

**NOTICE OF PROPOSED RULEMAKING FILING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT**

For internal agency use only.

Oregon Department of Agriculture, Pesticides Program		603
Agency and Program Name		Administrative Rules Chapter Number
Amy Bingham	abingham@oda.state.or.us	(503) 986-4583
Rules Coordinator	Email	Telephone
Amy Bingham	abingham@oda.state.or.us	(503) 986-4583
Filing Contact	Address	Telephone

FILING CAPTION

Listing of Restricted Use Pesticides

Last Date and Time for Public Comment: [October 1, 2020]

RULEMAKING ACTION

List each rule number separately (000-000-0000) below.

Attach proposed, tracked changed text for each rule at the end of the filing.

AMEND:

OAD 603-057-0205

RULE SUMMARY:

Include a summary for each rule included in this filing.

Amending OAD 603-057-0205 aligns it with ORS 634.306(4) and 634.316 regarding the agency's authority to classify a pesticide or device as restricted use.

STATUTORY AUTHORITY:

ORS 561.190 and 634.306

STATUTES IMPLEMENTED:

ORS 634.006(22), 634.306(4), and 634.316

HOW TO COMMENT ON THIS RULEMAKING PROPOSAL:

The Department is asking for public comment on the proposed rules. Anyone can submit comments and questions about this rulemaking. A person may submit comments by email, or by regular mail.

Email

A person may submit comments by email by sending them to chlorpyrifos-comments@oda.state.or.us. The email address for the formerly concurrent chlorpyrifos rulemaking will be shared with the rulemaking for Listing of Restricted Use Pesticides. Please include "RUP 2020 Rulemaking Comment" in the email subject line.

To submit a comment by mail, send it to;
Amy Bingham
RUP 2020 Rulemaking Comment
Directors Office
Oregon Department of Agriculture
635 Capitol St NE
Salem, OR 97301-2532

COMMENT DEADLINE:

The Department will only consider comments on the proposed rules that the Department receives September 1 (12:01 a.m.) to October 1, 2020 (5:00 p.m.). All times in this document are Pacific Daylight Time.

NOTE FOR PUBLIC UNIVERSITY STUDENTS:

ORS 192.345(29) allows Oregon public university and OHSU students to protect their university email addresses from disclosure under Oregon's public records law. If you are an Oregon public university or OHSU student, notify ODA that you wish to keep your email address confidential.

STATEMENT OF NEED AND FISCAL IMPACT

Need for Rule(s):

OAR 603-057-0205

There is a need to have alignment between statute and rule in order to fully implement the pesticide law. ORS 634.306(4) authorizes the Department to adopt rules designating pesticides as restricted-use pesticides (RUP) and provides criteria to consider in making such a decision. ORS 634.316 authorizes the Department to establish, maintain and amend lists of restricted-use pesticides and devices. However, the current OAR 603-057-0205 provides that restricted-use pesticides are only those so designated by the United States Environmental Protection Agency or that were labeled as such, limiting the Department's authority to designate additional products as state restricted-use pesticides. This rulemaking will clarify that the Department may determine that pesticides should be designated as restricted-use pesticides under state law.

This Notice of Proposed Rulemaking supersedes the Notice of Proposed Rulemaking regarding OAR 603-057-0205 that was filed on July 28, 2020. The revised proposed rule amendment clarifies the original intent of the July 28, 2020, proposed rulemaking by including language and criteria found in 634.306(4).

Fiscal and Economic Impact:

Approval of this rulemaking amendment to OAR 603-057-0205 will not have any immediate fiscal impact, but could result in future actions that would have a fiscal impact. This proposed amendment simply clarifies the Department's authority to designate restricted-use pesticides. That clarification does not directly impact any person or business. If the Department were to exercise such authority in the future, that separate action may have fiscal impacts.

As to those potential future impacts, the only immediate result of a pesticide being designated as a restricted-use pesticide is that only certified and licensed pesticide applicators may purchase such pesticides. It is anticipated that in most situations, minimal additional cost will be incurred because pesticide applicators as defined in ORS 634.006(9) are already required to be licensed, and there are over 4,000 licensed Private Pesticide Applicators, as defined in ORS 634.006(15). However in some cases, an agricultural producer may have to become licensed as a private pesticide applicator to purchase a product previously classified as

general use. A private applicator means an individual who uses or supervises the use of any pesticide, classified by the department as a restricted-use or highly toxic pesticide, for the purpose of producing agricultural commodities or forest crops on land owned or leased by the individual or the employer of the individual. Those requirements could impose some costs on users of such pesticides, but the Department does not collect or have access to information about how much licensed pesticide applicators may charge, as compared with other pesticide applicators. The Department is therefore unable to quantify the magnitude of the fiscal impacts that could result from adoption of this rule amendment.

Statement of 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).

