

**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
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FILING CAPTION

Listing of Restricted Use Pesticides

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

August 19, 2020	2:00 - 4:00 p.m.	Virtual Hearing	Judith Callens
Hearing Date	Time	Address	Hearings Officer
August 27, 2020	8:00 - 10:00 a.m.	Virtual Hearing	Judith Callens
Hearing Date	Time	Address	Hearings Officer

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:

ORAR 603-057-0205

RULE SUMMARY:

Include a summary for each rule included in this filing.

Amending ORAR 603-057-0205 will provide consistency with ORS 634.306(4) and 634.316 regarding the agency's authority to classify a pesticide or device as restricted use in which the department has found and determined to be so injurious or detrimental that additional restrictions are required.

STATUTORY AUTHORITY:

ORS 561.190 and 634.306

STATUTES IMPLEMENTED:

ORS 634.306 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 attending a virtual public hearing, email, or by regular mail. The public hearing dates and times for the proposed amended Listing of Restricted

Use Pesticides rule will be concurrent with the proposed Limitations on Pesticide Products Containing Chlorpyrifos rule.

Virtual Public Hearing

To participate in the public hearing, person may attend one of the two virtual public hearings, on either August 19, 2020, 2pm to 4pm, or on August 27, 2020, 8am to 10am. No pre-registration is required for the public hearing. Written comments will also be accepted by email through 5pm on September 1, 2020.

Prior to attending one of virtual public hearings, it is advised to see if there have been any unexpected changes in the meeting links by going to ODA's Pesticide Rulemaking webpage, <https://oda.direct/Rulemaking>

To participate in the public hearing on August 19, 2020 starting at 2pm, please join using the following:

GoToMeeting Link (for visuals):

<https://global.gotomeeting.com/join/799810733>

For audio:

Phone: 1 (844) 766-2282 (toll free)

Participant code: 763251#

Note: there is no computer audio option

To participate in the public hearing on August 27, 2020 starting at 8am, please join using the following:

GoToMeeting Link (for visuals):

<https://global.gotomeeting.com/join/399729285>

For audio:

Phone: 1 (844) 766-2282 (toll free)

Participant code: 763251#

Note: there is no computer audio option

New to GoToMeeting? Get the app now and be ready when your meeting starts:

<https://global.gotomeeting.com/install/799810733>

Email

A person may submit comments by email by sending them to chlorpyrifos-comments@oda.state.or.us.

The email address for the 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 August 3 (12:01 a.m.) to September 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 consistency between statute and rule in order to fully implement statute. Specifically, ORS 634.306(4) authorizes the Department to designate pesticides as restricted-use pesticides (RUP), and ORS 634.316 authorizes the Department to adopt additional limitations on the use of restricted-use pesticides, but the current OAR 603-057-0205 provided that restricted-use pesticides were only those so designated by the United State Environmental Protection Agency or that were labeled as such. This rulemaking will clarify that the Department may determine that pesticides should be designated as restricted-use pesticides.

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 would 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 licensed pesticide applicators may apply such pesticides, in most circumstances. 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; this fee is paid to the contractor. 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 worked extensively with a workgroup that included farmers, industry representatives and associations, and other interested parties for nine months. 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.

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 Langren, 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