

PRE-PUBLICATION NOTICE

On March 11, 2020, **Alexandra Dapolito Dunn**, the EPA Assistant Administrator for Chemical Safety and Pollution Prevention, signed the following document:

Action: Notice.

Title: **Carbaryl and Methomyl Registration Review; Draft
Endangered Species Act Biological Evaluations; Notice of
Availability**

FRL #: 10006-38

Docket ID #: EPA-HQ-OPP-2020-0090

EPA is submitting this document for publication in the *Federal Register* (FR). EPA is providing this document solely for the convenience of interested parties. It is not the official version of the document for purposes of public notice and comment under the Administrative Procedure Act. This document is not disseminated for purposes of EPA's Information Quality Guidelines and does not represent an Agency determination or policy. While we have taken steps to ensure the accuracy of this Internet version of the document that was signed, the official version will publish in a forthcoming FR publication, which will appear on the Government Printing Office's govinfo website (<https://www.govinfo.gov/app/collection/fr>) and on Regulations.gov (<https://www.regulations.gov>) in the docket identified above.

Once the official version of this document is published in the *Federal Register*, this version will be removed from the Internet and replaced with a link to the official version. At that time, you will also be able to access the on-line docket for this *Federal Register* document at <http://www.regulations.gov>.

For further information about the docket and, if applicable, instructions for commenting, please consult the ADDRESSES section in the front of the Federal Register document.

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ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2020-0090; FRL-10006-38]

Carbaryl and Methomyl Registration Review; Draft Endangered Species Act Biological Evaluations; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of the Environmental Protection Agency's (EPA or the Agency) draft biological evaluations (BEs) for the registration review of the pesticides carbaryl and methomyl and opens a public comment period on these documents.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2020-0090, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

Additional instructions on commenting or visiting the docket, along with more

information about dockets generally, is available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Tracy Perry, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-0128; email address: perry.tracy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides and/or the potential impacts of pesticide use on threatened or endangered (listed) species and designated critical habitat. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the

information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the agency taking?

A. Authority

The Endangered Species Act (ESA) requires federal agencies, such as EPA, to ensure that their actions are not likely to jeopardize the continued existence of species listed as threatened or endangered under the ESA or destroy or adversely modify the designated critical habitat of such species. The registration review process of reevaluating a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) constitutes an EPA "action" under the ESA. If EPA determines a pesticide may affect a listed species or its designated critical habitat, EPA must initiate consultation with the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service (collectively referred to as the Services), as appropriate. EPA initiates formal consultation with the Services through the conduct and transmittal of a BE with

its findings.

B. Background

The Agency has completed comprehensive, nationwide draft BEs for all carbaryl and methomyl uses relative to the potential effects on listed species and their designated critical habitats. The schedule for conducting the carbaryl and methomyl BEs was negotiated as part of a partial settlement agreement pursuant to a joint stipulation filed on October 18, 2019 and entered by the court on October 22, 2019, in *Center for Biological Diversity et. al. v. EPA et al.* (N.D. Ca) (3:11-cv-00293).

In preparation for conducting the carbaryl and methomyl BEs and consistent with the objective to revise and refine the method used for the first three pilot BEs (final pilot BEs for chlorpyrifos, malathion, and diazinon were completed in January 2017), EPA proposed refinements to the BE process with its Draft Revised Method. EPA sought public comments on this Draft from May to August 2019 (45-day public comment period, extended for an additional 45 days), held a public meeting on June 10, 2019, and conducted tribal outreach and formal tribal consultation from July to October 2019. The Services and the U.S. Department of Agriculture (USDA) provided input on the Draft Revised Method through an interagency workgroup prior to public release of the document for comment. EPA evaluated public input and met again with the Services and USDA to discuss the comments from the public and input from the agencies.

After reviewing comments received during the public comment period on the draft carbaryl and methomyl BEs, EPA will issue final BEs and a response to public comments document. If EPA determines that these pesticides may affect listed species and/or their designated critical habitats, EPA will initiate consultation with the Services. Based on the BEs, the Services will then develop Biological Opinions for carbaryl and methomyl.

