

August 10, 2020

Dear Stakeholders,

The ISDA process for addressing written comments during informal negotiated rulemaking is to post all written comments received on its website so all stakeholders have access to the comments. Written comments are read and considered in determining changes to the draft rule as negotiated rulemaking proceeds. Written comments are not the only relevant factor in deciding what future steps are needed as part of negotiated rulemaking. Specific to the pesticide and chemigation rulemaking, state and federal legal requirements related to the regulation and enforcement of pesticides are considered along with any other relevant legal issues that need to be considered. Although consensus among stakeholders is the goal, it is not required to proceed to the next step of formal rulemaking. I have copied a portion of the Idaho Rule Writer's Manual below that may shed some light on the process.

Negotiated rulemaking is an informal part of the rulemaking process that precedes all formal rulemaking proceedings. (The publication of a proposed rule is considered the "formal" initiation of a rulemaking.) Negotiated rulemaking is considered an informal part of the process because the agency has some leeway in how it conducts the negotiated meetings. This flexibility is intended to facilitate participation by the greatest number of persons who might be affected by the possible rule changes. Constituencies vary greatly between agencies and a process that works well for one agency may not work at all for another. Another reason for this less structured format is that the result of the "negotiations" may be that the agency does not initiate formal rulemaking procedures and the rulemaking effectively stops before it ever starts. There are no time constraints on the agency to finish negotiations, nor is there a limit on the number of meetings that can be held by the agency when conducting negotiated rulemaking. The agency proceeds as necessary and until such time that it feels it has met its statutory requirements to provide adequate and ample opportunity for participation by affected persons or when it has formulated a proposed rule that is acceptable to most participants.

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