

**NOTICE OF PROPOSED RULEMAKING FILING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT**

For internal agency use only.

Oregon Department of Agriculture, Pesticides Program		603
Agency and Program Name		Administrative Rules Chapter Number
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FILING CAPTION

Limitations on Pesticide Products Containing Chlorpyrifos

Last Date and Time for Public Comment: [September 1, 2020]

August 19, 2020	2:00 - 4:00 p.m.	Virtual Hearing	Judith Callens
Hearing Date	Time	Address	Hearings Officer
August 27, 2020	8:00 - 10:00 a.m.	Virtual Hearing	Judith Callens
Hearing Date	Time	Address	Hearings Officer

RULEMAKING ACTION

*List each rule number separately (000-000-0000) below.
Attach proposed, tracked changed text for each rule at the end of the filing.*

ADOPT:
OAR-603-057-0545

AMEND:

RULE SUMMARY:
Include a summary for each rule included in this filing.

Adopt OAR-603-057-0545 places limitations on the insecticide chlorpyrifos. It classifies nearly all products that contain chlorpyrifos as restricted-use and requires that only certified and licensed applicators are able to purchase and apply such products. It prohibits and limits certain uses starting in 2020, and requires a minimum restricted entry interval of four days for all agricultural plants covered under the Worker Protection Standard. It increases respirator protection for applicators and requires records of chlorpyrifos applications. Buffers for permanent waterways and sensitive areas, which are considerably larger than those stated on the label, are required. As of December 31, 2023, it is prohibited to use, deliver, distribute, sell, offer or expose for sale pesticide products containing chlorpyrifos, except under very limited conditions. Cattle ear tags are excluded from limitations in this rule.

STATUTORY AUTHORITY:
ORS 561.190 and 634.306

STATUTES IMPLEMENTED:
ORS 634.306 and 634.322

HOW TO COMMENT ON THIS RULEMAKING PROPOSAL:

The Department is asking for public comment on the proposed rules. Anyone can submit comments and questions about this rulemaking. A person may submit comments by attending a virtual public hearing, email, or by regular mail. The public hearing dates and times for the proposed *Limitations on Pesticide Products Containing Chlorpyrifos* rule will be concurrent with the proposed amended *Listing of Restricted Use Pesticides* rule.

Virtual Public Hearing

To participate in the public hearing, a person may attend one of the two virtual public hearings, on either August 19, 2020, 2pm to 4pm, or on August 27, 2020, 8am to 10am. No pre-registration is required for the public hearing. Written comments will also be accepted by email through 5pm on September 1, 2020.

Prior to attending one of virtual public hearings, it is advised to see if there have been any unexpected changes in the meeting links by going to ODA's Pesticide Rulemaking webpage, <https://oda.direct/Rulemaking>

To participate in the public hearing on August 19, 2020 starting at 2pm, please join using the following:

GoToMeeting Link (for visuals):

<https://global.gotomeeting.com/join/799810733>

For audio:

Phone: 1 (844) 766-2282 (toll free)

Participant code: 763251#

Note: there is no computer audio option

To participate in the public hearing on August 27, 2020 starting at 8am, please join using the following:

GoToMeeting Link (for visuals):

<https://global.gotomeeting.com/join/399729285>

For audio:

Phone: 1 (844) 766-2282 (toll free)

Participant code: 763251#

Note: there is no computer audio option

New to GoToMeeting? Get the app now and be ready when your meeting starts:

<https://global.gotomeeting.com/install/799810733>

Email

A person may submit comments by email by sending them to chlorpyrifos-comments@oda.state.or.us Please include “Chlorpyrifos 2020 Rulemaking Comment” in the email subject line.

Mail

To submit a comment by mail, send it to;
Amy Bingham
Chlorpyrifos 2020 Rulemaking Comment
Directors Office
Oregon Department of Agriculture
635 Capitol St NE
Salem, OR 97301-2532

COMMENT DEADLINE:

The Department will only consider comments on the proposed rules that the Department receives August 3 (12:01 a.m.) to September 1, 2020 (5:00 p.m.). All times in this document are Pacific Daylight Time.

NOTE FOR PUBLIC UNIVERSITY STUDENTS:

ORS 192.345(29) allows Oregon public university and OHSU students to protect their university email addresses from disclosure under Oregon’s public records law. If you are an Oregon public university or OHSU student, notify ODA that you wish to keep your email address confidential.

