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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

DOA 5-2022

CHAPTER 603

DEPARTMENT OF AGRICULTURE

FILED

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ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Criteria for grasshopper and cricket suppression cost share reimbursement program.

EFFECTIVE DATE: 04/14/2022 THROUGH 10/10/2022

AGENCY APPROVED DATE: 04/14/2022

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NEED FOR THE RULE(S):

In the summer of 2021, Oregon suffered its worst outbreaks of grasshoppers and crickets in fifty years. A record 10 million acres of rangeland in 18 counties suffered damaging levels of infestation. At infested sites, grasshoppers reached an average density of 65 insects per square yard (eight (8) or more grasshoppers per yard can cause significant damage to rangeland).

Grasshopper outbreaks often follow or coincide with drought years. Low rainfall and warm spring weather support egg hatches and survival of small grasshopper nymphs. As a result, grasshoppers develop rapidly. These conditions also reduce the impact of predators and diseases that limit grasshopper numbers. According to the National Weather Service, the water supply forecast shows that the majority of grasshopper and cricket egg beds are in severe, extreme, or exceptional drought areas.

Grasshopper outbreaks mean less forage and vegetation cover essential for livestock and wildlife. Less vegetation leads to environmental damage and erosion. Starving grasshoppers may also invade agricultural areas where they eat crops. Senate Bill 5561 passed in response to the forage loss on Oregon rangelands from outbreak grasshopper populations in 2020 and 2021. The bill provides one-time funding of \$5,000,000 to help combat the severe grasshopper season expected in 2022. The core of the Department's grasshopper and cricket suppression plan is to promote suppression efforts through a cost share program. These rules establish the criteria for that program and provide the landowners and land managers the information necessary to determine if they are willing to participate in the program.

This cost share program will provide significant benefit to rural communities around Oregon. While the funds will reimburse landowners, the primary beneficiaries will be the small businesses and their employees hired by the landowner to provide the pesticide application services. The cost share program is also available to counties that provide grasshopper and cricket suppression support to county landowners. Reimbursements under this program will allow those counties to use the funding for other county needs.

The reimbursement rate will be based upon the number of acres treated and the amount of available funds. All landowners and land managers will receive the same reimbursement rate regardless of racial status.

JUSTIFICATION OF TEMPORARY FILING:

Grasshoppers and crickets are native to Oregon, so the goal is not to eradicate the population, but to suppress their

numbers to minimize significant damage to rangelands and crops. The preferred method of suppression is an application of a growth inhibiting insecticide. The insecticide does not kill the nymphs but prevents them from maturing into adults. The major advantage of using this insecticide is that it is largely non-toxic to mammals, birds, and terrestrial vertebrates. Grasshoppers begin to hatch in early April, depending on region and temperatures, and remain in the nymph stage for 60-90 days. An application is ineffective once the grasshopper or cricket reaches their adult stage. The effectiveness of the suppression efforts is extremely time sensitive due to the life cycles of the grasshoppers and crickets. Failure to implement the rules within the required timeframe will result in the Department's efforts being ineffective and in continued damage to rangeland and crops.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

- 2021 Second Special Session Senate Bill 5561 (available from the Oregon State Legislature website)
 - ODA Grasshopper and Mormon Cricket webpage -
<https://www.oregon.gov/ODA/programs/IPPM/SurveyTreatment/Pages/GrasshoppersCrickets.aspx>
 - National Weather Service Oregon Water Supply Summary as of March 8th, 2022 -
<https://www.weather.gov/media/pqr/WaterSupplyOutlook.pdf>
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RULES:

603-007-0010, 603-007-0020, 603-007-0030, 603-007-0040, 603-007-0050

ADOPT: 603-007-0010

RULE TITLE: Definitions

RULE SUMMARY: Sets the definitions for the grasshopper and cricket suppression cost share reimbursement program.

RULE TEXT:

The following definitions apply to OAR 603-007-0010 through OAR 603-007-0050, unless the context requires otherwise:

- (1) "Cost" means the expenses incurred by a person or group of persons pursuant to a Treatment Plan for the purchase and application of pesticides to treat grasshoppers or crickets. It does not include reimbursement of a person's time and labor if they applied the pesticide themselves.
- (2) "Department" means the Oregon Department of Agriculture.
- (3) "Director" means the director of the Oregon Department of Agriculture.
- (4) "Economically justifying infestation" means a finding by the Department that a particular geographic area has a population density of eight (8) or more grasshoppers or crickets per square yard.
- (5) "Group of persons" means an organization that applies pesticides on behalf of multiple persons. "Group of persons" includes, but is not limited to, farm cooperatives, county governments, and other formal or informal organizations.
- (6) "Person" means a person as defined in ORS 174.100 with an ownership or leasehold interest in a property identified as a suppression site.
- (7) "Suppression site" means a geographic area that the Department has identified as having an economically justifying infestation.
- (8) "Treatment Plan" means a document issued by the Department that identifies a suppression site, time window, and pesticide for grasshopper or cricket suppression that is eligible for reimbursement under this program.
- (9) "Use," as in "to use a pesticide" means any of the following:
 - (a) Pre-application activities involving mixing and loading the pesticide.
 - (b) Applying the pesticide, including, but not limited to, supervising the use of a pesticide by a noncertified applicator.
 - (c) Other pesticide-related activities, including, but not limited to, transporting or storing pesticide containers that have been opened, cleaning equipment, and disposing of excess pesticides, spray mix, equipment wash waters, pesticide containers, and other pesticide-containing materials.

