

PROPOSED NEW AND AMENDED RULES TO IMPLEMENT HB 4062 AND HB 2031

RESOURCES:

HB 4062 (2022) is available at:

<https://oda.fyi/HB4062>

HB 2031 (2021) is available at:

<https://oda.fyi/HB2031>

Oregon Administrative Rule (OAR) Chapter 603, Division 057:

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

Oregon Revised Statutes (ORS), Chapter 634

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

ADOPT:

OAR 603-057-0190

License Equivalency Provision for Noncommercial Pesticide Use

(1) Pursuant to ORS 634.006(12), an appropriately licensed commercial applicator is not required to additionally obtain and maintain a noncommercial applicator license to use, apply, or supervise the use of restricted-use or highly toxic pesticides to land or property owned or leased by the licensed commercial pesticide applicator or their employer if all of the following conditions are met:

- (a) The individual applies or otherwise uses pesticides only in the license categories listed on the individual's commercial applicator license;
- (b) The individual applies or otherwise uses pesticides only in the course of their employment with a licensed pesticide operator; and
- (c) The licensed pesticide operator prepares and maintains the records, and submits the reports, required of pesticide operators by ORS 634.146 and OAR 603-057-0130.

(2) This rule shall not apply to individuals who perform the work, duties or responsibilities of a private applicator or a public applicator.

OAR 603-057-0104

Limitations on Pesticide Licensing Exemptions

The licensing exemptions in ORS 634.106(2) and 634.106(5)-(7) do not apply to persons using pesticides classified as restricted use or highly toxic, as those terms are defined in ORS 634.006.

AMEND:

OAR 603-057-0001

Definitions

In addition to the definitions set forth in ORS 634.006, the following shall apply (1) "Accident" means an undesirable and unintended event, caused by the use or application of pesticides, that adversely affects the environment.

(2) "Aerial pesticide applicator" or "aerial applicator" means an aerial pesticide applicator as defined in ORS 634.128.

(3) "Commercial pesticide applicator" or "commercial applicator" means a pesticide applicator as defined in ORS 634.006.

(4) "Commercial pesticide operator" or "pesticide operator" means a pesticide operator as defined in ORS 634.006.

(5) "Common Exposure Route" means a likely way (oral, dermal, respiratory) by which a pesticide may enter an organism.

(6) "Compatibility" means the properties of a pesticide that permit its use with other chemicals without undesirable results being caused by such combination.

(7) "Competence" means the proficiency in the performance of activities related to pesticide application, the degree of which is directly related to the nature of such activities.

(8) "Environment" means water, air, land and plants, humans, or other animals living therein or thereon, and the interrelationships existing among them.

(9) "Immediately Supervised Trainee" is a type of trainee as defined in ORS 634.006(26).

(10) "Immediate Supervision" means supervision by an appropriately licensed commercial, noncommercial, or public applicator who is:

(a) Located on the pesticide application site at all times during the application; and

(b) Available at the specific point of pesticide use within a time period of no more than five minutes.

(11) "Noncommercial pesticide applicator" or "noncommercial applicator" means a noncommercial pesticide applicator as defined in ORS 634.006.

(12) "Non-Target Organism" means plant or animal life other than to which the pesticide is applied or is intended to be applied.

(13) "Pesticide Apprentice" is a type of trainee, as defined in ORS 634.006(26) that engages in pesticide application activities under the supervision of a licensed commercial, noncommercial, or public applicator as described in OAR 603-057-0127. A pesticide apprentice is limited to the categories of pesticide application authorized on the commercial, noncommercial, or public applicator license of the supervisor.

(14) "Pesticide consultant" or "consultant" means a pesticide consultant as defined in ORS 634.006.

(15) "Pesticide dealer" means a pesticide dealer as defined in ORS 634.006.

(16) "Private applicator" means a private applicator as defined in ORS 634.006.

(17) "Public pesticide applicator" or "public applicator" means a public applicator as defined in ORS 634.006.

(18) "Regulated Pest" means a specific organism determined by the Department to be a pest requiring control, or eradication in order to protect the environment.

(19) For the purpose of pesticide registration as specified in ORS 634.016, "pesticide product" means a pesticide readily distinguishable from any other pesticide by its content, registration number assigned by the United States Environmental Protection Agency, brand name, trade name, manufacturer, registrant, use as specified in labeling, or other distinction, but not including size or quantity of package.

(20) For the purposes of ORS 634.006(8), ORS 634.006(12)(c), ORS 634.106(7), ORS 634.126(1)(c), Oregon Laws 2022, chapter 53, Section 3(1)(b), OAR 603-057-0001(13), and OAR 603-057-0127, the terms "direct charge of," "supervises," "direct supervision," and "supervision" mean that:

(a) The supervisor of the person applying a pesticide has determined that the person applying a pesticide has sufficient knowledge and ability to safely apply the particular pesticide according to its label directions and any other additional directions;

(b) The person applying a pesticide is applying the particular pesticide under the instructions of their supervisor; and

(c) The person applying a pesticide is applying the pesticide in such proximity to their supervisor that such supervisor is reasonably available for any needed consultation or further direction, even though such supervisor is not physically present at the time or place of the pesticide application.

(21) For the purposes of section (20) of this rule, "supervisor" means a person that is responsible for the actions of a person applying a pesticide.

OAR 603-057-0100

License Fees

The following designated annual fees shall be applicable to each described license:

(1) Pesticide Operator: \$90 including one category; \$15 for each additional category; and \$20 for each additional category after license issued.

(2) Commercial Applicator: \$50 including one category; \$7.50 for each additional category; and \$12.50 for each additional category after license issued.

(3) Immediately Supervised Trainee or Pesticide Apprentice: Same as commercial, noncommercial, or public applicators.

(4) Public Applicator: Same as commercial applicators.

(5) Pesticide Dealer: \$75, with a separate license required for each sales outlet or location.

(6) Pesticide Consultant: \$40.

(7) Noncommercial Applicator: Same as commercial applicators.

OAR 603-057-0106

Immediately Supervised Trainee

(1) There is herewith established a type of trainee license as defined in ORS 634.006(26) which shall bear the designation "Immediately Supervised Trainee."

(2) An immediately supervised trainee license may only be issued upon receipt by the department of:

(a) An appropriately completed license application form; and

(b) Payment of the appropriate fee.

(3) The fee for an immediately supervised trainee license shall be the same as the fee for a pesticide trainee license.

(4) An immediately supervised trainee license shall expire on December 31 of the year of issuance, or of the following year if issued a license for two consecutive years.

(5) An immediately supervised trainee license authorizes the holder to conduct pesticide application activities under the immediate supervision of an appropriately licensed supervisor as detailed in OAR 603-057-0001. The immediately supervised trainee may apply pesticides only in the categories listed under the supervisor's license. If the supervisor is a licensed public applicator, the immediately supervised trainee may only apply pesticides as described in ORS 634.116(12).

(6) An immediately supervised trainee license may be renewed.

(7) For each pesticide application made by an immediately supervised trainee, a pesticide application record, as required by ORS 634.146 and OAR 603-057-0130, must be made that also contains the names

and pesticide license numbers of the immediately supervised trainee(s) and their supervisor(s). The employer of the immediately supervised trainee shall retain the record for a period of three years and release them to the department for inspection as required or authorized by ORS chapters 561 or 634 or rules adopted thereunder.

(8) An immediately supervised trainee license does not authorize the holder to conduct pesticide applications by helicopter or fixed wing aircraft.

(9) For purposes of this section, “an appropriately licensed supervisor” is:

(a) A licensed commercial, noncommercial, or public applicator;

(b) Licensed in the category, or categories, in which the immediately supervised trainee is currently engaged.

(10) Any immediately supervised trainee conducting pesticide application activities without an appropriately licensed supervisor, without an appropriately licensed supervisor on the site where the application is being made, or who is unable to identify their supervisor, will be considered unlicensed and subject to enforcement actions in accordance to ORS 634.900.