Along with the draft BEs, EPA is posting an updated Revised Method document in this BE docket, as a supporting document. The updated Revised Method will also be posted in the Draft Revised Method docket (see docket ID number EPA-HQ-OPP-2019-0195 at www.regulations.gov), along with a response to public comments document. Some elements of the Revised Method include: (1) Incorporation of usage data to inform the likelihood that an ESA-listed species or designated critical habitat may be exposed to a pesticide; (2) incorporation of probabilistic approaches to determine the likelihood that an ESA-listed species will be adversely affected by a pesticide given the variability in the range of potential exposures and toxicological responses to listed species; and (3) incorporation of a weight-of-evidence framework for informing effects determinations.

C. Public Comments Sought

Pursuant to 40 CFR 155.53(c) and consistent with the enhanced stakeholder engagement practices (see docket ID number EPA-HQ-OPP-2012-0442), EPA is providing an opportunity, through this notice of availability, for interested parties to provide comments and input concerning the Agency's draft BEs for carbaryl and methomyl. Such comments could address, among other things, the application of the Agency's revised risk assessment methodologies and assumptions to these draft BEs for methomyl and carbaryl. In particular, EPA is seeking comment regarding the following specific aspects of the draft BEs.

First, there are uncertainties in the spatial footprint associated with the non-agricultural uses (e.g., residential, forestry, rangeland) of carbaryl and there are limited data available to inform the extent of usage in any given area for these types of uses. EPA has previously requested input on availability of spatial data to define use sites and on usage data for non-agricultural uses, including seeking public comment on: The registration review plan for carbaryl

in 2010; the NMFS biological opinion on chlorpyrifos, diazinon, and malathion in 2018; and the draft Revised Method for conducting national level endangered species risk assessments for pesticides in 2019. In light of these data limitations and associated uncertainties, EPA is seeking input on the evaluation of the likelihood of effects to an individual of a listed species from the use of carbaryl on non-agricultural use areas.

Second, EPA has developed a systematic process, using the best available data, to determine if a pesticide is likely to adversely affect an individual of a listed species and, if so, then characterizes the strength of evidence associated with likely to be adversely affected (LAA) determinations. The criteria used to characterize the strength of evidence are described in Attachment 4-1 of the BEs. EPA is seeking input on these strength-of-evidence criteria.

Third, a number of draft LAA determinations were made for methomyl and carbaryl based on potential impacts on prey, pollination, habitat, or dispersal (PPHD) of a listed species using endpoints identified in Table 3 of the Revised Method document and chapter 2 of the BEs. There are uncertainties associated with the magnitude of impact to a particular species' prey base or habitat for a given pesticide that could result in a discernible effect to that listed species. EPA requests public input regarding properties of methomyl and carbaryl or particular characteristics of listed species or their habitats that affect the confidence in the link between thresholds used to evaluate PPHD effects and resulting potential effects to an individual of a listed species.

The file sizes of the draft BEs for carbaryl and methomyl exceed the docket system's file size limitation, therefore these documents are not posted to this BE docket. Instead, the BEs are posted on EPA's endangered species webpage (see web links provided in the Table below). Commenters are instructed to post comments on the BEs to this BE docket (EPA-HQ-OPP-2020-0090) in *www.regulations.gov*, as indicated in the Table below.

Table. Pesticide Docket ID Numbers for Posting Comments on the Carbaryl and Methomyl Draft BEs and Links to the Draft Carbaryl and Methomyl BEs

Document	Pesticide Docket ID Number for Public Comments	Links to the draft BEs
Carbaryl BE	EPA-HQ-OPP-2020-0090	https://www.epa.gov/endangered-species/draft-biological-evaluation-chapters-carbaryl-esa-assessment
Methomyl BE	EPA-HQ-OPP-2020-0090	https://www.epa.gov/endangered-species/draft-biological-evaluation-chapters-methomyl-esa-assessment

1. *Other related information.* Additional information on endangered species risk assessment and the NAS report recommendations are available at <https://www.epa.gov/endangered-species/implementing-nas-report-recommendations-ecological-risk-assessment-endangered-and>. Information on the Agency's registration review program and its implementing regulation is available at <https://www.epa.gov/pesticide-reevaluation>.

2. *Information submission requirements.* Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.

- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record.

Written material may be submitted in paper or electronic form.

- Submitters must clearly identify the source of any submitted data or information.
- Submitters may request the Agency to reconsider data or information that the Agency

rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

Authority: 7 U.S.C. 136 *et seq.*

Dated: March 11, 2020.

Alexandra Dapolito Dunn,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.