OREGON
DEPARTMENT OF
AGRICULTURE

Oregon Department of Agriculture
Chlorpyrifos Work Group Meeting Notes: Aug. 31, 2020

Welcome and introductions

Stephanie Page (ODA): The August 31st meeting was originally planned to coincide with the end of comment periods for the proposed chlorpyrifos rule and proposed amended Listing of Restricted Use Pesticides (RUP) rule; the workgroup meeting was intended to provide a platform for the discussion of the public comments submitted. However, a request was received by ODA to extend the public comment period from September 1 to October 1, 2020. ODA wanted to still have a check-in meeting today to be able to discuss the two concurrent rulemakings - Chlorpyrifos and RUP - and to gain feedback from workgroup members' respective communities and stakeholders in regards to the two proposed rules.

Rose Kachadoorian (ODA): Provided clarification that this is not an unannounced additional public hearing, this is just a workgroup meeting. Therefore, any statements provided at this meeting are not going to be captured as official comments on any of the proposed rulemakings.

The filing of the concurrent proposed amended RUP rule appears to have caught some workgroup members "off guard". ODA acknowledges that it is conceivable that the phrase "alignment with statute" was not adequately explained in the midst of COVID-19 and becoming accustomed to virtual workgroup meetings, and ODA apologizes for any confusion. The discussion involving the proposed chlorpyrifos rule also heavily dominated all workgroup meetings.

As mentioned in the notice and one or more meetings, ODA does have legal authority through statute to create a list of RUP's. The old and existing rule had portions of statute rather than a full description. With the intention of adding clarity and alignment with statute, ODA copied the definition of a RUP from statute and incorporated it into the first version of the amended rule. However, the process was not fully understood by all workgroup members.

Because ODA values transparency, a decision was made by the Department to make it abundantly clear that the proposed rule language came directly from statute, and that novel language had not been created. It was also not well understood that ODA was legally obligated to follow all portions of the statute which pertain to the listing of RUPs. This indicated that laws and regulations of the federal government, as well as laws and regulations of other states, along with advice and counsel of experts in the pesticide industry, including farmers needed to be taken into consideration. It was decided was that ODA would file a revised proposed amended rule, which was done on August 25, 2020. The revised proposed amended rule supersedes the original filing (July 28, 2020). After working with our attorney this was decided to be the best move forward. Also, the revised notice clarified how small businesses were involved with the development of the rules.

Page, Question for Rose Kachadoorian: Why did we need to make the separate rule change?

Kachadoorian: The original rule was unclear as far as authority; turn this rule change would help to align rule and statute.

Page: Read a few sentences from the notice indicating (Current Oregon Administrative Rule) the clarification that ODA may determine which pesticides will be designated RUP's under state law.

Kachadoorian: All the documents are available and filed on ODA website.

Questions

Question: How many times has ODA used authority to designate products as RUP?

Kachadoorian: We have not done this in the past, this is something that has been brought up as many other surrounding states have done this in the past and have state-designated RUP because the state deems there is a particular issue. This is done to mitigate risks.

Q: Why now since this chemistry class is being largely discontinued?

Kachadoorian: This was something that workgroup felt would add an extra level of assurance to know that those purchasing/applying the product would receive a certain level of training and understood the risks.

Q: Whether this will affect the validity of public comments made last month?

Kachadoorian: Will need to discuss with Matthew Bucy, however last time I reviewed the comments there was only one comment in regards to the RUP rulemaking, the person indicated they were for both of the Chlorpyrifos rules.

Matthew Bucy: Other than the one mentioned by Rose K, there have not been specific comments about the proposed RUP rule.

Kachadoorian: What will be done for the person, an email will be sent letting them know the comment period does not start till a specific date and for that person to submit their comment again once the comment period has started.

Q: Doesn't WPS training take care of folks knowing the risks? (Page: This is in connection with above question why making the RUP rule now?)

Kachadoorian: To be a certified and licensed applicator is held to a higher bar and this will increase protections. This was discussed several times in the workgroup.

Page: Follow-up to Matthew Bucy's statement, Public comment focused mostly on Chlorpyrifos, not the RUP rulemaking.

Next steps and process on RUP rulemaking

Page: This proposed RUP rule will be published in Oregon Bulletin tomorrow, September 1, 2020. The Oregon Bulletin is where the Sec. of State publishes notice of rulemaking or rule adoption. Last day to comment on this purposed rulemaking is October 1, 2020 at 5:00pm PST. Comments provided after that time will not be accepted unless ODA extends the comment period for everyone.

Updates received by ODA from manufactures regarding Chlorpyrifos for vector control

Kachadoorian: There is a company that has indicated they are the country's leading public health company, they are sunsetting the sale and manufacture of public health/mosquito control products. They are doing this because they are seeing a decline in customer and public acceptance in their products. Their products are not currently registered in Oregon. However, there are still a few products for vector control in Oregon, the registrants have been notified and have been sent a copy of the Chlorpyrifos proposed rule.

Jenny Dresler: There have been questions from the industry using these products for other vector control purposes, can you provide clarity to those folks regarding those questions?

Kachadoorian: In pesticide regulation and in public health circles, "vector control" program is a term commonly used when controlling mosquitoes and other insects that vector human and animal pathogens. There was some confusion because certain insects such as leafhoppers and aphids can vector plant diseases. If we find ourselves discussing vector control districts this will help to clarify.