OAR 603-057-0108

Aerial Applications Generally

(1) A person may not spray or otherwise apply a pesticide by aircraft unless the person is an individual that holds a valid aerial pesticide applicator certificate issued by the Oregon Department of Agriculture.

Aerial Pesticide Applicator

(2) An aerial pesticide applicator certificate is a type of license.

(3) For 2016, an aerial pesticide applicator certificate may only be issued to an individual upon receipt and approval by the department of:

(a) An appropriately completed license application form;

(b) Payment of the appropriate fee;

(c) Proof that the individual holds a valid commercial pilot certificate for the type of aircraft to be used by the aerial pesticide applicator in applying pesticides;

(d) Proof that the individual holds a valid pesticide applicator, public applicator, or private applicator license or certificate; and

(e) Proof, in the form of a sworn statement or a declaration that the individual has either:

(A) At least fifty (50) hours of experience as a licensed pesticide applicator, licensed public applicator or certified licensed private applicator on flights conducted for the purpose of carrying out spraying or otherwise applying pesticides by aircraft; or

(B) At least fifty (50) hours of flight training experience as a licensed pesticide applicator, licensed public applicator, or certified private applicator, or as a pesticide trainee or public trainee under the supervision of a licensed pesticide applicator, licensed public applicator, or certified licensed private applicator, on flights conducted for the purpose of carrying out, or training to carry out, spraying or otherwise applying pesticides by aircraft.

(4) The department shall suspend or revoke the aerial pesticide applicator certificate if the certificate holder fails to maintain the valid commercial, noncommercial, public, or private applicator license that was the basis of obtaining the aerial pesticide applicator certificate.

(5) The annual fee for an aerial pesticide applicator certificate shall be the same as the fee for commercial applicators.

(6) The certification period for an aerial pesticide applicator certificate issued for 2016 will expire on December 31, 2016.

(7) As of January 1, 2017, the certification period for an aerial pesticide applicator certificate shall not exceed five years.

(8) Beginning January 1, 2017, an aerial pesticide applicator certificate may only be issued to an individual upon receipt and approval by the department of:

(a) An appropriately completed license application form;

(b) Payment of the appropriate fee;

(c) Proof that the individual holds a valid commercial pilot certificate for the type of aircraft to be used by the aerial pesticide applicator in applying pesticides;

(d) Proof that the individual holds a valid commercial, noncommercial, public, or private applicator license or certificate;

(e) Proof, in the form of a sworn statement or a declaration that the individual has either:

(A) At least fifty (50) hours of experience as a licensed commercial, noncommercial, public, or private applicator on flights conducted for the purpose of carrying out spraying or otherwise applying pesticides by aircraft; or

(B) At least fifty (50) hours of flight training experience as a licensed commercial, noncommercial, public, or private applicator, or as an immediately supervised trainee or pesticide apprentice under the supervision of a certified aerial pesticide applicator, on flights conducted for the purpose of carrying out, or training to carry out, spraying or otherwise applying pesticides by aircraft; and

(f) Proof that the individual has passed a national examination, or other examination approved by the department, testing the knowledge of the individual regarding proper spraying and other application of pesticides by aircraft.

(9) An applicant for an aerial pesticide applicator certificate issued under OAR 603-057-0108 (7) shall be required to take a re-examination each fifth year after taking the original aerial pesticide applicator examination.

(10) If the department's records indicate that an applicant for certificate renewal has successfully completed during the preceding five years at least 10 credit hours in programs of instruction or educational courses satisfactory to the department and related to the spraying or other application of pesticides by aircraft:

(a) The department shall count any credit hours in satisfactory programs of instruction or educational courses as described above toward any instruction or education requirements imposed by the department for the issuance or renewal of a commercial, noncommercial, or public applicator license.

(b) The department may not count any credit hours in satisfactory programs of instruction or educational courses described above toward any instruction or education requirements imposed by the department for the issuance or renewal of a private applicator's license.

(11) As of January 1, 2017, and for an individual, the certification period of their commercial, noncommercial, public, or private applicator license may be aligned with the certification period for their aerial pesticide applicator certificate.

(12) An aerial pesticide applicator that was certificated solely on the basis of a public applicator license shall not spray or otherwise apply pesticides by aircraft to any lands beyond those lands that they are authorized to spray or otherwise apply pesticides to from the ground.

(13) In order to be authorized to make aerial pesticide applications, a pesticide applicator that is also certificated as an aerial pesticide applicator, must be employed by a pesticide operator with an aerial endorsement or other similar specification assigned by the department.

OAR 603-057-0110

Categories for Pesticide Operators, and Commercial, Noncommercial, and Public Applicators

In accordance with subsection (2) of ORS 634.306, the following categories of pesticide operators, and commercial, noncommercial, and public applicators are established. The license categories permitted for each license type are indicated in this rule. The license subcategories for each license type are indicated in OAR 603-057-0115.

(1) Agricultural Pest Control: This shall include pesticide operators, commercial applicators, noncommercial applicators as described in ORS 634.006(8)(b), and public applicators 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 and commercial, noncommercial, and public applicators who use or supervise the use of pesticides in treating standing or running water.

(3) Demonstration and Research: This shall include pesticide operators and commercial, noncommercial, and public applicators 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, commercial applicators, noncommercial applicators as described in ORS 634.006(8)(b), and public applicators 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 and commercial, noncommercial, and public applicators 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 and commercial, noncommercial, and public applicators 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 and commercial, noncommercial, and public applicators 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 and commercial, noncommercial, and public applicators 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 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 and commercial, noncommercial, and public applicators who use or supervise the use of pesticides in right-of-way areas.

(11) Seed Treatment: This shall include pesticide operators and commercial, noncommercial, and public applicators who use or supervise the use of pesticides on any seed, including, but not limited to, agricultural seed, flower seed, and vegetable seed, as defined in ORS 633.511. Treatment of a person's own seed on their own premises with pesticides other than those classified a restricted use or highly toxic as defined in ORS 634.006, is exempt under subsections (12) and (16) of ORS 634.006.

(12) School Integrated Pest Management: This shall include pesticide operators, commercial applicators, noncommercial applicators as described in ORS 634.006(8)(b), and public applicators 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, ;

(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.

OAR 603-057-0115

Pesticide Operator, Applicator, and Trainee Subcategories

The following subcategories of pesticide operators and commercial, noncommercial, and public applicators are hereby established within the categories set forth in OAR 603-057-0110:

(1) Under “Agricultural Pest Control”:

(a) Insecticide and Fungicide: This shall include pesticide operators, commercial applicators, noncommercial applicators as described in ORS 634.006(8)(b), and public applicators who use or supervise the use of insecticides, fungicides, and/or nematicides in the production of agricultural crops, or on agricultural lands, grasslands, and non-crop agricultural lands;

(b) Herbicides: This shall include pesticide operators, commercial applicators, noncommercial applicators as described in ORS 634.006(8)(b), and public applicators who use or supervise the use of herbicides in the production of agricultural crops or on agricultural lands, grasslands, and non-crop agricultural lands;

(c) Soil Fumigation: This shall include pesticide operators, commercial applicators, and public applicators who use or supervise the use of soil applied fumigants in the production of agricultural crops or on agricultural lands, grasslands, or non-crop agricultural lands;

(d) Livestock Pest Control: This shall include pesticide operators, commercial applicators, noncommercial applicators as described in ORS 634.006(8)(b), and public applicators who use or supervise the use of pesticides in agricultural areas for control or eradication of such livestock pests as insects, mites and ticks;

(e) Vertebrate Pest Control: This shall include pesticide operators, commercial applicators, noncommercial applicators as described in ORS 634.006(8)(b), and public applicators who use or supervise the use of pesticides in agricultural areas for control of vertebrate pests other than livestock predators.

