> | 32, 33, 36, 37 |
| 17 | <p>To argue that finding chlorpyrifos in the air at concentrations below health screening levels is reason for increased regulation is setting a dangerous precedent for determining if a chemical should be state-restricted or not. Data from air monitoring program does not demonstrate a hazard and does not support listing as a restricted material.</p> <p><i>Designating chlorpyrifos as a restricted material is based on contamination of surface water and potential hazards from drift. As described in the Initial Statement of Reasons, DPR conducted year-round air monitoring for chlorpyrifos in Parlier during 2006, and is conducting ongoing monitoring in three other communities as part of its air monitoring network. Chlorpyrifos was detected in Parlier, and DPR concluded that "No findings warranted immediate regulatory action. Nonetheless, some</i></p> | 32-37, 42, 43 |

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| | <i>detections did trigger regulatory concern and further action." Similar chlorpyrifos concentrations have been detected from the air monitoring network. Based on the specific toxicity concerns associated with chlorpyrifos and its frequent detection in air in California, DPR has a sufficient basis for designating chlorpyrifos a restricted material.</i> | |
| 18 | <p>DPR addresses the concentration of chlorpyrifos exceeding aquatic benchmark levels are cause for concern. Concerns of chlorpyrifos and surface water quality were once an issue, but have since been tackled not by regulation, but by careful examination, educational outreach, and local knowledge to address a local problem.</p> <p>Research (Hall, et.al. 2014) supports that likely surface water issues are local or specific to some watersheds or streams and further mitigations should be regional and not statewide.</p> <p><i>DPR recognizes the importance of educational outreach as an important component to address surface water contaminant issues. However, due to continued exceedance of U.S. EPA's chronic aquatic life benchmark in surface water runoff of California's agricultural areas, the regulatory designation of chlorpyrifos as a state-restricted material is necessary. This statewide designation allows CACs to develop and adopt permit conditions based on local or regional conditions. Almost all registered uses of chlorpyrifos is designated for production of agricultural commodities, therefore monitoring efforts have focused on surface waters with contributions originating from agricultural runoff. In a review of statewide monitoring data, DPR summarized monitoring results collected from seven California agricultural regions from 2006–2010. Samples collected from three central coast regions (Pajaro, Salinas, Santa Maria) and the Imperial Valley exceeded U.S. EPA aquatic benchmark (0.04 µg/L) 13–57 percent of the time. The San Joaquin region of the Central Valley had a 6.5 percent exceedance rate. A follow up analysis of more recent monitoring data (2010–2013) within the San Joaquin region detailed exceedances within five watersheds ranging from 6–44 percent (See documents no.6 and 12 in "Documents relied upon."). Extensive analysis of statewide monitoring data suggests a pattern of widespread surface water contamination in agricultural regions of high chlorpyrifos use. DPR believes a restricted materials permit system will allow CACs to use their expertise of local conditions and pest pressures to best address regional water quality issues associated with chlorpyrifos.</i></p> | 32, 33, 37, 42 |
| 19 | DPR points out 35 different chlorpyrifos applications "possibly", "probably", and "definitely" were associated with a pesticide illness. Important to note is that 364,000 chlorpyrifos applications were applied from the same time period as the 2001-2011 exposure incidents, revealing the infrequent nature of alleged issues with this product. It is also critical to remember that these | 32, 34, 36, 37, 43 |

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| | <p>incidents could be from events from several years ago and may not reflect recent label changes.</p> <p><i>DPR agrees that the majority of applications are conducted without incident. However due to specific toxicity concerns associated with chlorpyrifos and its frequent detections in air and surface water monitoring, DPR is proposing to make chlorpyrifos a restricted material. By designating chlorpyrifos a restricted material, the CAC has the ability to evaluate each proposed application before it occurs and document their determination that the application poses no unacceptable risks, or condition the permit to mitigate identified hazards on a location and time specific basis. This process enables the CACs to address application specific concerns associated with the use of a material that may not be necessary or appropriate for all applications.</i></p> | |
| 20 | <p>DPR should reconsider this proposed regulatory action until more definitive and creditable data is available.</p> <p><i>DPR's proposal to make chlorpyrifos a California restricted material is primarily based on the data the department currently has with respect to environmental monitoring and documented illness cases. Since 2012 when DPR first established its air monitoring network stations, chlorpyrifos has remained one of the most frequently detected pesticides in the air throughout California. Additionally, surface water samples from the Central Valley and Coastal Regions have continued to detect chlorpyrifos at concentrations exceeding U.S. EPA's chronic invertebrate aquatic life benchmark. Based on the specific toxicity concerns associated with chlorpyrifos and its frequent detection in air and water samples in California, DPR has a sufficient basis for designating chlorpyrifos a restricted material.</i></p> | 32, 33, 34, 35, 36, 39, 41 |
| 21 | <p>DPR did not address potential region-specific mitigation measures in lieu of a statewide restriction, despite DPR's own data which indicates that concerns are region specific. There is not a scientifically valid basis to assert water quality impacts statewide -- chlorpyrifos becoming a statewide restricted material is not appropriate based on this analysis.</p> <p><i>See response to comment no. 18.</i></p> | 36, 42 |
| 22 | <p>Urge DPR to maintain the continued registration and access as well as promote the safe use of chlorpyrifos as a critical tool to ensure the healthy growth of many fruit, nut, and vegetable commodities.</p> <p><i>DPR is not cancelling registration of chlorpyrifos. See response to comment no. 2.</i></p> | 37 |
| 23 | <p>Select uses of chlorpyrifos are absolutely essential to citrus IPM.</p> <p><i>See response to comment no. 22.</i></p> | 38 |

