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ARCHIVES DIVISION
MARY BETH HERKERT
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

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: Aligns definition of school in OAR 603-057-0500(14) with statute (ORS 634.700)

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.

CONTACT: Sean Fornelli
503-986-4758
sfornelli@oda.state.or.us

635 Capitol St NE
300
Salem, OR 97301

Filed By:
Sean Fornelli
Rules Coordinator

HEARING(S)

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

DATE: 12/17/2018

TIME: 1:00 PM

OFFICER: Judith Callens

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

NEED FOR THE RULE(S):

Currently the definition of school in OAR 603-057-0500(14) is not identical to the statutory definition of school in ORS 634.700. The Oregon Department of Agriculture is adopting a rule that would align OAR 603-057-0500(14) to match the statutory definition.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Oregon Revised Statutes 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>

Oregon Department of Education Institution Lookup
<https://www.ode.state.or.us/instID/Default/Index>

FISCAL AND ECONOMIC IMPACT:

No financial or economic impact is anticipated because this rulemaking is simply amending the definition in the rule to match the existing statutory definition, which has been in place for several years.

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 additional costs on state or local government or the public.

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: Private educational institutions offering education in all or part of kindergarten through grade 12 are subject to this rule. According to the Oregon Department of Education (ODE), no comprehensive database is available for private educational institutions. However, according to the ODE's Institution Lookup Database (<https://www.ode.state.or.us/instID/Default/Index>), there are 444 schools that have been flagged as "Private", "Oregon non-public school", or "Charter" educational institutions. Data is not available on the number of employees each of these educational institutions have. Therefore, it is unclear how many of these qualify as small businesses.

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):

Private schools as small businesses were part of the stakeholder group.

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

The effect of this rule is to align OAR 603-057-0500(14) to match the existing statutory definition.

AMEND: 603-057-0500

RULE SUMMARY: Aligns definition of school in OAR 603-057-0500(14) with statute (ORS 634.700).

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:

603-057-0500

Definitions ¶

In addition to the definitions set forth in ORS 634.006 and OAR 603-057-0001, the following shall apply:¶

- (1) "Director" means the Director of the Department of Agriculture or the Director's authorized deputies or officers.¶
- (2) "Enforcement" means any documented action taken by the Department to address a violation.¶
- (3) "Flagrant" means any violation where the Department has documented evidence that the respondent had actual knowledge of the law and knowingly committed the violation.¶
- (4) "Gravity of Effect" is the ranking of a violation with respect to its effect, or potential effect, on the public interests reflected in ORS 634. A violation is ranked as high, medium, or low.¶
- (5) "Gross negligence" means an act or omission that does not reflect an exercise of reasonable care under the circumstances and that is characterized by conscious indifference to or reckless disregard of any purpose of the State Pesticide Control Act.¶
- (6) "Injury" includes, but is not limited to, adulteration.¶
- (7) "Intentionally" means the person acts, or fails to act, with a deliberate or an express purpose. For instance, a person acts intentionally when the person either consciously chooses not to determine whether a pesticide label authorizes use of a pesticide on a particular crop, or when the person knows that a pesticide label does not authorize use of the pesticide on a particular crop but still chooses to apply the pesticide to the crop.¶
- (8) "Knowingly" means the person acts, or fails to act, with a practical understanding of, or a distinct skill in, the general activity that was obtained through such means as instruction, study, practice, or experience.¶
- (9) "Magnitude of Violation" is the categorization of a violation in relation to other types of violations after considering its potential to affect the public interests reflected in ORS 634. A violation is categorized as major, moderate, or minor.¶
- (10) "Person" includes individuals, corporations, associations, firms, joint stock companies, public and municipal corporations, political subdivisions of the state and any agencies thereof, and the Federal Government and any agency thereof.¶
- (11) "Violation" is an act or omission that does not comply with a provision of ORS 634 that relates to pesticide application, sale, or labeling.¶
- (12) "Willfully" means the person acted, or failed to act, after calculating and considering the potential effects and consequences.¶
- (13) "Willful misconduct" means an act or omission that is characterized by or resulting from calculation and consideration of effects and consequences, and with awareness that the act or omission will be incompatible with any purpose of the State Pesticide Control Act.¶
- (14) "School" means¶
 - (a) ~~A facility operating an Oregon prekindergarten or a federal Head Start program;~~¶
 - (b) ~~A public or private educational institution offering education in all or part of kindergarten through grade 12;~~¶
 - (c) ~~The Oregon School for the Deaf; and~~¶
 - (d) ~~A regional academy operated by the Oregon Youth Authority.~~has the meaning defined in ORS 634.700Statutory/Other Authority: ORS 561, 634, 183.335(5)
Statutes/Other Implemented: ORS 183.745, 634.006, 634.306, 634.322, 634.372, 634.900 - 634.915