As stated above, none of these entities will be immediately economically affected by the adoption of this rule, because it only clarifies the Department's authority and does not impose any direct requirements on any other entity. Such entities may be affected in the future, if the Department exercises its authority to list a new pesticide as a restricted-use pesticide. In such a case, an unlicensed agricultural producer may be potentially impacted if they intend to use a pesticide formerly classified as general use, and it becomes classified as restricted use pesticide. They would either have to hire a commercial pesticide applicator to make the application, select an alternative product, or become licensed as a private pesticide applicator. If they choose to become licensed it would cost \$58.00 for the examination. It would also cost \$25.00 for a five-year year private pesticide applicator's license, this fee is payable to the Oregon Department of Agriculture, ORS 634.142.

(2) Effect on Small Businesses:

(a) Estimate the number and type of small businesses subject to the rule(s);

17,832 farms could potentially be impacted in the future, as described above.

(b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s);

Most producers and pesticide users who could be potentially impacted by this rulemaking in the future are already subject to recordkeeping requirements because of state or federal laws, and therefore will not face additional requirements as a result of this amended rule, ORS 634.146, 40 CFR 170, 40 CFR 171, and 7 CFR 110. However, for the small portion of agricultural producers that are not currently subject to any recordingkeeping requirements under the US Environmental Protection Agency's Worker Protection Standard (40 CFR 170) or the Certification and Training rule (40 CFR 171), they will be required to keep records under the United States Department of Agriculture recordkeeping requirements (7 CFR 110), and possibly any rule that the Oregon Department of Agriculture adopts regulating the use of a restricted use

(c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

There are no additional requirements mandated by this rule. As stated above, the rule could impose the additional costs to hire a licensed pesticide applicator for the application of new, restricted-use pesticides designated by the Department under the authority of this rulemaking. But for the reasons explained above, the Department is unable to quantify the magnitude of the fiscal impacts that could result from adoption of this rule amendment.

Describe how small businesses were involved in the development of these rule(s)?

The Department held meetings with a workgroup in which the primary discussion was about the insecticide chlorpyrifos, and the workgroup agreed on the need to categorize all chlorpyrifos containing products, except for cattle ear-tags, as restricted-use pesticides. There was some limited discussion about the need to align the existing Listing of Restricted Use Pesticides rule with statute. Because the process of alignment was not fully discussed, the Department is holding another workgroup meeting on August 31, prior to the publication of

this proposed amended rule in the September 1, 2020 Oregon Bulletin. 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.

Documents Relied Upon, and where they are available:

7 CFR Part 110 - RECORDKEEPING ON RESTRICTED USE PESTICIDES BY CERTIFIED APPLICATORS; SURVEYS AND REPORTS

<https://www.govinfo.gov/content/pkg/CFR-2020-title7-vol3/pdf/CFR-2020-title7-vol3-part110.pdf>

40 CFR Part 170 - WORKER PROTECTION STANDARD

<https://www.govinfo.gov/content/pkg/CFR-2019-title40-vol26/pdf/CFR-2019-title40-vol26-part170.pdf>

40 CFR Part 171 - CERTIFICATION OF PESTICIDE APPLICATORS

<https://www.govinfo.gov/content/pkg/CFR-2019-title40-vol26/pdf/CFR-2019-title40-vol26-part171.pdf>

Restricted-use pesticide, and records required of operators

https://www.oregonlegislature.gov/bills_laws/ors/ors634.html

Was an Administrative Rule Advisory Committee consulted? No

If not, why not?

In developing this rule, the Department worked extensively with stakeholders in an informal Chlorpyrifos Workgroup for nine months, but that group was not designated as a formal rulemaking advisory committee. The workgroup included farmers, farmworker advocacy representatives, environmental health professionals, toxicologists, environmental groups, industry representatives and associations, and other interested parties. ODA will meet with this same group on August 31, 2020 to discuss additional revisions to the amended proposed rule.

The Department concluded that it received sufficient feedback to inform its work on this proposed rule without convening a formal rulemaking advisory committee. Members of the workgroup included:

Lisa Arkin, Beyond Toxics

Martha Sonato, Pineros y Campesinos Unidos del Noroeste

Karen Lewotsky, Oregon Environmental Council

David Farrer, Oregon Health Authority

Jeff Jenkins, Oregon State University

Fred Berman, Oregon Health and Science University and Oregon State University

Chal Landgren, Oregon State University

Pete Brentano, Farmer, Oregon Board of Agriculture member

Scott Dahlman, Oregonians for Food and Shelter

Jenny Dresler, Oregon Farm Bureau, Associated Oregon Hazelnut Industries

Bryan Ostlund, Oregon Seed League, Oregon Clover Seed Commission, Oregon Blueberry Commission,

Oregon Blueberry Commission, Oregon Fine Fescue Commission, Oregon Mint Commission, Oregon

Ryegrass Growers Seed Commission, Oregon Tall Fescue Commission

Dave Phipps, Golf Course Superintendents Association of America

Jeff Stone, Oregon Association of Nurseries

Authorized Signer

Printed name

Date