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ARCHIVES DIVISION
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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 603
DEPARTMENT OF AGRICULTURE

FILED
11/21/2018 12:05 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Creates a new license category to apply pesticides on the campus of a school

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 01/11/2019 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Filed By:
Sean Fornelli
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HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 12/17/2018

TIME: 10:00 AM

OFFICER: Judith Callens

ADDRESS: Oregon Department of
Agriculture
635 Capitol St NE
Conference Room D
Salem, OR 97301

NEED FOR THE RULE(S):

The Oregon Department of Agriculture (Department), in consultation with stakeholders and school Integrated Pest Management (IPM) coordinators, has identified a need for pesticide applicator training that is better calibrated to the laws and pesticide uses that are relevant to schools. Currently, individuals must demonstrate their knowledge on relevant topics through examination(s) administered by the Department to earn a license category. However, no license categories are currently available that are tailored specifically to schools. To enhance compliance with the school IPM law and be more protective of children, the Department is adopting an optional school IPM license category that is earned only after an individual demonstrates their knowledge of the school IPM law; IPM strategies, including non-chemical pest management techniques; the increased risks posed by pesticides to children when compared to adults; and other topics.

Currently, pesticide applicators who are licensed by the Department to apply pesticides on school campuses often need several license categories to do their job. For example, a school staff member who occasionally applies ant bait stations indoors, does spot spraying of herbicides in turf areas and parking lots, and applies moss treatments on sidewalks would need four separate license categories. With certain limitations, the school IPM license category could be used instead of these other license categories, resulting in a more streamlined regulatory process and an estimated cost savings on

average.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Oregon Administrative Rule Chapter 603, Division 57

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

Pesticide Forms (includes license and license category fee information)

<https://www.oregon.gov/ODA/programs/Pesticides/Licensing/Pages/PesticideForms.aspx>

Taking Your Pesticide Exams (includes exam fee information)

<https://www.oregon.gov/ODA/programs/Pesticides/Licensing/Pages/TakingPesticideExams.aspx>

FISCAL AND ECONOMIC IMPACT:

It is anticipated that in most situations, a net savings will occur because:

1. School employees who earn new licenses will generally be able to work under a single license category (school IPM), rather than two or more license categories. Each license category is earned by passing an exam which costs \$58, and by paying an annual application fee of \$7.50 per category. The total savings is estimated to range from \$0 (1 category, 1 exam) to \$305 (3 categories, 5 exams) per individual in the first year of licensure, and \$0 (1 category) to \$15 (3 categories) per individual per year thereafter.
 2. The school IPM license category is optional. Therefore, any current license holder who currently has license categories that allow them to make applications on school campuses will not be required to obtain the school IPM license category or take the associated exam. The estimated cost for these license holders is \$0.
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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). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

The enactment of this rule will not impose significant additional costs on state or local government or the public. This license category will likely not have an impact on the number of license applications received by the Department, and may potentially result in a net decrease, since many new license holders can rely on a single license category and will generally not need to add license categories over time. Fewer license applications necessarily means lower costs for the Department to process applications.

To obtain this license category, an individual must pass an exam that will cover the allowances and limitations of this license category. Further, the Department already routinely does outreach on new and emerging topics, such as the creation of new license categories. Therefore, no significant costs are anticipated for education and outreach related to the implementation of this license category.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: This rule creates an optional license category. Therefore, no requirements are imposed on any person. However, 5,524 currently licensed Public and Commercial Pesticide Applicators and 894 Commercial Pesticide Operators could utilize this license category.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services: There are no additional requirements mandated by this rule.

c. Equipment, supplies, labor, and increased administration required for compliance. There are no additional requirements mandated by this rule.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The Department consulted with school representatives and other groups for over 2 years, including officials representing public and private schools, the Oregon School Employees Association, Oregon State University, licensed pest control operators, and the advocacy groups Beyond Toxics and Oregonians for Food and Shelter.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The Department worked with stakeholders for over 2 years, and received input from school IPM coordinators from across the state on the school IPM category. It was a consensus recommendation from both groups that the Department enact a license category for licensed public and commercial pesticide applicators who apply pesticides on the campus of a school, with certain limitations.

