

Summary of the Guidance for Administering OAR 629-605-0150

Summary

At its January 2008 meeting, the Board received public comment related to changes in chemicals listed on notifications of operations for forest chemical applications. The comments and Department responses are summarized in the table 1. The remainder of the document provides more detail on the forest practice rules and guidance involved in this issue.

Table 1. Summary of public comments related to guidance and department responses

Public Comments	Department Response
<p>The Department's web pages seem to indicate that the Department is considering draft guidance or rule language relating to notification requirements:</p> <p>Subscribers receive notification information for forest chemical applications and rely on that information to be aware of chemicals that may be applied. Guidance for OAR 629-605-0150(9) indicates that new notifications are not needed for additions of chemicals to the notification. If chemicals are added without a new notification, the subscription process may not inform a subscriber of all chemicals that may be applied nearby.</p>	<p>The Department is not considering draft rule or guidance language for OAR 629-605-0150(9); although guidance documents are considered open to revision as needed. The Department recognizes that the current guidance web pages may have led to some confusion and will review and revise the pages to add clarity.</p> <p>OAR 629-605-0150(9) does not require a new notification for adding chemicals to the list on the original notification, nor does the guidance for the rule. However, the guidance directs Department staff to provide subscribers with copies of notifications updated to reflect reported changes, including additions to the list of chemicals.</p>

Notification of Operations Required

Operators are required to notify the Department before conducting forest operations, including chemical applications (OAR 629-605-0140 and 0150; ORS 527.670(1), (6), and (7)). The form used for this notification process is called a "Notification of Operations/Application for Permit," often referred to simply as a "notification." The purpose of the notification system is to provide the Department the opportunity to review resource protection requirements with operators and to track operations.

Subscriptions to Receive Notification Information

Any person may purchase a subscription to receive copies of the notification information the Department receives (ORS 527.670(8)). Some subscribers use this service to be aware of operations that may take place near their homes or other specific areas, and others use the information to gain data on forest activity levels or to identify potential log sources.

Statute and Rule Guidance

Since the mid-1980s, the Department has prepared and maintained interpretive guidance as an aid for Department field personnel to administer the forest practice statutes and rules in an effective and consistent manner. The Department intends the guidance for internal use, but it is accessible to the public at the Department's website.

Changes in Notification Information

Since 1974, ORS 527.670 has contained language requiring the person who filed the original notification to notify the State Forester of any subsequent changes to the notification information. The current language of ORS 527.670(7) is as follows:

An operator, timber owner or landowner, whichever filed the original notification, shall notify the State Forester of any subsequent change in the information contained in the notification.

Records show that by 1993, the Board of Forestry had adopted rule language to refine this statutory standard. From 1993 to the present, rule numbering has changed, but the text has been carried forward to the current OAR 629-605-0150(9), which reads as follows:

The operator, landowner or timber owner, whichever filed the original notification, shall contact the State Forester and report any subsequent change to information contained in the notification. Additions to the geographic location, however, shall require a separate notification.

The purpose of this statute and rule is to make the Department aware of changes in planned operations so that the Department can work to ensure compliance with the forest practice rules. Neither the statute nor the rule requires a new notification for a change in chemicals to be used. The Department's thought process in the guidance reflects the rule intent that a simple report of a change in notification information is sufficient unless there is a compelling reason to require a new notification of operations. The guidance directs that a new notification is required under any of the follow circumstances:

1. There is a change in geographic location. This standard is listed in the rule.
2. There is a change in the general operation type (e.g., a change from harvesting to road construction). In this situation, the Department considers that the new activity is really a completely different operation, rather than an alteration to the original operation.

3. There is a change between ground-based and aerial chemical application methods. A new notification is needed because protection standards vary with application type, as does the requirement for operators to notify public water system managers (OAR 629-620-0700).

As noted by public testimony, the guidance does not require a new notification for additions of chemicals to the list originally submitted in the notification of operations. The logic for this determination is that there is not a compelling reason to require a new notification; a simple report to the Department is sufficient for the purpose of administering the forest practice rules. It may be advisable to review this position when there is change to a different type of chemical, e.g., from an herbicide to a fungicide, since water protection requirements vary with that type of change. However, for most locations, the changes would involve the addition of a specific herbicide to the notified list of herbicides. This would not entail any change in resource protection requirements, so a simple report would be sufficient.

Updated Notifications go to Subscribers

It is important to note that the guidance directs the Department to send updated copies of notifications to subscribers when applicants report changes to notification information.

References

Guidance for OAR 629-605-0150(9):

http://www.oregon.gov/ODF/PRIVATE_FORESTS/docs/fp/guidance/OARDiv605.pdf,
pages 38 through 41