(2) Under “Industrial, Institutional, Health, and Structural Pest Control”:

(a) Pest Control, General: This shall include pesticide operators and commercial, noncommercial, and public applicators who use or supervise the use of pesticides, other than fumigants, in or around structures, institutions and establishments for the protection of stored, processed, and manufactured products or for the protection of human health;

(b) Structural Pest Control: This shall include pesticide operators and commercial, noncommercial, and public applicators who use or supervise the use of pesticides, other than fumigants, in, on, or around structures for the control of wood-destroying pests (i.e., termites, carpenter ants, powder post beetles, etc.);

(c) Space Fumigation: This shall include pesticide operators and commercial, noncommercial, and public applicators who use or supervise the use of fumigants in enclosed or confined areas or structures for the control of pests in structures, in stored food or feed, and in other agricultural products. Field treatment of utility poles, pilings, bridge supports, and similar elements of construction are excluded from this category;

(d) Moss Control: This shall include pesticide operators and commercial, noncommercial, and public applicators who use or supervise the use of pesticides for the control of moss and algae on structures;

(e) Wood Treatment: This shall include pesticide operators and commercial, noncommercial, and public applicators who use or supervise the use of pesticides to treat wood products (i.e., lumber, poles, ties, etc.) before the use of those products in construction, and to field treat utility poles, pilings, bridge supports, cross arms, and similar elements of construction with fumigants or other pesticides.

(3) Under “Ornamental and Turf Pest Control”:

(a) Insecticide and Fungicide: This shall include pesticide operators and commercial, noncommercial, and public applicators who use or supervise the use of insecticides and fungicides in the establishment and maintenance of ornamental plantings and turf;

(b) Herbicide: This shall include pesticide operators and commercial, noncommercial, and public applicators who use or supervise the use of pesticides in the establishment and maintenance of ornamental plantings and turf.

(4) Under “Regulatory Pest Control”:

(a) M-44 Device: This shall include only employees of the United States Department of Agriculture, Animal and Plant Health Inspection Service, Animal Damage Control, who are licensed as public applicators and who use the M-44 device containing sodium cyanide for the control of coyotes and certain other wild canids, which shall be in the manner as specified by the administrative rules of the Department;

(b) Livestock Protection Collar: This shall include only employees of the United States Department of Agriculture, Animal and Plant Health Inspection Service, Animal Damage Control, who are licensed as public applicators and who use the livestock protection collar containing sodium fluoroacetate (Compound 1080) for the control of coyotes, which shall be in the manner as specified by the administrative rules of the Department;

(c) Weed Control: This shall include public applicators who use or supervise the use of pesticides for the control of plants designated by local weed control districts or the Department as noxious weeds as set forth in ORS 569.355.

OAR 603-057-0120

General Standards of Commercial Applicator, Public Applicator and Noncommercial Applicator Competence

(1) Competence in the use or handling of pesticides shall be determined on the basis of written examinations which, in addition to the requirements of OAR 603-057-0125, shall include the following general standards:

(a) Comprehension of labeling format, labeling terminology, and the labeled warnings and instructions;

(b) Knowledge of safety factors to be considered, including need and use of protective clothing, first aid procedures in the event of accidents, symptoms of various pesticide poisonings, and proper storage, transportation, handling, and disposal methods;

(c) Knowledge of potential consequences to the environment from the use or misuse of pesticides, as influenced by climate, topography, vegetative buffers or other pesticide practices directly relating to protection of water, and existence of plant and/or animal life,;

(d) Methods to minimize pesticide drift and off-target deposition of pesticides, including nozzle selection, calibration, product formulation, product volatility, buffers and barriers, adjuvants, precision application technology, and environmental conditions (wind, inversion, temperature, etc.);

(e) Knowledge of methods of use or application, including the various formulations (dust, wettable powder, etc.) of pesticides, the compatibility of various pesticides, the types of application equipment or devices, and the times when various pesticide formulations or equipment would be appropriately used; and

(f) Knowledge and comprehension of existing laws and rules governing pesticide use or application, including classifications of various pesticides (highly toxic, restricted use, or general).

(2) The applicant shall be notified within 30 days of taking a written examination, as to the grade received in such examination and whether such grade is passing or failing. Such notification shall be deemed an "order" for the purposes of judicial review provided in ORS 183.480.

(3) An applicant for a commercial, public, or noncommercial applicator license renewal shall be required to take a reexamination each fifth year after taking the original examination, and be subject to the provisions of this section and OAR 603-057-0125 in regard thereto. However, if the Department's records indicate the applicant for license renewal has complied with the provisions of 603-057-0150, the written examination shall be waived, except in the category "Regulatory Pest Control," subcategory "Livestock Protection Collar."

(4) If an applicant for a commercial, public, or noncommercial applicator license has passed a current written examination accredited by another state with which the Department has a reciprocal agreement on certification or licensing, and submits evidence of the same to the Department at the time of submitting an initial license application with applicable fee, the license examination may be waived.

(5) In the event an applicant for a commercial, public, or noncommercial applicator license fails the written examination or re-examination, the applicant shall be eligible to take the examination again.

OAR 603-057-0127

Pesticide Apprentice Standards of Competence

(1) The department may issue a pesticide apprentice license for one licensing period, or portion thereof. The department may issue the license to an applicant that is at least 18 years of age upon receipt of:

(a) A license application form that contains all of the information requested by the department;

(b) Payment of the appropriate fee; and

(c) Documentation that the applicant successfully completed, within two years of the date of initial application, a written examination developed and administered by the department for the purpose of assuring that the applicant is competent in the use of pesticides as a pesticide apprentice. The content of this examination shall include the topics listed in OAR 603-057-0120. Successful completion of the examination shall require answering at least 70 percent of the examination questions correctly.

(d) A pesticide apprentice license shall expire on December 31 of the year of issuance, or the following year if issued a license for two consecutive years.

(2) The department may renew a pesticide apprentice license for consecutive licensing periods upon receipt of:

(a) A license renewal application form containing all of the information requested by the department;

(b) Payment of the appropriate fee; and

(c) Documentation that the applicant successfully completed the required credit hours of pesticide instructional sessions during the previous licensing period. The department must accredit the instructional sessions. Eight (8) credit hours are required for each year of a licensing period. Four (4) of the eight (8) credit hours must be core credits as described in OAR 603-057-0135. All training requirements may be waived for the first year of the initial licensing period only.

(3) If a person licensed as a pesticide apprentice does not deliver the form, fee, and documentation described in section (2) of this rule to consecutively renew their license, the person will not be eligible to renew their pesticide apprentice license. The person must retake the qualifying examination as described in (1)(c) of this rule.

(4) A pesticide apprentice license authorizes the holder to conduct pesticide application activities under the supervision of an appropriately licensed supervisor. The licensed apprentice may apply pesticides only in the categories listed on the supervisor's license. If the supervisor is a licensed public applicator, the licensed apprentice may only apply pesticides as described in ORS 634.116(12).

(5) For each pesticide application made by a pesticide apprentice, a pesticide application record, as required by ORS 634.146 and OAR 603-057-0130, must be made that also contains the names and pesticide license numbers of the appropriately licensed pesticide apprentice(s) and the supervisor(s). The employer of the licensed pesticide apprentice shall retain the record for a period of three years and release them to the department for inspection as required or authorized by ORS chapters 561 or 634 or rules adopted thereunder.

(6) A pesticide apprentice license does not authorize the holder to conduct pesticide applications by helicopter or fixed wing aircraft.

(7) For purposes of this rule "an appropriately licensed supervisor" is:

- (a) A licensed commercial, noncommercial, or public applicator;
- (b) Licensed in the category, or categories, in which the pesticide apprentice is currently engaged.

(8) Any pesticide apprentice conducting pesticide application activities without a valid appropriately licensed supervisor, or who is unable to identify their supervisor, will be considered unlicensed and subject to enforcement actions in accordance with ORS 634.900

OAR 603-057-0130

Application Records and Reports

(1) Pursuant to subsection (13) of ORS 634.116, a public applicator shall prepare and maintain the records, and submit the reports, required of pesticide operators by 634.146.