STATUTORY/OTHER AUTHORITY: ORS 561.190

STATUTES/OTHER IMPLEMENTED: ORS 561.240, ORS 570.305, ORS 570.310, SB 5561 (2021 2nd Special Session)

ADOPT: 603-007-0020

RULE TITLE: Purpose

RULE SUMMARY: Establishes the purpose - criteria and procedures for administering the Oregon grasshopper and cricket suppression cost share reimbursement program.

RULE TEXT:

OAR 603-007-0010 through OAR 603-007-0050 provide criteria and procedures for administering the Oregon grasshopper and cricket suppression cost share reimbursement program.

STATUTORY/OTHER AUTHORITY: ORS 561.190

STATUTES/OTHER IMPLEMENTED: ORS 561.240, ORS 570.305, ORS 570.310, SB 5561 (2021 2nd Special Session)

ADOPT: 603-007-0030

RULE TITLE: Eligibility

RULE SUMMARY: Describes requirements to be eligible for the Oregon grasshopper and cricket suppression cost share reimbursement program.

RULE TEXT:

To be eligible for the Oregon grasshopper and cricket suppression cost share reimbursement program:

- (1) A person must contact the Department to request that the Department conduct a survey to assess the existence of an economically justifying infestation on a property;
- (2) The Department will conduct a survey to assess the existence of an economically justifying infestation. If an economically justifying infestation exists, the Department shall provide the person with a Treatment Plan.
- (3) Only treatments conducted in accordance with a Treatment Plan and all applicable state and federal laws are eligible for cost reimbursement.
- (4) On or before August 1, 2022, a person or group of persons must submit an application for cost reimbursement on a form provided by the Department with documentation showing the cost of implementing the Treatment Plan at the suppression site(s) along with all pesticide application records. If a group of persons submits a combined application for cost reimbursement, the combined application must specifically identify each suppression site included as part of the group application.
- (5) To be eligible for cost reimbursement, a Treatment Plan must have been implemented in compliance with all state and federal laws and regulations pertaining to pesticide use, recordkeeping and pesticide licensing.

STATUTORY/OTHER AUTHORITY: ORS 561.190

STATUTES/OTHER IMPLEMENTED: ORS 561.240, ORS 570.305, ORS 570.310, SB 5561 (2021 2nd Special Session)

ADOPT: 603-007-0040

RULE TITLE: Review of Applications and Reimbursement Rate

RULE SUMMARY: Describes how applications will be reviewed and the reimbursement rate.

RULE TEXT:

(1) Once the application deadline of August 1, 2022, has passed, the Department shall calculate, based on the applications received, the total number of acres eligible for cost reimbursement. By dividing the available funds by the total number of acres eligible for cost reimbursement, the Department shall determine a per acre reimbursement rate. Each qualifying applicant will be reimbursed based upon the number of acres treated. In no event shall the reimbursement to any person or group of persons exceed 75% of the actual cost of implementing the Treatment Plan.

(2) If a person or group of persons participates in a federal grasshopper and cricket suppression program, their reimbursement under the Oregon grasshopper and cricket suppression cost share reimbursement program shall not exceed 75% of the costs not covered by the federal program.

STATUTORY/OTHER AUTHORITY: ORS 561.190

STATUTES/OTHER IMPLEMENTED: ORS 561.240, ORS 570.305, ORS 570.310, SB 5561 (2021 2nd Special Session)

ADOPT: 603-007-0050

RULE TITLE: Denials

RULE SUMMARY: Describes procedure that will be followed if an application for reimbursement is denied.

RULE TEXT:

(1) Denial of request. If an application, or part of an application, is denied, the Department will provide a letter to the applicant explaining the reason for denial.

(2) The Director's determination as to each application is a contested case subject to the provisions of ORS chapter 183. A hearing request shall be made in writing to the Director. To be considered timely, a request for a hearing must:

(a) Be in writing;

(b) Be received by the Director within twenty (20) business days from the date the Department mailed the notice.

STATUTORY/OTHER AUTHORITY: ORS 561.190

STATUTES/OTHER IMPLEMENTED: ORS 561.240, ORS 570.305, ORS 570.310, SB 5561 (2021 2nd Special Session)