

To: Oregon Department of Agriculture
From: Oregonians for Food & Shelter, Oregon Farm Bureau Federation
Re: Feedback on Examples of Mitigation Options
Date: March 16, 2020

(1) Increasing buffers around schools is consistent with the approach proposed in HB 4109 by PCUN and Beyond Toxics. Anything beyond that would not be in line with the proposal put forward by PCUN and Beyond Toxics or the agricultural groups who supported the minority report to HB 4109. If ODA considers this mitigation measure, then we recommend that school buffers for chlorpyrifos be tailored to type of use. For instance, seed treatments don't pose a risk of exposure, given that they treat soil pests and are not applied to foliage.

(2) Court-ordered buffers are outside the scope of rulemaking and are not based on science or Oregon use patterns. The stated purpose of the workgroup is "to explore appropriate science-based restrictions on products containing chlorpyrifos that protect public health and safety while fulfilling critical pest control needs of land managers." The focus has been on worker safety and limiting bystander exposure. Evaluating water quality related measures properly would require different staff, stakeholders, and agencies than those presently seated on the workgroup. We strongly recommend the workgroup continue to focus its energy on worker safety and limiting bystander exposure, and leave water quality conditions to the existing label, the pesticide stewardship partnership and the state's Agriculture Water Quality Management Program.

At any rate, adoption of the court ordered buffers for salmonids is not supported by science or necessary to protect water quality or salmonid populations. The court ordered buffers are not based on studies or supported by science. Instead, they are purposely overprotective and are designed to be in place temporarily while the National Marine Fisheries Service is working on the biological opinions for these products. They are simply an interim measure designed to be overly protective while additional biological study is being conducted. The final measures that will come out of that process will replace these interim measures and may become part of the product's use long-term. It would be imprudent to adopt these overprotective and temporary buffers, which are not scientifically based and have not been shown to be necessary to protect listed species.

While we do not think these standards should be adopted, it also is worth noting that the framing of the restrictions will not be workable for Oregon farmers and ranchers. It is not clear what the Department means by "aquatic areas" which it defines as "areas adjacent to permanent bodies of water such as rivers, natural ponds, lakes, streams, reservoirs, marshes, estuaries, and commercial fish ponds." There has been considerable discussion under the Clean Water Act, state water quality law, and through the pesticides general permit about when a dry feature on the landscape is a waterbody, and the definitions and requirements vary for each law. It often requires a professional delineation. Under the proposal, it is unclear

what the Department means by “areas adjacent” to the specified waterways – does it mean the riparian area? Where would the measurement start?

We assume the Department is intending to protect perennial waterways, i.e. those main waterbodies that flow year-round. If the Department moves forward with this approach, it should explicitly state that it intends for the buffers to apply to the specified water bodies when water is present at the time of application and specify where the measurement begins. For an applicator doing an application on the ground, they need to be able to look at the waterbody and understand immediately whether the buffer applies.

It also would be prudent for the Department to analyze the impact in terms of acreage, tailored to the definition of “areas adjacent” to specified waterways if the buffer approach is considered. For instance, extending the buffer for aerial application to 300 feet would significantly impact many alfalfa growers. As an example:

- An acre contains 43,560 square feet
- A square 40 acre field (this is a pretty standard parcel in our land survey system) would be 1320 ft X 1320 ft
- A 300 foot wide buffer along a salmon stream refers to the buffer width along one side of the stream; i.e. the total buffer would be 600 ft if you owned the land on both sides of the stream
- A 600 ft buffer translates to one acre of land for every 73 ft of linear distance... $72.6 \text{ ft} \times 600 \text{ ft} = 43560 \text{ square feet}$ or one acre
- A salmon stream that crosses through a 40 acre field would include a buffer at least 1320 ft long (it could be longer if it wasn't a straight course or ran on a diagonal, but let's keep it simple).
- A buffer 1320 ft long and 600ft wide would take up 18.18 acres of the hypothetical 40 acre field or 45%.

In short, this examples shows that a proposed buffer is more than just the width. It translates into untreated acres of a field/crop that are larger than we often realize, and the buffer acres mount up quickly.

(3) While a longer REI will help reduce exposure risk for some application methods, a longer REI will not add any additional protections for others. For instance, soil applications, seed treatments, and granular applications pose a minimal risk (if at all) to farmworkers or bystanders. An expanded REI (for instance, 8 days as proposed in HB 4109) will pose an issue for transplanting crops that use a granular treatment if it isn't tailored to the use pattern and exposure risk. This could force a change in cropping systems throughout the Willamette Valley. Additionally, a longer REI should accommodate situations like irrigating and irrigation fixes, among other issues. The REI should be tailored to the use pattern to best protect workers/ bystanders (possibly foliar application only) and also ensure that our specialty crop industry has the tools to treat symphs and other soil pests.