(2) A noncommercial pesticide applicator shall prepare and maintain the records, and submit the reports, required of pesticide operators by ORS 634.146.

(3) A commercial applicator and public applicator shall include their full name and pesticide applicator license number legibly on the records required by ORS 634.116 and 634.146.

(4) If a pesticide application is conducted by a Pesticide Apprentice or an Immediately Supervised Trainee, then the names and pesticide license numbers of both the Pesticide Apprentice or Immediately Supervised Trainee and their supervising applicator must be included legibly on the record.

OAR 603-057-0135

Private Applicator Standards of Competence

(1) As provided in ORS 634.142, competence of a private applicator in the use or handling of pesticides shall be determined on the basis of a written examination and evidenced by the issuance of a certificate.

(2) A private applicator certificate shall be valid for a period of up to five calendar years from its issuance and expire on December 31 of the fifth year.

(3) An applicant for a private applicator's initial certificate or for a private applicator's renewal shall be required to successfully complete the written examination then in use for certification of private applicators. Successful completion of the written examination shall consist of correctly responding to at least 70 percent of the questions contained in the examination.

(4) In lieu of the written re-examination requirement of section (3) of this rule, an applicant for renewal of a private applicator certificate may attend pesticide training sessions approved by the Department, totaling 16 hours of Department approved pesticide use related instruction, during the period preceding the expiration of his/her certificate as follows:

(a) An individual shall be required to attend the core pesticide training session and accumulate twelve additional units of Department approved pesticide training;

(b) Not more than eight units of Department approved pesticide training may be accumulated for recertification during a single 12-month period (January–December);

- (c) Credit for attending core pesticide training can only be obtained twice during the five year certification period. The second core pesticide training session attended will be credited toward the twelve additional units of Department approved pesticide training required for recertification; and
- (5) The core pesticide training required by section (4) of this rule shall consist of a total of at least 4 units of instruction (50–60 minutes of instruction per unit) on any one or more of the following topics:
- (a) Principles of Integrated Pest Management as defined in ORS 634.650;
 - (b) Label Comprehension;
 - (c) Calibration (math and equipment);
 - (d) Methods to minimize pesticide drift and off-target deposition of pesticides, including nozzle selection, product formulation, product volatility, buffers and barriers, adjuvants, precision application technology, and environmental conditions (wind, inversion, temperature, etc.);
 - (e) Pest resistance prevention;
 - (f) Laws (environmental, endangered species, ground and surface water protection, worker protection standards (WPS), pesticide and pesticide container disposal); and
 - (g) Personal Safety (including personal protective equipment (PPE)).
- (6) The submission of pesticide training sessions to the Department for approval, assignment of approved units of instruction and conditions relating thereto shall be done in accord with OAR 603-057-0150(2).
- (7) The Department shall make available to each holder of a private applicator certificate of the expiration date of his/her certificate, of his/her attendance of core training, and of the number of units of additional Department approved pesticide training accumulated toward renewal of the certificate.
- (8) The requirement for re-examination as specified in section (3) of this rule and the alternate procedure of attending Department approved pesticide training as specified in section (4) of this rule shall be waived if the applicant for a private applicators certificate renewal is a commercial applicator, noncommercial applicator, public applicator or consultant. Said waiver shall be in effect only for the period the applicant is a commercial applicator, noncommercial applicator, public applicator or consultant. Such waiver shall not affect the requirement for re-examination or the alternate procedure of OAR 603-057-0150 for commercial applicators, noncommercial applicators, public applicators or consultants specified elsewhere in these administrative rules.
- (9) The fee for a private applicator certificate shall be \$25.

OAR 603-057-0145

Pesticide Consultant Standards of Competence

- (1) As provided in ORS 634.132, competence of a pesticide consultant to advise or make recommendations concerning the use, handling, or selection of restricted-use pesticides shall be determined on the basis of a written examination. As a supplement to the subject matters set forth in section (2) of ORS 634.132, the examination shall also include the subject matters set forth in OAR 603-057-0120(1) relating to the General Standards of Commercial Applicator, Public Applicator and Noncommercial Applicator Competence.
- (2) A pesticide consultant licensed pursuant to this section may not advise or make recommendations in subcategories (a) or (b) of 603-057-0115(4), Regulatory Pest Control, regarding the use, handling, or selection of the M-44 Device containing sodium cyanide or the livestock protection collar containing sodium fluoroacetate (Compound 1080).

(3) A pesticide consultant licensed pursuant to this section may add the category Demonstration and Research, as defined in OAR 603-057-0110 (3), to their license following successful completion of the written examination for the Demonstration and Research category.

(4) A pesticide consultant licensed pursuant to this section in the category Demonstration and Research is eligible to be licensed as a commercial applicator, public applicator and noncommercial applicator in the category of Demonstration and Research without further examination. An application for such commercial, noncommercial, or public applicator's license, or for the addition of the category to an existing license, and the appropriate fee payment must be made separately from the application for, or the addition to, a pesticide consultant's license.

(5) If an applicant for a pesticide consultant's license has passed a current written examination accredited by another state with which the Department has a reciprocal agreement on certification or licensing, and submits evidence of the same to the department at the time of submitting his license application with applicable fee, the license examination may be waived.

(6) An applicant for a pesticide consultant's license renewal shall be required to take and successfully complete a reexamination each fifth year after taking the original examination, and be subject to the provisions of this section in regard thereto. However, if the Department's records indicate the applicant for license renewal has complied with the provisions of OAR 603-057-0150, the written reexamination shall be waived.

(7) In the event an applicant for a pesticide consultant's license fails the written examination or reexamination, the applicant shall be eligible to take the examination again upon submitting a new application for the same.

(8) A pesticide consultant licensed pursuant to this section shall also be eligible to be licensed as a private applicator for the purpose of purchasing, using or supervising the use of any restricted use or highly toxic pesticides for the purpose of producing agricultural commodities or forest crops on land owned or leased by the person. An application and fee payment for a private applicator's license must be made separately from the application and fee payment for the pesticide consultant license. The certification date of the Private Applicator license will be consistent with that of the consultant license.

OAR 603-057-0150

Alternative Requirements for Competence of Commercial, Public, or Noncommercial Applicator or Consultant License Renewal

In lieu of the written re-examination requirements of OAR 603-057-0120(3) or of 603-057-0145(4), an applicant for renewal of a commercial applicator license, a public applicator license, a noncommercial applicator license or a pesticide consultant license may accumulate at least 40 credits by attending pesticide-instructional sessions, accredited by the Department, during the five-year period preceding the year in which the written re-examination would be required, in accordance with the following:

(1) Not more than 15 credits may be accumulated for recertification purposes by an applicant during any one calendar year.

(2) In the event a pesticide instructional session is desired to be considered for accreditation by an applicant, such applicant shall submit to the Department, or person authorized by the Department, a written request for accreditation not less than 30 days prior to the scheduled session, which written request shall include the agenda and summary of each topic/presentation of the session, the session sponsor, the name and address of the session sponsor, and the time and place of such session. Upon receipt of such written request, the Department, in consultation with Oregon State University, shall evaluate the instructional value of the session and either deny accreditation or assign credits to the entire session or any portion thereof in a range from 1 to 15, assigning no more than one credit for each 50 minute period of instruction. No such instructional sessions shall be considered for accreditation that is less than two credit hours in length except for computer based trainings as approved by the Department. In the event an instructional session is accredited, the Department shall provide the session instructor or sponsor with attendance certificates to be completed by such instructor or sponsor and returned by the applicants to the Department within 15 days after the session is completed. Under exceptional circumstances, as described in writing by an applicant, a written request for accreditation submitted later than 30 days prior to the scheduled session may be assigned credits in accordance with the provisions of this rule. Falsification of any part of such attendance certificate shall be considered grounds for license revocation proceedings by the Department.