STATEMENT OF NEED AND FISCAL IMPACT

Need for Rule(s):

OAR-603-057-0545

Chlorpyrifos is an organophosphate pesticide used since 1965, primarily to control foliage and soil-dwelling insect pests on a wide variety of ornamental plants, and food and feed crops. In 2017 and 2019, the EPA issued orders denying petitions to ban chlorpyrifos. A number states have restricted or prohibited use, including: California, Hawaii and New York. Legislation has been introduced into the Oregon legislature multiple times by farm worker advocacy and environmental advocacy groups; however, a resolution has not been reached.

To reduce the possibility of potential exposure through residues in food and drinking water, coming into contact with treated plants through occupational exposure, off-target movement from pesticide applications, and volatilization of treated areas post-application, the Oregon Department of Agriculture is proposing numerous mitigation measures, and eventually phasing out all uses of chlorpyrifos with a few limited exceptions. These exceptions include the retention of the registration and use of commercial seed treatments and granular formulations. The department has not proposed a complete ban because these limited uses pose a lower risk to applicators, workers, bystanders and the environment, than other types of uses. In addition, there are currently few insecticides which control soil-dwelling pests as effectively as chlorpyrifos.

Fiscal and Economic Impact:

Chlorpyrifos is relatively inexpensive and is labeled for use on a wide variety of agricultural plants including: Christmas trees, alfalfa, various seed crops, fruit, grain and ornamental plant nurseries. It may also be used on golf courses, for non-structural wood treatments, and for control of mosquitos. According to oral grower statements in Oregon, use has significantly decreased over the years. This statement is supported by

water quality data collected in Oregon, which shows a marked reduction in detections. California, prior to banning its use, documented a steady reduction in use over the years. Use has decreased because of a variety of reasons, including: worker safety and societal concerns, available alternatives, trade barriers, long pre-harvest intervals, personal protective equipment requirements, and pest resistance.

It is anticipated that in most situations, the limitations on the use of chlorpyrifos-containing pesticides in this rule will result in minimal additional cost because such pesticides are no longer widely used and pesticide users have already transitioned to lower toxicity alternatives. However, for any person or business who may want to make an application of chlorpyrifos, it could be approximately 33% more costly to use the alternative pesticide product. This possible increase in cost has been derived from an estimate from the University of California when defining and deriving critical uses in alfalfa (see reference provided in this notice). The cost of alternative active ingredients relative to chlorpyrifos depends on cost per unit of product and the recommended rates per acre. The price of pesticides varies widely, and newly developed pesticide products tend to be more expensive than off-patent older pesticide products. If an agricultural business normally treats 100 acres each year and the cost to use Product A is \$2.00 per acre compared to \$1.50 per acre to apply chlorpyrifos, then it would cost the agricultural business \$50.00 more to use the alternative product (Product A).

The amount of such fiscal impacts will be lower in the initial years of this rule, as the limits on the use of chlorpyrifos-containing pesticides are phased-in, with fewer initial limitations on use before December 31, 2023. In addition, given the exceptions to the rule once fully phased-in, it is anticipated that a small segment of current users of chlorpyrifos-containing pesticides may transition to using granular formulations for soil-borne insect and symphylan control, that will still be authorized. The Department is unable to estimate how many users that may be. The Department is also unable to estimate the future cost of such products, in relation to the cost of current products.

This rule will also limit possible human exposure to chlorpyrifos; and because chlorpyrifos exposure may cause certain health effects, a reduction in exposure could potential reduce associated health care costs. The Department does not have information to estimate or quantify how much reduction in such costs will occur.

Statement of Cost of Compliance:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s).

The Oregon Department of Agriculture estimates that it will eventually see a reduction in \$13,120 in pesticide registration fees that it currently receives for registrations of chlorpyrifos-containing pesticides. However, the Department estimates that it will save approximately \$60,000 to \$75,000 dollars a year in chlorpyrifos pesticide investigations and laboratory analyses expenses.

(2) Effect on Small Businesses:

(a) Estimate the number and type of small businesses subject to the rule(s);

The Department estimates that this rulemaking could affect 21,861 farms, 134 golf courses, and 20 mosquito control districts that may currently use chlorpyrifos-containing pesticides.

(b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s);

Most producers and pesticide users potentially impacted by this rulemaking are already subject to recordkeeping requirements and will not face additional requirements as a result of this rule.

(c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

There are no such additional requirements mandated by this rule.

Describe how small businesses were involved in the development of these rule(s)?