(4) Pre-harvest intervals are based on food tolerances. In our conversations with Christmas tree growers, chlorpyrifos is typically applied in the spring and summer months to treat needle midge. While pyrethroids are applied just prior to shipping (the requirement is 3-6 weeks prior for Mexico), chlorpyrifos is applied months in advance when the crop is facing the specific pest pressure. Were a grower to indiscriminately apply chlorpyrifos just prior to shipping without targeting a specific pest, it would likely be an off-label application. We don't think a PHI is necessary when you look at all label changes—expanded REI, licensure, etc. We also are concerned that a new PHI could inadvertently impact other cropping systems.

(5) We generally agree with the designation of chlorpyrifos as a restricted use pesticide (RUP). As for the proposed exception, requiring veterinarians and cattlemen to obtain a pesticide license is a significant burden for the cattle industry. At this time we are still getting feedback on the timeline of 2023, although we've had initial conversations with one manufacturer.

(6) We generally agree that it is good for applicators of chlorpyrifos to go through accessible specialized training. Also, it is important to understand what the training would encompass and where it would take place. We suggest the training follow the model for paraquat in allowing for an online course to be taken every three years. Additionally, depending on how expansive this requirement is, accommodations ought to be made for handlers, who are covered by the Worker Protection Standard.

(7) If all chlorpyrifos products are RUP, then the records retention requirement of three years will apply. This is consistent with existing requirements for restricted use products.

(8) We are still reviewing advisory best management practices with practitioners to determine which are common practice and which ones are required under federal law. However, we are concerned about Oregon adopting baseline advisory BMPs and subsequently facing a label change through EPA. We anticipate draft label changes put forward by EPA by June 2020 and final changes by the end of 2020. If Oregon adopts baseline standards that are either less protective or conflict with new federal requirements, then applicators will be in the awkward position of conflicting with either state or federal law. Also, while it may be an advisory BMP, an advised practice is unlikely to be suited to the diverse geographies and cropping systems across Oregon.

We conducted an initial review of advisory BMPs on the Lorsban advanced label and put forward the below feedback.

Aerial drift reduction advisory:

Controlling droplet size-

- **Volume:** This language is very ambiguous as spray nozzles are categorized as Coarse, Medium, Fine and variations thereof and have the volume median

diameter (VDM) listed for each one. Spray nozzle requirements are already listed on the label.

- **Pressure:** This is already stated on the label.
- **Orientation:** Stated on the label under Aerial Application section gives specific instructions as to how the nozzles should be orientated.
- **Nozzle type:** This is covered by stating minimum VMD as listed in the Aerial application section of the label.

Boom length- Boom length restriction are written under the Aerial Application section on the label. The 75% is the same for Wingspan but is more restrictive to Rotor. Changing the rotor restriction would mean more passes across a field.

Application height- This is already on the label under the Aerial Application section.

Swath adjustment- The label already states use and upwind swath displacement under the Aerial Application section.

Wind- Current label is more restrictive stating a 3-10mph. It does not have the Note section about local terrain, this section could pose a challenge as new applicators will need to have time to learn a new terrain and that is the only way to gain experience.

Temperature and humidity- It is common practice to not spray in high temperatures and low humidity as we need our product to reach the target in order for it to be effective. Nozzle sizing requirements already stated on the label also address this concern.

Temperature inversions- Wind requirements address this concern, and this is common practice as it is the law not to spray during temperature inversions.

Sensitive areas- Already on the label under Spray Drift Management section with the exception of "known habitat for threatened or endangered species." This is a broad term but should be covered by the Environmental Hazards section which prohibits any applications to sensitive species.

Ground boom application advisory BMPs: Nozzles and pressures are listed under similar terms under the Broadcast Soil Application section of the label by stating VMD requirements. The second bullet is the same standard as the aerial application section. While the label only includes the statement in the third bullet for aerial application, it reflects standard practice.

Orchard airblast application: The first bullet would not be a feasible action because in order to cover the top part of the canopy, some product will go slightly above the canopy and is contradicted by guidance on the next page. The second and third bullets are common practice, given that ODA has been instructing applicators in these practices for years.

Drift reduction- A maximum acceptable height would not be feasible in orchards where replanting is occurring and there are multiple crop heights present.

Shutting off spray delivery in gaps- This would require equipment purchases for this to work in young orchards, such as green seeker technology. It is more common though for growers to use hand wands to spray each tree for the first few years of a new planting. We are not sure if the new technology could even shut off one side at a time when only one side has a gap.

Minimizing over spray for smaller vines and trees- Shutting off the top nozzles is already common practice within the industry.

We hope to bring additional information regarding advisory BMPs to the March 30 meeting.

(9) We will come prepared to the March 30 meeting to discuss current application methods and how HB 4109 and the Minority Report applied additional restrictions to the provided list.

(10) This makes practical sense. Oregon's regulatory requirements should be complimentary, and the update is needed to ensure that applicators are aware of the respirator requirements.

(11) We are working with our colleagues in the nursery sector to provide feedback and will try to provide it to ODA in advance of the March 30 timeline.