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| 24 | <p>DPR's intent to further restrict uses of chlorpyrifos in the future is not supported by the facts and needs to be better defined. The preservation of chlorpyrifos as a useful "tool" for insect pest management as a way of reducing insecticide resistance cannot be understated. All pesticides have potential risks associated with their use, which is why the use of an Integrated Pest Management program is critical, including making choices for pest management based on agronomic, economic, human health and environmental considerations. Do not designate chlorpyrifos as a state restricted material until the facts are in. DPR has not had the opportunity to review and assess the recently submitted Chlorpyrifos Critical Use Report.</p> <p><i>DPR has the authority (FAC section 14004.5) to designate pesticide as a restricted material based on being a hazard to the environment or danger of impairment of public health. DPR has sufficient data to designate chlorpyrifos a restricted material. DPR is not cancelling use of chlorpyrifos. Also, see response to comment no 2.</i></p> | 39, 40 |
| 25 | <p>DPR states that chlorpyrifos can move off-site and it is toxic to aquatic and marine organisms but has not demonstrated that the citrus use of chlorpyrifos is causing any harm to those organisms.</p> <p><i>DPR acknowledges that there have been great reductions in chlorpyrifos containing runoff in agricultural areas with high citrus production. This may be due to the conversion to drip irrigation systems. Unfortunately at this time many non-orchard commodities do not have the ability to utilize this practice to address water quality issues. DPR believes a permit system will allow CACs to use their expertise of local conditions and pest pressures to best address regional water quality issues associated with chlorpyrifos.</i></p> | 34 |
| 26 | <p>If a standard for defining "hazards to the public" exists, we don't believe DPR has met such a standard. DPR has not been transparent in providing its scientific justification for taking this action.</p> <p><i>See response to comment no. 17.</i></p> | 34 |
| 27 | <p>The East San Joaquin Water Quality Coalition via the Irrigated Lands Regulatory Program has greatly reduced the number of detects in their waterways. Clearly there would be great benefit to better coordination between DPR and both the Central Valley Water Resources Board and the State Water Resources Control Board. Additionally, it would make sense to wait for U.S. EPA's risk assessment to be completed before making any changes to current state policy to ensure that any policy changes are in line with any potential federal policy changes anticipated by U.S. EPA.</p> <p><i>DPR acknowledges the benefit of increased communication between regulatory agencies. However, DPR disagrees that changes in state policy need to wait until the federal risk assessment is complete. Many aspects of chlorpyrifos detections in California surface waters are specific to the</i></p> | 40 |