Q: Backing up to last agenda item, the RUP item, when will we file the final rule and when will it take effect?

Kachadoorian: We are thinking late fall, this is dependent on how many comments we get. We would like to file both rules together to avoid any confusion. More than likely it will be late October, early November. Each comment will be reviewed, we also have a mathematical formula to be able to categorize the comments. The formula will be used and all points will be captured.

Jeff Stone: Wanting to clarify that many our members who use the product, it is part of their Integrated Pest Management (IPM) program, even though it is not used regularly it is effective when it is needed. Its regularity should not be the differential here but rather it should be its effectiveness as a tool. Pest and disease problems are seen, specifically with climate and until there is a product that can be market ready to replace Chlorpyrifos, I want to know what thoughts are regarding these issues?

Kachadoorian: One example, to assist Christmas tree growers, ODA working on a Section 24(c) for use of Acephate because of limitation of chlorpyrifos. We are looking for data that is available for other products that may work as alternatives to chlorpyrifos. We have the ability, under certain guidelines, to grant special local need registrations under FIFRA Section 24(c).

Discussion of feedback from growers, communities, stakeholders in regards to the proposed rule

Each workgroup member asked to share feedback.

Bryan Ostlund: Clover and grass seed growers are concerned about lack of alternatives, short turn around, lack of funding for research for alternatives, a lot of acres that have issues. Lots of big issues have many on edge.

Jeff Stone: Growers take any application of any pesticide very seriously, I continue to get asked what is the problem ODA is trying to solve and has this been done before? Why this, why now? Especially with what is known of the arch of life span of Chlorpyrifos on the federal level. Would rather work with folks that disagree with pesticide use in general rather than the pesticide of the month that gets banned.

Jenny Dresler: Crop consultants and commodity research teams have general questions from public perception stand point, and the REI of 4 days makes folks nervous, they are feeling like the 4-day REI period is arbitrary. Why was 4 days chosen? As discussed in the workgroup we looked at REI on the label and WPS. Concerned there is not a toxicological base for that number. Also, having this tied to WPS is important to ensure that work can still be done around irrigation with proper PPE. The industry will lose up to 60% of spray season without alternatives and the buffers will be significant. Critical to maintain market access. The concept of permanent waterbody needs work, further definition needed. Many questions as to what will qualify as a permanent water body? Difficult to understand where regulation will apply if they do not know the baseline. Willing to work with ODA on this. Concern about the definition of "Sensitive Site" this will eliminate significant acreage. A pest left untreated will move to other acres and damage the crops. Also issue around purposed cancellation date, commodities worried they will not be able to make the change with an alternative product by that date. Focus to provide growers with clarity around these larger newer concepts with the new regulations. Trying to get arms around the impacts.

Jeff Jenkins: Out of loop of how the ag community has responded to this. Intrigued about the REI and would like to know more about the permanent water body definitions.

David Farrer: Not in contact with growers so out of the loop there. From Oregon Health Authority, want to respond to the science behind the health risks. Hearing that people are saying this is coming out of left field is confusing, since 2011 we have heard about the risks of Chlorpyrifos. Multiple EPA risks assessments completed including in 2011, with the latest as of 2016. EPA deemed there were no safe uses. According to the 2016 risk assessment the label and current regulations are not protected. No new data to counter to the 2016 assessment. From the health department the science behind this decision is very sound. It is curious about the 4-day REI as well.

Fred Berman: Has not received any comments, out of the loop.

Martha Sonato: Has heard some good feedback on some components of the rule, workers agree with the REI and like the definition of "Sensitive Sites", and agree with the training required. Would like training in Spanish and indigenous languages. Concerns around the buffer zones and around the partial phase out. Conversations every day.

Lisa Arkin: Hearing appreciation for the "Sensitive Site" definitions on the label. Some people would like the REI to be longer, others appreciate the range on the label. Would like it to be 5 days but still appreciate. Recognize this is based off long history of science of health impacts, specifically on children, and that is greatly appreciated.

Scott Dalman: Not a whole lot to add. Worked closely with Jenny and others, supports and reiterates her concerns and respects the burden this is going to place on growers.

Karen Lewotsky: Been speaking with conservation and water community, generally people are feeling pretty good about the rule. Some have said they are impressed with the rule. Only concern about the REI and making sure the buffers are sufficient and will protect the water bodies under question. Appreciate all the work that has gone into the rule making.

Next steps

Page: Next steps for the Chlorpyrifos and purposed RUP rule. We have had 3 public hearings at this point on the Chlorpyrifos rule. Public comment periods for both are scheduled to end on October 1, 2020. Both rules will likely be filed together later this fall (late October-early November) after all comments have been reviewed.

Kachadoorian: Two of the public hearing are now posted on the website. There has been interest from the press. The first hearing will be posted after technical issues are resolved. Further clarification will be made to some of the above concerns to come in the near future or will be clarified within the rule itself.

Presentation given by Matthew Bucy explaining public comments up to this date.

Page: Questions about future meetings of this group. Would like to follow-up in the future with a smaller group of folks to address concerns about clarity. Reach out to Stephanie if feeling like another meeting of this workgroup is necessary.