The Department worked extensively with a workgroup that included farmers, industry representatives and associations, and other interested parties for nine months. The Department requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

Documents Relied Upon, and where they are available:

Oregon Revised Statute, Chapter 634

https://www.oregonlegislature.gov/bills_laws/ors/ors634.html

Oregon Administrative Rule, Chapter 603, Division 57

<https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=2734>

Pesticide Complaints: <https://oda.direct/PesticideComplaints>

Documents in EPA Dockets

<https://www.regulations.gov/docket?D=EPA-HQ-OPP-2007-1005>

<https://www.regulations.gov/docket?D=EPA-HQ-OPP-2008-0850>

<https://www.regulations.gov/docket?D=EPA-HQ-OPP-2015-0653>

Pesticide Chemical Search

https://iaspub.epa.gov/apex/pesticides/f?p=CHEMICALSEARCH:3:::NO:21,3,31,7,12,25:P3_XCHEMICAL_ID:1822

APPENDIX 3-1: Environmental transport and Fate Data Analysis for Chlorpyrifos

www3.epa.gov > final > chlorpyrifos > appendix-3-1

TOXICOLOGICAL PROFILE FOR CHLORPYRIFOS

<https://www.atsdr.cdc.gov/ToxProfiles/tp84.pdf>

Oregon Department of Agriculture Chlorpyrifos Workgroup Documents

<https://www.oregon.gov/oda/programs/Pesticides/RegulatoryIssues/Pages/PesticideRulemaking.aspx>

United States Department of Agriculture Recordkeeping Requirements

<https://www.ams.usda.gov/rules-regulations/pesticide-records>

CHLORPYRIFOS USE IN ALFALFA – DEFINING AND REFINING CRITICAL USES P.B. Goodell¹, L.A. Berger¹, R. Long, T. Hays and S. Halsey

https://alfalfa.ucdavis.edu/+symposium/proceedings/2014/14CAS24_Goodell_Chlorpyrifos.pdf

California Shows Decreased Use of Most-Hazardous Pesticides

<https://www.cdpr.ca.gov/docs/pressrls/2019/061119.htm>

Oregon Agriculture, FACTS & FIGURES, 2019

https://www.nass.usda.gov/Statistics_by_State/Oregon/Publications/facts_and_figures/facts_and_figures.pdf

OREGON MOSQUITO CONTROL DISTRICTS BY COUNTY

<https://www.oregon.gov/OHA/PH/DISEASES/CONDITIONS/DISEASESAZ/WESTNILEVIRUS/Documents/vectorcontrol.pdf>

Golf anyone? A look at golf courses and country clubs by state

<https://www.bls.gov/opub/ted/2018/golf-anyone-a-look-at-golf-courses-and-country-clubs-by-state.htm>

Worker Protection Standard For Agricultural Pesticides

<http://pesticideresources.org//index.html>

Was an Administrative Rule Advisory Committee consulted? No

If not, why not?

In developing this rule, the Department worked extensively with stakeholders in an informal Chlorpyrifos Workgroup for nine months, but that group was not designated as a formal rulemaking advisory committee. The workgroup included farmers, farmworker advocacy representatives, environmental health professionals, toxicologists, environmental groups, industry representatives and associations, and other interested parties.

The Department concluded that it received sufficient feedback to inform its work on this proposed rule without convening a formal rulemaking advisory committee. Members of the workgroup included:

Lisa Arkin, Beyond Toxics

Martha Sonato, Pineros y Campesinos Unidos del Noroeste

Karen Lewotsky, Oregon Environmental Council

David Farrer, Oregon Health Authority

Jeff Jenkins, Oregon State University

Fred Berman, Oregon Health and Science University and Oregon State University

Chal Langren, Oregon State University

Pete Brentano, Farmer, Oregon Board of Agriculture member

Scott Dahlman, Oregonians for Food and Shelter

Jenny Dresler, Oregon Farm Bureau, Associated Oregon Hazelnut Industries

Bryan Ostlund, Oregon Seed League, Oregon Clover Seed Commission, Oregon Blueberry Commission,

Oregon Blueberry Commission, Oregon Fine Fescue Commission, Oregon Mint Commission, Oregon

Ryegrass Growers Seed Commission, Oregon Tall Fescue Commission

Dave Phipps, Golf Course Superintendents Association of America

Jeff Stone, Oregon Association of Nurseries

Authorized Signer

Printed name

Date