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| | <i>unique and various agricultural conditions of the regions. By installing a permitted use process, it allows for the CAC to utilize knowledge of local environmental conditions to make recommendations to growers that will both address pest management and water quality issues. Also, see response to comment no. 11 and 18.</i> | |
| 28 | <p>No data in a 2013 analysis by Hall & Anderson to support a significant increase in toxicity or concentrations of three high-use pesticides from any of the data sets analyzed from 2004-2009.</p> <p><i>Hall and Anderson reviewed pesticide concentrations in water samples and the toxicity to aquatic organisms. DPR's surface water monitoring data indicate chlorpyrifos is frequently detected in rivers and streams in agricultural areas in California, often at concentrations that exceed water quality benchmarks for aquatic invertebrates. Also, see response to comment no. 18.</i></p> | 41 |
| 29 | <p>Reclassifying a material that is in decline and that has been used safely for nearly 50 years by citing public concern in connection with human health and the environment, based on perceptions and ambiguous representations, sets a bad precedent that undermines the entire pesticide regulatory process. DPR should endeavor to educate the public to the strict processes and procedures in place to assure pesticides are safe when used in accordance with the Federal and State regulated label instructions.</p> <p><i>Part of DPR's mission includes educating the public about the safe and effective use of pesticides through outreach efforts, news releases, letters from the director, and publications detailing DPR's efforts. However, the state mandated regulatory process for assessing pesticide safety requires DPR to continually reevaluate pesticides as new scientific data and studies arise which provide additional detail related to potential adverse effects. Based on current pesticide use reports chlorpyrifos is still widely used in California agriculture. Furthermore, recent California environmental monitoring data has shown that chlorpyrifos has the propensity to move offsite in the air and surface water. In light of these new data DPR is acting on its regulatory duty and proposing to classify chlorpyrifos as a restricted material so its application can be assessed on a site and time specific basis.</i></p> | 42 |
| 30 | <p>The observation on representations that have been made related to chlorpyrifos being "linked" to long-term neurological effects is obviously an opportunity for a toxicology and epidemiology debate, but having comments in the proposed regulations that are ambiguous, dramatic and lacking context is disturbing. This type of unsupported allegation is another reason that a more comprehensive risk assessment should inform the need for additional regulation.</p> <p><i>DPR and U.S. EPA consider the results of studies investigating patterns of health effects in humans as well as results of toxicity tests with laboratory</i></p> | 42 |

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| | <p><i>animals. These studies show a potential for serious health effects. Additionally, DPR has the authority (FAC section 14004.5) to designate pesticide as a restricted material based on being a hazard to the environment or danger of impairment of public health. Determining that a pesticide poses a hazard to the environment or public does not require DPR to complete a risk assessment.</i></p> | |
| 31 | <p>Results of long-term neurological effects in humans are inconsistently observed and are biologically implausible. These claims do not qualify chlorpyrifos as meeting the toxicological criteria for listing as a state-restricted material.</p> <p><i>There are no set toxicological criteria for designating chlorpyrifos as a restricted material. See response to comment no. 6 and 30.</i></p> | 43 |
| 32 | <p>Recent implementation of label changes that include setbacks from sensitive sites further reduces concerns over off-site movements. Concerns expressed by DPR do not account for more recent research, including the air flux study conducted in California, recent inhalation toxicity data, and recent label changes. Off-site air movement of chlorpyrifos is negligible and detections are well below any levels of toxicological significance.</p> <p><i>Designating chlorpyrifos as a restricted material is based on water impacts and potential hazards from drift. DPR disagrees that off-site movement of chlorpyrifos is negligible. Based on the drift modeling by U.S. EPA as part of their risk assessment, off-site deposition beyond the setbacks may result in unacceptable dermal exposures.</i></p> | 43 |
| 33 | <p>Off-site surface water movement is being addressed by growers, applicators, coalitions, and registrants. Significant reductions have been made in the past 10 years in the Sacramento/Feather River watershed, Central Coast, and San Joaquin Central Valley. A focused effort in the remaining watersheds that still experience occasional exceedances can accomplish DPR's water quality objectives without statewide restricted materials listing.</p> <p><i>DPR acknowledges that strides have been made within the Central Valley region to reduce runoff. Significant reductions in use and detections in surface waters have been noted in the past decade. However, water quality exceedances are still common in watersheds of other major agricultural regions in the state (See documents no.6 and 10 in "Documents relied upon"). DPR believes a permit system will provide a more comprehensive tool for addressing remaining water quality issues on a multi-regional level.</i></p> | 43 \ |