AMEND: 603-057-0110

RULE SUMMARY: Creates a license category for licensed public and commercial pesticide applicators who apply pesticides on the campus of a school, with certain limitations.

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.

CHANGES TO RULE:

603-057-0110

Pesticide Operator, Applicator, and Trainee Categories ¶¶

In accordance with subsection (2) of ORS 634.306, the following categories of pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees are established with licenses (or certificates) to be issued for such categories, or any specific subcategories established by OAR 603-057-0115:¶¶

(1) Agricultural Pest Control: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides in the production of agricultural crops and livestock (including Christmas tree plantations and commercial nurseries), or on agricultural lands, grasslands, or non-crop agricultural lands.¶¶

(2) Aquatic Pest Control: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides in treating standing or running water.¶¶

(3) Demonstration and Research: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators and public trainees who use or supervise the use of pesticides, or of any substance or mixture of substances that is being evaluated for use as a pesticide, for experiments or research such as for gathering data to satisfy registration requirements of the United States Environmental Protection Agency or of the department. The exemption provided manufacturers under subsection (1) of ORS 634.106 only applies to laboratory research. The uses included in this category must be:¶

- (a) Authorized by an experimental use permit issued by the United States Environmental Protection Agency;¶
- (b) Authorized by an experimental use permit issued by the department as provided in OAR 603-057-0160; or¶
- (c) By a federal or state agency that is exempt from obtaining an experimental use permit as provided in OAR 603-057-0160(2)(b).¶

(4) Forest Pest Control: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides in the production of forest crops, or on forestry lands (not including Christmas tree plantations or commercial nurseries).¶

(5) Industrial, Institutional, Health, and Structural Pest Control: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides in, on, or around food handling establishments, human dwellings, institutions (i.e., schools, hospitals, etc.), industrial establishments (including warehouses and grain elevators), and any other structures or areas utilized for the storing, processing, or manufacturing of products.¶

(6) Marine Fouling Organism Control: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of marine antifouling paint or coating on boat or ship hulls or other parts of boats or ships.¶

(7) Ornamental and Turf Pest Control: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides in the establishment and maintenance of ornamental plantings and turf (not including Christmas tree plantations, commercial nurseries or forest crops). The exemption provided persons under subsection (5) of ORS 634.106 only applies to persons principally engaged in home lawn and garden care.¶

(8) Public Health Pest Control: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides for the control of any pest which may be deleterious to the public health, including mosquito and other vector control.¶

(9) Regulatory Pest Control: This shall include public applicators and public trainees who use or supervise the use of pesticides upon regulated pests not otherwise specified in this section.¶

(10) Right-of-Way Pest Control: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides in right-of-way areas.¶

(11) Seed Treatment: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides on seed, as it is defined in subsection (1) of ORS 633.511. Treatment of a person's own seed on his own premises is exempt under subsections (9) and (13) of ORS 634.006.¶

(12) School Integrated Pest Management: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides on the campus of a school, as defined in ORS 634.700 and OAR 603-057-0500. School Integrated Pest Management does not include any of the following:¶

(a) The use of any pesticide in areas where the integrated pest management plan adopted by the school under 634.705 does not apply;¶

(b) The use of any pesticide for the purpose of controlling wood-destroying pests, such as, but not limited to, termites, carpenter ants, and powder post beetles;¶

(c) The use of any pesticide for the purpose of controlling the following public health pests: bed bugs, lice, fleas, ticks, and adult mosquitoes;

(d) The use of any pesticide by using power-driven pesticide application equipment or power-driven devices;¶

(e) The use of any highly toxic or restricted-use pesticide, as defined in ORS 634.006(5) and (22), respectively;¶

(f) The use of any pesticide that is not registered with the State Department of Agriculture, as described in ORS 634.016; or

(g) The use of any pesticide formulated or packaged as a total release fogger, which is a pressurized container designed to automatically release the total contents in one operation for the purpose of creating a permeating fog within a confined space to deliver the pesticide throughout a space. Pesticide types listed in ORS 634.705(4) are excluded from this provision.

Statutory/Other Authority: ORS 634.306, 561, 634

Statutes/Other Implemented: 634, ORS ~~634.306~~