(3) This section shall not apply to persons licensed to use the livestock protection collar in Oregon, in accordance with OAR-603-057-0120(3).

OAR 603-057-0160

Pesticide Use for Experimental or Research Purposes

(1) Use of any substance or combination of substances as a pesticide with the intent of gathering data needed to satisfy pesticide registration requirements of the United States Environmental Protection Agency (EPA) or of the department shall be considered pesticide use for experimental or research purposes.

(a) An experimental use permit that is issued by the department constitutes the approval required by ORS 634.022(2).

(b) The permit requirement in this section is in addition to pesticide licensing requirements.

(2) The requirement to obtain an experimental use permit is not applicable to:

(a) Experiments or research conducted by federal or state agencies; or

(b) Experiments or research conducted entirely in one or more greenhouses; or

(c) Experiments or research that only:

(A) Use pesticides that are registered by EPA and the department; and

(B) Use pesticides in the manner consistent with the product label.

(3) To obtain an experimental use permit, a person must submit a complete application to the department and be in compliance with subsection (14) of this section. The pesticide use described in the application may not begin until the department issues the experimental use permit.

(a) The applicant must use a form approved by the department; and

(b) The application must be submitted to the department at least 30 days prior to intended use.

(4) There are two types of experimental use permits: site-specific and collective.

(5) A site-specific experimental use permit authorizes pesticide use for experimental or research purposes that are at sites specified in the permit and are not covered by a collective experimental use permit.

(a) Approvable sites include, but are not limited to, aquatic, residential, recreational and structural sites, areas with public access, commodity storage facilities, and areas exceeding a total of one acre.

(b) Each application for a site-specific experimental use permit will include the following:

(A) The name, address, and telephone numbers of the applicant and of the person responsible for carrying out the provisions of the experimental use permit;

(B) Identification of each pesticide to be used, including;

(i) The name of the pesticide active ingredient;

(ii) The name of the pesticide product, if any; and

(iii) The EPA registration number of the pesticide product, if any.

(C) The name, address, and telephone numbers of the person responsible for carrying out the provisions of the experimental use permit at each specific site, and the number of the pesticide-related license issued to the person by the department, and the means of locating the person in case of an emergency;

(D) The purpose of the experiment or research, including a list of the intended target pest(s), if any;

(E) The approximate date(s) of pesticide use;

(F) The intended crop or site of pesticide use;

(G) Specific description and location of each site where pesticide use may occur, including the size (for example, acres, or square feet) of each site;

(H) Disposition of any food or feed item from the crop or site on which the pesticide will be used;

(I) Application rate(s) of the pesticide, and number of applications;

(J) Method of application;

(K) Timing and duration of the proposed experiment or research;

(L) Total amount of pesticide to be used, diluent, and dilution rate;

(M) Copy of any experimental use permit issued by EPA, if applicable;

(N) A copy of the labeling that will accompany the pesticide in the field; and

(O) Any other information pertinent to the experiment or research specifically requested by the department.

(6) A site-specific experimental use permit may be issued for up to twelve months from the date of approval by the department.

(7) A collective experimental use permit authorizes pesticide use for experiments or research without identifying any specific site. Approvable sites include agricultural and forestry sites.

(a) The applicant may use one or more sites in any location in Oregon provided that the total size of all of the sites used for a particular pesticide does not exceed one acre.

(b) Each application for a collective experimental use permit will include the following:

(A) The name, address, and telephone numbers of the applicant and of the person responsible for carrying out the provisions of the experimental use permit, the number of the pesticide-related license issued to the person by the department, and the means of locating the person in case of an emergency;

(B) A signed statement that all pesticide use will comply with all of the provisions of the collective experimental use permit and of this section; and

(C) Any other information pertinent to the application specifically requested by the department.

(8) A collective experimental use permit will be issued for as long as one calendar year, ending December 31st.

(9) Any person conducting pesticide use for experimental or research purposes must be appropriately licensed by the department and include the category Demonstration and Research, as specified in OAR 603-057-0110(3), on that license. This licensing requirement applies to all persons making pesticide applications for experimental or research purposes and is not limited to persons conducting pesticide research authorized by an experimental use permit.

(10) Any crop or site on which a pesticide is used for experimental or research purposes shall be under the control of the person authorized to conduct that pesticide use. Said control may include:

(a) Ownership, rental or lease of the land on which the crop or site is located by the person;

(b) Ownership, rental or lease of the land on which the crop or site is located by the immediate employer of the person;

(c) Documented permission for the pesticide use from the owner, renter or leaseholder of the land on which the crop or site is located;

(d) Documented permission for the pesticide use from the public entity in possession or control of the land on which the crop or site is located.

(11) Any person using pesticides for experimental or research purposes shall prepare, maintain, and provide records in the same manner as in ORS 634.146 and OAR 603-057-0130.

(12) As provided by ORS 634.322(6), the department may deny an application for an experimental use permit or, amend, suspend or revoke any experimental use permit issued by the department.

(13) The department may establish conditions in an experimental use permit approval that the department determines necessary to be consistent with ORS Chapter 634 and this section.

(14) The holder of an experimental use permit shall provide the department a summary report of the experiments and research conducted under the permit no later than 30 days after the expiration date of the permit.

(a) Each summary report must include, at a minimum, the identification number of the experimental use permit, the records required by subsection (11) of this section, any adverse environmental, human, or animal health effects resulting from the pesticides used, and, if any pesticide use occurred on a food or feed item, documentation of food or feed item destruction, crop/site isolation, or other measures taken to prevent the food or feed item from being used or consumed.

(b) If the required summary report is not provided to the department, the department will not issue any future experimental use permit to the applicant.

(15) If information is provided in an experimental use permit application, summary report, or other form that is identified by the applicant as confidential, the department will hold the information confidential to the extent allowed under ORS Chapter 192.

(16) Any food or feed item to which a pesticide used for experimental or research purposes has been applied must be rendered unusable for food or feed unless a tolerance greater than the residues resulting from the use has been established or, if allowed by law, conditions implemented to prevent any use of the treated crop/site for food or feed for a period no less than 365 days. Such food or feed item may include, but is not limited to crop, forage (including grazing rangeland or pasture), green chop, hay, seed screenings, silage, and straw. The department requires documentation of food or feed item destruction or crop/site isolation as a condition of the experimental use permit.

(17) The department may monitor any pesticide used for experimental or research purposes. Monitoring may include, but is not limited to:

(a) Observing, inspecting, and documenting mixing, loading, transportation, and application activities;

- (b) Inspecting and documenting application equipment;
- (c) Collecting and analyzing samples;
- (d) Interviewing any person that may have knowledge regarding the pesticide use; and
- (e) Reviewing any records.

(18) The permit holder or the person that conducted the pesticide use must immediately report to the department any adverse environmental, human, or animal health effects resulting from pesticides used for experimental or research purposes.

(19) In addition to any other liability or penalty provided by law, any failure by any person to comply with the provisions of this section, as determined by the department, may be used as a basis for one or more of the following actions, if applicable:

- (a) To revoke, suspend or refuse to issue an experimental use permit, in accordance with ORS 634.022 or 634.322(6);
- (b) To revoke, suspend or refuse to issue any license of a permit holder or of a person that conducted a pesticide use for experimental or research purposes, in accordance with ORS 634.322(4);
- (c) To impose a civil penalty, in accordance with ORS 634.900.

OAR 603-057-0180

Pesticide License Equivalency Provision

A commercial applicator, noncommercial applicator as described in ORS 634.006(8), or public applicator licensed pursuant to ORS 634.122 in the subcategory Agriculture-Herbicide, or in the subcategory Agriculture-Insecticide/Fungicide, or in the category Forest Pest Control, shall be eligible to be licensed as a Private applicator to purchase, use, and/or supervise 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 licensee or licensee's immediate employer. An application and fee payment for such Private applicator license must be made separately from the application and fee payment for the commercial, noncommercial, or public pesticide applicator license. The certification date of the Private Applicator license will be consistent with that of the commercial, noncommercial, or public pesticide applicator license.