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| 34 | <p>Listing chlorpyrifos as a restricted material would not add further protections to surface water quality that are not already being addressed by current efforts. In lieu of a statewide restricted materials listing, propose to work with DPR, CACs and the agricultural community to address remaining water quality concerns on a watershed-specific basis.</p> <p><i>The permit system serves as a bridge between the growers and the CAC to address local water quality concerns, increasing communication between the two on local pest pressures and the appropriate management strategy. The CAC can use his or her knowledge of local pest pressures and environmental conditions to require permit restrictions to reduce chlorpyrifos contamination in surface water runoff while continuing to allow use.</i></p> | 43A |
| 35 | <p>Chlorpyrifos can wash into urban streams. Remaining urban chlorpyrifos use, though low, is likely a source of occasional detections of chlorpyrifos in urban watersheds at concentrations approaching and sometimes exceeding water quality criteria and/or TMDL targets. Because urban chlorpyrifos products do not include water quality management measures that prevent chlorpyrifos runoff, TMDLs have resulted in requirements that our member agencies continue to expend resources on chlorpyrifos monitoring and management. If urban chlorpyrifos products join agricultural products as restricted materials, measures to prevent drift and runoff can be included in chlorpyrifos use permits. DPR should modify the proposed regulation to include non-agricultural chlorpyrifos products (with the exception of containerized baits).</p> <p><i>U.S. EPA phased out non-agricultural uses of chlorpyrifos in 2001. Since that time, detections in urban surface waters have plummeted. DPR's Surface Water Protection Program has been monitoring chlorpyrifos in urban streams since 2008. Out of 484 samples collected between 2009 and 2014, only nine samples were above reporting limits (1.8 percent) (DPR Surface Water Database, 2014). Of these, four (0.8 percent) were above the minimum U.S. EPA aquatic benchmark (0.04 µg/L). Based on our data, DPR believes that current federal use restrictions are sufficient in meeting aquatic effect thresholds for receiving waters affected by runoff from urban landscapes. DPR understands that there may still be rare occasions when chlorpyrifos is detected in urban waterways. Thus, we will continue to monitor for chlorpyrifos in urban areas.</i></p> <p><i>Note that DPR scientists are working with municipal stormwater programs in Northern and Southern California to assist with outreach on urban pyrethroid products. DPR could similarly work with our stormwater program partners to better understand remaining chlorpyrifos uses in urban areas, their pathways of surface water contamination, and explore whether mitigation is necessary.</i></p> | 44 |

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| 36 | <p>DPR should investigate a more targeted approach to restrictions on chlorpyrifos use including specific restrictions for fields with irrigation drainage and adequate buffers when making treatments adjacent to waterways. These restrictions may also only need to be in effect in specific counties with a history of repeated exceedances, and in those counties where surface waters can transport is more likely.</p> <p><i>See response to comment no. 18.</i></p> | 45, 46 |
| 37 | <p>Merely restricting use of other hazardous agricultural pesticides has not significantly reduced use or resulted in improved protections for children. This classification will not sufficiently mitigate the health threat for California's farmworkers and rural, largely Latino communities.</p> <p><i>DPR's restricted material and permitting process is intended to allow for the continued use of a chemical while simultaneously addressing specific concerns related to its use. Designating a chemical as a restricted material allows the local agricultural commissioner to assess each application based on the time and specific location. Not every application poses a potential for adverse effects. Therefore, the restricted material process is designed to enable the CAC to condition individual applications with concerns (such as potential exposure to children) while allowing the continued use of a chemical.</i></p> | 47 |
| 38 | <p>Under the Birth Defects Prevention Act, DPR must take cancellation or suspension action against the product pursuant to FAC section 12825 or 12826 of the Act. We urge that this law be fully considered and actions taken in accordance with its requirements.</p> <p><i>The Birth Defects Prevention Act requires the Director, after evaluation of the health effects studies submitted on a specific chemical, to determine if there are significant adverse health effects that cannot be mitigated and, if so, to take action to require cancellation. At this time, no such determination has been made. However, under DPR's obligation to continuously evaluate registered pesticides, DPR continues to evaluate new information and if DPR determines that additional mitigation measures are necessary, DPR will consider taking appropriate regulatory action in a separate rulemaking or through permit conditions.</i></p> | 20, 47 |
| 39 | <p>DPR is required to abide by Government Code section 11135, which prohibits disparate impact discrimination in state-funded programs. DPR must change current regulatory policies about chlorpyrifos to eliminate the disparate impact on communities of color living in proximity to fields where chlorpyrifos is applied.</p> <p><i>The purpose of this regulatory action is to facilitate the protection of all individuals against potential adverse exposure to chlorpyrifos regardless of race, national origin, and ethnic identity.</i></p> | 47 |

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| 40 | Propose regulations to replace recommended permit conditions. <i>See response to comment no. 13. By designating chlorpyrifos a California restricted material, the permit process will allow the CAC to evaluate the specific local conditions of each application site and determine if additional protections are needed.</i> | 48 |
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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 requiring 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 B of the California Constitution. DPR has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from this regulatory action.

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.

By designating chlorpyrifos a state-restricted material, chlorpyrifos will only be sold to, purchased by, possessed or used by, a person who holds a restricted material permit issued by the local CAC. The permit requirement will provide an effective mechanism to facilitate CAC oversight of chlorpyrifos use by certified applicators. To mitigate regionally, and not statewide as suggested in comments number 18, 21, and 33, would not be an acceptable alternative. Extensive analysis of statewide monitoring data suggests a pattern of widespread surface water contamination in agricultural regions of high chlorpyrifos use. The statewide designation allows CACs to develop and adopt permit conditions based on local or regional conditions.

POSTING REQUIREMENT

Title 3, California Code of Regulations, 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.