OAR 603-057-0200

Limitations on Restricted Use Pesticides

As provided in ORS 634.306 and ORS 634.322 and in addition to other provisions of ORS Chapter 634, the following limitations and procedures shall apply to the distribution and use of restricted use pesticides identified in OAR 603-057-0205:

(1) A restricted use pesticide shall only be:

(a) Distributed for use by and used by an appropriately licensed commercial, noncommercial, public or private applicator; and

(b) Distributed or sold to users by an appropriately licensed pesticide dealer.

(2) A private applicator, a pesticide operator, a commercial applicator, a noncommercial applicator, a public applicator, or their designated agent shall display their appropriate certificate or license to the pesticide dealer at the time of purchase of a restricted use pesticide, so that the number thereof may be recorded by the pesticide dealer pursuant to OAR 603-057-0140.

OAR 603-057-0315

Prohibited Acts

(1) No landowner shall use, apply, or cause to be applied, either by ground or aerial equipment, 2,4-D in the formulations described in OAR 603-057-0301 within the area prescribed in 603-057-0305 or within the time period prescribed by 603-057-0310, without first having applied for and received a permit from the Department as provided in 603-057-0320.

(2) No commercial applicator, public applicator, noncommercial applicator, trainee as described in ORS 634.006, or pesticide operator shall use, apply, or cause to be applied, either by ground or aerial equipment, 2,4-D as prescribed in section (1) of this rule without first having received a copy of a valid permit from the landowner as provided in OAR 603-057-0320.

(3) No person shall violate the restrictions or conditions of a permit issued under OAR 603-057-0320.

Statutory/Other Authority: ORS 561.190, 634.306 & 634.322

Statutes/Other Implemented: ORS 634.306 & 634.322

History:

AD 1072(18-75), f. & ef. 12-5-75

OAR 603-057-0500

Definitions

In addition to the definitions set forth in ORS 634.006 and OAR 603-057-0001, the following shall apply to OAR 603-057-0500 to 603-057-0532:

(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" has the meaning given in ORS 634.006.
- (11) "Violation" is an act or omission that:
- (a) Does not comply with a provision of ORS chapter 634 that relates to pesticide application, sale, or labeling;
 - (b) Does not comply with a provision of ORS chapter 634 that relates to restricted-use pesticides; or
 - (c) Does not comply with a rule adopted pursuant to ORS chapter 634 that relates to restricted-use pesticides.
- (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" has the meaning defined in ORS 634.700

OAR 603-057-0502

Civil Penalties Generally

- (1) In addition to any other penalty provided by law, the Director may assess a civil penalty for a violation.
- (2) Where the Director determines that a violation occurred before June 25, 2007, the Director will determine the amount of any civil penalty for that violation using OAR 603-057-0525 and 603-057-0529. The amount of such civil penalty for a first violation shall not exceed \$1,000, and the amount of such civil penalty for any subsequent violation of the same provision shall not exceed \$2,000.
- (3) Where the Director determines that a violation did not result from gross negligence or willful misconduct, and if the violation occurred between June 25, 2007 and December 31, 2015, the Director will determine the amount of any civil penalty for that violation using OAR 603-057-0525 and 603-057-0530. The amount of such civil penalty for a first violation shall not exceed \$1,000, and the amount of such civil penalty for any subsequent violation of the same provision shall not exceed \$2,000.
- (4) Where the Director determines that a violation did not result from gross negligence or willful misconduct, and if the violation occurred on or after January 1, 2016, the Director will determine the amount of any civil penalty for that violation using OAR 603-057-0525 and 603-057-0531. The amount of such civil penalty for a first violation shall not exceed \$2,000, and the amount of such civil penalty for any subsequent violation of the same provision shall not exceed \$4,000.
- (5) Where the Director determines that a violation resulted from gross negligence or willful misconduct and occurred on or after June 25, 2007, the Director will determine the amount of any civil penalty for that violation using OAR 603-057-0525 and 603-057-0532. The amount of such civil penalty for a first or a subsequent violation shall not exceed \$10,000.
- (6) Where the Director determines that a violation involves a failure to comply with a confidentiality agreement related to the pesticide use reporting program, the Director will determine the amount of any civil penalty for that violation using OAR 603-057-0420. The amount of such civil penalty for a first or subsequent violation of such confidentiality agreement shall not exceed \$10,000.
- (7) If a person requests a hearing, nothing in this division of administrative rules prevents the Department from amending the notice to impose civil penalties for the violation under OAR 603-057-0525 and either OAR 603-057-0530 or 603-057-0531, and, in the alternative, under OAR 603-057-0525 and 603-057-0532. The amended notice will specify which civil penalty will be assessed if the hearing does not occur for any reason.
- (8) A civil penalty imposed under the applicable statutes and these rules may be remitted or reduced upon such terms and conditions as the Director considers proper and consistent with public health and safety.
- (9) Civil penalties shall be due and payable ten (10) business days after the order becomes final by operation of law or on appeal. A person may pay a civil penalty before an order becomes final. Payment

of a civil penalty before an order becomes final is an admission by the person of all of the allegations in the Notice of Imposition of Civil Penalty.

OAR 603-057-0510

Notice of Violation, Notice of Imposition of Civil Penalties, and Notice of Contested Case Rights and Procedures

(1) The Director may determine that a person committed a violation and decide to not impose a civil penalty. In such circumstances, the Director will issue a written Notice of Violation. The Notice of Violation shall inform a person of the existence of a violation and the consequences of non-compliance.

(2) The Director may determine that a person committed a violation and decide to impose a civil penalty. In such circumstances, the Director will issue a written Notice of Imposition of Civil Penalty. The Notice of Imposition of Civil Penalty will inform the person of the existence of a violation, state the amount of the penalty imposed for the violation, and summarize how the penalty was calculated.

(3) Notices of Violation and Notices of Imposition of Civil Penalties shall be served by registered or certified mail.

(4) Notices of Violation and Notices of Imposition of Civil Penalties shall include, but not be limited to:

(a) A caption with the name of the Department and with the name of the person to whom the notice is issued;

(b) A reference to the particular sections of the statutes and administrative rules involved;

(c) A short and plain statement of the matters asserted or charged;

(d) A statement of the person's right to be represented by counsel and that legal aid organizations may be able to assist a person with limited financial resources;

(e) A statement of the person's right to request a hearing;

(f) A statement of the procedure to request a hearing, including but not limited to the following;

(A) Any request for hearing must be in writing;

(B) Any request for hearing must be received by the Department within ten (10) days of the date the Department mailed the notice; and

(C) The address to which a request for hearing must be sent;

(g) A statement that if a request for hearing is not received by the Department within the time stated in the notice the person will have waived the right to a contested case hearing;

(h) A statement of the authority and jurisdiction under which a hearing will be held on the matters asserted or charged;

(i) A statement that if the person requests a hearing a Notice of Contested Case Rights and Procedures will be provided before any hearing;

(j) A statement indicating whether and under what circumstances an order by default may be entered, including but not limited to, that the notice becomes a final order unless the person makes a timely written request for a hearing; and

(k) Other information required by law.

(5) Notices of Violation and Notices of Imposition of Civil Penalties may also include additional information deemed appropriate by the Director, including but not limited to the following:

(a) A statement that the record of the proceeding to date, including information in the Department's file or files on the subject of the contested case and all materials submitted by a person, automatically become part of the contested case record upon default for the purpose of proving a prima facie case; and

(b) A statement that a collaborative dispute resolution process is available if the person requests a hearing as stated in the notice.

(6) If a person timely requests a hearing for either a Notice of Violation or a Notice of Imposition of Civil Penalty, the Department will mail a written Notice of Contested Case Rights and Procedures to the person before the commencement of the hearing, or request that an administrative law judge inform the person of the rights and procedures.

OAR 603-057-0525

Civil Penalties; Magnitude of Violation and Gravity of Effect

(1) The Director will consider the magnitude of the violation and its gravity of effect when calculating a civil penalty for a violation.

(a) The Director shall determine the magnitude of the violation as specified in section (2) of this rule.

(b) The Director shall determine the gravity of effect pertinent to the violation as specified in section (3) of this rule.

(2) Magnitude of Violation: Violations are categorized as to their magnitude of violation as follows:

(a) Category I (Major):

(A) Make false or misleading claims through any media, relating to the effect of pesticides or application methods to be utilized (ORS 634.372(1));

(B) As a commercial, noncommercial, or public applicator or pesticide operator, intentionally or willfully apply or use a worthless pesticide or any pesticide inconsistent with its labeling (ORS 634.372(2));

(C) As a pesticide consultant recommend the application or use of any pesticide inconsistent with its labeling (ORS 634.372(2));

(D) As a pesticide dealer knowingly distribute any pesticide for application or use inconsistent with its labeling (ORS 634.372(2));

(E) Perform pesticide application activities in a faulty, careless or negligent manner (ORS 634.372(4));

(F) As a pesticide dealer, refuse or neglect to prepare required records of restricted use and highly toxic pesticide product sales and to maintain those records for at least three years prior to the date of inspection (ORS 634.372(5), OAR 603-057-0140). Occurs when four or more items across any of the records inspected are missing or contain incorrectly recorded information;

(G) As a pesticide operator, public applicator or noncommercial applicator, refuse or neglect to prepare required pesticide application records, and to maintain those records for at least three years prior to the date of inspection (ORS 634.372(5); 634.146(1); OAR 603-057-0130). Occurs when four or more items across any of the records inspected are missing or contain incorrectly recorded information;

(H) Prepare required records, reports or application forms which are false, misleading or fraudulent (ORS 634.372(6));

(I) Operate pesticide applicators' apparatus, machinery or equipment without a licensed commercial, public, noncommercial or private applicator performing the actual application, or supervising such application if performed by a trainee as defined in ORS 634.006 (ORS 634.372(7));

(J) As a commercial, public, or noncommercial applicator, work or engage in the application of any classes of pesticides without first obtaining and maintaining a commercial, public, or noncommercial applicator license, or apply pesticides which are not specifically authorized by such license (ORS 634.372(8)). No license;

(K) As a pesticide operator, engage in the business of, or represent or advertise as being in the business of, applying pesticides on the property of another, without first obtaining and maintaining a pesticide operator's license, nor shall such person engage in a class of pesticide application business which is not specifically authorized by the license issued by the Department. Further, no such person shall employ or use any person to apply or spray pesticides who is not a licensed commercial applicator, licensed immediately supervised trainee or licensed pesticide apprentice (ORS 634.372(9));

(i) Firm licensing — No license;

(ii) Employee licensing — No license.

(L) As an immediately supervised trainee or pesticide apprentice, work or engage in the application of any class of pesticides without first obtaining and maintaining the appropriate trainee's license and otherwise being in compliance with the provisions of this chapter (ORS 634.372(10)). No license;

(M) Act as or purport to be, a pesticide dealer or advertise as such without first obtaining and maintaining a pesticide dealer's license (ORS 634.372(11));

(N) Act as or purport to be a pesticide consultant without first obtaining and maintaining a pesticide consultant's license (ORS 634.372(12));

(O) Apply any pesticide classified as a restricted-use or highly toxic pesticide to agricultural, horticultural or forest crops on land owned or leased by the person without first obtaining and maintaining a private applicator certificate (ORS 634.372(13));

(P) As a person described in ORS 634.106(5), use power-driven pesticide application equipment or devices (use hand or backpack types only), or use or apply any pesticide other than those prescribed by the Department (ORS 634.372(14));

(Q) Deliver, distribute, sell or offer for sale any pesticide which has been misbranded (ORS 634.372(15));

(R) Formulate, deliver, distribute, sell or offer for sale any pesticide which is adulterated (ORS 634.372(16));

(S) Make application of pesticides, by aircraft or otherwise, within a protected or restricted area without first obtaining a permit for such application from the committee of the protected or restricted area in which the application is to be made, nor shall such person make such an application contrary to the conditions or terms of the permit so issued (ORS 634.372(20));

(T) Use isopropyl ester of 2,4-D, or any other ester of equal or higher volatility with regard to plant damage as determined by the Department, without first obtaining a permit for such use as provided in ORS 634.322(10); 634.372(21));

(U) Sell, use or remove any pesticide or device subjected to a "stop sale, use or removal" order until the pesticide or device has been released there-from as provided in ORS 634.322(3) (634.372(22));

(V) Other violations with a substantially similar potential to affect the public interests reflected in ORS chapter 634.

(b) Category II (Moderate):

(A) Operate a faulty or unsafe spray apparatus, aircraft or other application device or equipment (ORS 634.372(3));

(B) As a pesticide dealer, refuse or neglect to prepare required records of restricted use and highly toxic pesticide product sales and to maintain those records for at least three years prior to the date of inspection (ORS 634.372(5); OAR 603-057-0140). Occurs when two or three items across any of the records inspected are missing or contain incorrectly recorded information;

(C) As a pesticide operator, public applicator or noncommercial applicator, refuse or neglect to prepare required pesticide application records, and to maintain those records for at least three years prior to the

date of inspection (ORS 634.372(5); 634.146(1); OAR 603-057-0130). Occurs when two or three items across any of the records inspected are missing or contain incorrectly recorded information;

(D) As a commercial, public, or noncommercial pesticide applicator, work or engage in the application of any classes of pesticides without a commercial, public, or noncommercial applicator license, or apply pesticides which are not specifically authorized by such license (ORS 634.372(8)). Inappropriate license;

(E) As a pesticide operator, engage in the business of, or represent or advertise as being in the business of, applying pesticides on the property of another, without first obtaining and maintaining a pesticide operator's license, nor shall such person engage in a class of pesticide application business which is not specifically authorized by the license issued by the Department. Further, no such person shall employ or use any person to apply or spray pesticides who is not a licensed commercial applicator, licensed immediately supervised trainee, or licensed pesticide apprentice (ORS 634.372(9)):

(i) Firm licensing — Inappropriate license;

(ii) Employee licensing — Inappropriate license.

(F) As an immediately supervised trainee or pesticide apprentice, work or engage in the application of any class of pesticides without first obtaining and maintaining the appropriate trainee's certificate and otherwise being in compliance with the provisions of this chapter (ORS 634.372(10)). Inappropriate license;

(G) Formulate, deliver, distribute, sell or offer for sale any pesticide which has not been registered as required by ORS 634.016 (634.372(17));

(H) Formulate, deliver, distribute, sell or offer for sale any powdered pesticide containing arsenic or any highly toxic fluoride which is not distinctly colored (ORS 634.372(18));

(I) Distribute sell or offer for sale any pesticide except in the manufacturers original unbroken package (ORS 634.372(19));

(J) Other violations with a substantially similar potential to affect the public interests reflected in ORS 634.

(c) Category III (Minor):

(A) As a pesticide dealer, refuse or neglect to prepare required records of restricted use and highly toxic pesticide product sales and to maintain those records for at least three years prior to the date of inspection (ORS 634.372(5); OAR 603-057-0140). Occurs when one item across any of the records inspected is missing or contains incorrectly recorded information;

(B) As a pesticide operator, public applicator or noncommercial pesticide applicator, refuse or neglect to prepare required pesticides application records, and to maintain those records for at least three years prior to the date of inspection (ORS 634.372(5); 634.146(1); OAR 603-057-0130). Occurs when one item across any of the records inspected is missing or contains incorrectly recorded information;

(C) Other violations with a substantially similar potential to affect the public interests reflected in ORS 634.

(3) Gravity of Effect: The Director shall rank the violation as to its gravity of effect. Following are the factors that may be considered in assigning a gravity ranking to a specific violation. The existence of one or more factors determined to be of high level shall result in the gravity being ranked high level. Lacking any factor determined to be high level, the existence of one or more factors determined to be of medium level shall result in the gravity being ranked medium level. Lacking any factor determined to be of high or medium level shall result in the gravity being ranked low level:

(a) Rank — High Level:

(A) Human Threat: Injury or illness occurred which was confirmed by medical evaluation conducted through the Oregon Pesticide Analytical And Response Center to have been caused by the pesticide exposure;

(B) Environmental Threat:

(i) Evidence of injury to crops, wildlife, and/or livestock documented by the Department or other appropriate federal or state agency; or

(ii) Evidence of surface or groundwater contamination documented by the Department or other appropriate federal or state agency.

(C) Pesticide:

(i) Designated as restricted use or highly toxic; or

(ii) Use or distribution halted due to emergency suspension.

(D) Conditions of Usage:

(i) Wide area of application;

(ii) Use in area of high population density (e.g., urban, suburban); or

(iii) Usage resulted in a pesticide residue or metabolite on a food or feed crop, on a raw agricultural commodity, or on a crop having food or feed by-products, and for which there is no tolerance or exemption from tolerance established, or for which the established tolerance was exceeded.

(iv) Usage resulting in a pesticide residue or a metabolite of a pesticide being deposited onto a school as defined in OAR 603-057-0500(14) by a person other than that authorized by the school's governing body as defined in ORS 634.700(2).

(b) Rank — Medium Level:

(A) Human Threat: Physical irritation occurred which was confirmed by medical evaluation conducted through the Oregon Pesticide Analytical And Response Center to have been caused by pesticide exposure.

(B) Environmental Threat: Symptoms of exposure visible in crops, wildlife, and/or livestock documented by the Department or other appropriate federal or state agency.

(C) Conditions of Usage:

(i) Moderate area of application; or

(ii) Use in area of medium population density.

OAR 603-057-0545

Limitations on Pesticide Products Containing Chlorpyrifos

(1) On and after January 1, 2021, all products that contain any amount of chlorpyrifos (“chlorpyrifos-containing products”) are classified as restricted-use pesticides.

(2) The use of chlorpyrifos-containing products is limited as follows:

(a) Application of such products is prohibited:

(A) For mosquito vector control purposes;

(B) On turfgrass on golf courses; and

(C) In an enclosed space production structure as defined in 40 CFR § 170.305, except when one of the following conditions is met and maintained until the expiration of the minimum restricted entry interval (REI):

(i) The structure has open sidewalls and ridge or roof vents, in which the combined open vented area is at least 40% of the floor area of the structure; or

(ii) The structure has at least 50% of the total roof area open; or

(iii) The structure has open end-walls and open sidewall vent areas, in which the combined open vented area is at least 40% of the floor area of the structure.

(b) The minimum REI is four days for uses covered under the Worker Protection Standard on chlorpyrifos pesticide labels, 40 CFR 170.

(c) Aerial application is prohibited on all crops, except for on Christmas trees.

(d) Application, regardless of application method, to Christmas trees is authorized only between April 1 and June 15 of each year, inclusive, and is prohibited at all other times;

(e) Any application must be conducted by a certified and licensed commercial, noncommercial, public, or private applicator;

(f) Commercial applicators, noncommercial applicators, public applicators, private applicators and mixers and loaders must wear a minimum of the following personal protective equipment, which must be approved by the National Institute for Occupational Safety and Health (NIOSH):

(A) Particulate filtering face piece respirator with any N, R, or P filter, as defined and approved under 42 CFR Part 84;

(B) Elastomeric particulate respirator with any N, R, or P filter, as defined and approved under 42 CFR Part 84; or

(C) Powered air purifying respirator with HE filters, as defined and approved under 42 CFR Part 84.

(g) All private applicators shall prepare and maintain records of all applications of chlorpyrifos-containing products for at least three years from the date of application. These records must be available during business hours for review and inspection by the department. At a minimum, such records must include the following:

(A) The full name and address of the business, firm, or individual who owns or controls the agricultural plants, property or site treated;

(B) The address of the application site, or a specific geographic description of the application site (such as circle or field number or name);

(C) The specific agricultural plants or sites to which the product was applied, as applicable;

(D) The month, day, and year of the application, and the beginning and ending time of the application;

(E) The name of the product applied;

(F) The EPA registration number of the product applied;

(G) The size of the area treated (such as in acres or square feet);

(H) Amount of product applied per acre or unit area applied;

(I) When applicable, the carrier or diluent, dilution rate, and total amount of solution applied per acre or unit area;

(J) The full name and license number of the private applicator who made the application;

(K) The full name of the individual or business that supplied the product; and

(L) Identification of the type of application equipment used, and if applied aerially, the aircraft registration number assigned by the United States Federal Aviation Administration.

(3) On and after March 1, 2021, all pre-application activities involving mixing or loading chlorpyrifos-containing products must be conducted by:

(a) A certified and licensed commercial, noncommercial, public, or private applicator; or

(b) An individual who has successfully completed a special training conducted or approved by the Oregon Department of Agriculture on the mixing and loading of chlorpyrifos-containing products. The training must be completed annually and a record of the training must be maintained for three years from the date of the training, and available for review and inspection by the department during business hours.

(4) For purposes of this rule:

(a) "Sensitive sites" means areas frequented by non-occupational bystanders (especially children). These include, but are not limited to, homes and other residential buildings, farmworker housing, residential lawns, schools, daycare centers, nursing homes, hospitals, pedestrian sidewalks, outdoor recreational areas such as school grounds, athletic fields, and parks, and all property associated with buildings occupied by humans for residential or commercial purposes. The following are excluded from the definition of "sensitive sites":

(A) Residences occupied by the owner(s) of an agricultural establishment and members of their immediate families, as defined in 40 CFR § 170.305;

(B) Non-residential agricultural buildings, including barns, livestock facilities, sheds, and outhouses; and

(C) Public and private roadways.

(b) "Bodies of water" means the aquatic areas identified on the pesticide label as requiring a buffer zone.

(c) "Buffers" means areas between the application sites and protected areas where chlorpyrifos-containing products may not be applied, as described in section 5. If more than one buffer applies to a particular application then the application must comply with the largest applicable buffer. Buffers must be measured as follows:

(A) For sensitive sites, from the edge of the sensitive site to the edge of the application site; and

(B) For bodies of water, from the ordinary high-water mark of the waterbody and extending outward to the edge of the application site.

(5) Buffer Requirements. It is prohibited to apply chlorpyrifos-containing products:

(a) When using aerial application equipment or airblast application equipment (excluding targeted or directed airblast equipment), within 300 feet of sensitive sites or bodies of water;

(b) When using a targeted or directed airblast sprayer, such as a tower sprayer, tunnel sprayer or an airblast sprayer with anti-drift panels, within 150 feet of sensitive sites or bodies of water; or

(c) When using ground equipment (excluding airblast), or applying by chemigation within 60 feet of sensitive sites or bodies of water.

(6) After December 31, 2023, it is prohibited to use, deliver, distribute, sell, offer or expose for sale all chlorpyrifos-containing products, except when:

(a) Labeled for use as, and used as, a commercial pre-plant seed treatment, or

(b) Formulated as, and used as, a granular product.

(7) This rule does not apply to chlorpyrifos impregnated in ear tags for cattle.

(8) Failure to comply with this rule may result in one or more of the following actions:

(a) Revocation, suspension or refusal to issue or renew the license or certification of an applicant, licensee or certificate holder;

(b) Imposition of a civil penalty; or

(c) Any other enforcement action authorized under any law.