



Oregon

Theodore R. Kulongoski, Governor

Department of Agriculture

635 Capitol Street NE
Salem, OR 97301-2532



TO: Interested Parties

FROM: Janet Fults, Program Manager, ODA Pesticides Division
(503) 986-4652 jfults@oda.state.or.us

DATE: May 15, 2009

RE: OAR 603-057-0160, OAR 603-057-0110, OAR 603-057-0145
Proposed Oregon Administrative Rules

Attached is the Notice of Proposed Rulemaking Hearing of the Oregon Administrative Rules (OAR) associated with the Pesticide Control Act (Oregon Revised Statutes Chapter 634). There are three sections of administrative rule attached. Below is a brief overview of what is being proposed in each section:

OAR 603-057-0160 Pesticide Use for Experimental or Research Purposes

Two distinct processes are outlined to address experimental or research uses of pesticides. The two processes provide researchers the ability to:

1. Apply for a "Collective Experimental Use Permit" that expires December 31st of each year. This "Collective" permit covers experimental pesticide use that does not exceed a total of one acre per pesticide and is conducted on agricultural or forest sites.
2. Apply for a "Site-Specific Experimental Use Permit" that expires 12 months after issuance by the department. This permit is for experimental pesticide use on specific sites other than agriculture or forest or that exceed one acre.

In addition, this section:

- Outlines licensing and recordkeeping required for experimental pesticide use.
- Outlines the information to be included in reports of experimental use to be submitted to the department upon expiration of a permit.
- Identifies entities exempt from applying for an experimental use permit.

OAR 603-057-0110 Pesticide Operator, Applicator, and Trainee Categories

Amends license categories for pesticide operators, applicators and trainees. The amendments being proposed:

- Allows ability to add the Demonstration and Research category to a trainee license.
- Identifies when the Demonstration and Research category is to be used.

OAR 603-057-0145 Pesticide Consultant Standards of Competence

- Adds the ability to add the category of Demonstration and Research to a Pesticide Consultant license.
- Clarifies when a Pesticide Consultant with the category of Demonstration and Research may qualify for an applicator license.

The public hearing regarding these proposed administrative rules is on June 23, 2009 at 10:00 am at the Oregon Dept. of Agriculture, Conference Room D, 635 Capitol St. NE, Salem, OR 97301. Comments may also be emailed to pestreg@oda.state.or.us. The last day for public comment is July 7, 2009 at 5:00 pm.

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*

A Statement of Need and Fiscal Impact accompanies this form.

Department of Agriculture Pesticides Division	603-057	
Agency and Division	Administrative Rules Chapter Number	
Sue Gooch	635 Capitol St. NE Salem, OR 97301	503-986-4552
Rules Coordinator	Address	Telephone

RULE CAPTION

Establishes process for experimental or research pesticide use. Amends application of Demonstration and Research category

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

June 23, 2009	10:00 am	Oregon Dept. of Ag 635 Capitol St. NE Salem, OR	John Beyers
Hearing Date	Time	Location	Hearings Officer

RULEMAKING ACTION

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

ADOPT:

OAR 603-057-0160 Pesticide Use for Experimental or Research Purposes

AMEND:

OAR 603-057-0110 Pesticide Operator, Applicator, and Trainee Categories

OAR 603-057-0145 Pesticide Consultant Standards of Competence

REPEAL:

RENUMBER:

AMEND & RENUMBER:

Stat. Auth. : ORS 634

Other Auth.:

Stats. Implemented: ORS 634

RULE SUMMARY

OAR 603-057-0160

Addresses pesticide use for experimental or research purposes with two distinct experimental use permit processes. Clarifies licensing and recordkeeping requirements to conduct experimental use of pesticides.

OAR 603-057-0110

Amends Pesticide operator, applicator, and trainee categories to allow the ability of adding the category of Demonstration and Research to a pesticide trainee license. Identifies when the category of Demonstration and Research is to be used.

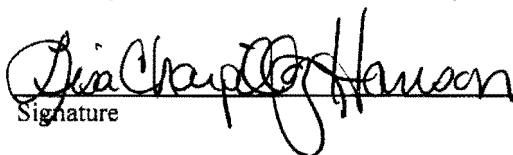
OAR 603-057-0145

Amends pesticide consultant standards of competence to include the ability to add the category of Demonstration and Research to a Pesticide Consultant license. Clarifies when a Pesticide Consultant with the category of Demonstration and Research may qualify for an applicator license.

The Agency 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.

July 7, 2009 5:00 pm

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)


Signature

Lisa Charpilloe Hanson
Printed name

5/12/09
Date

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Department of Agriculture Pesticides Division

603-057

Agency and Division

Administrative Rules Chapter Number

Establishes process to address pesticide use for experimental or research purposes. Amends utility of the Demonstration and Research category

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: Pesticide use for experimental or research purposes

Statutory Authority: ORS 634

Other Authority:

Stats. Implemented: ORS 634

Need for the Rule(s): The new rule establishes a process to permit pesticide use intended for experimental or research purposes and identifies when a permit is, or is not, required. Two different types of experimental use permits are established. One will streamline routine research trials on agriculture or forest sites and another will address larger, more diverse experimental use situations with specific site information required.

The amended rules allow the Demonstration and Research pesticide license category to be utilized by commercial pesticide trainees, public pesticide trainees and consultants. Clarification is added to the pesticide consultant standards of competence to add the category of Demonstration and Research and to be eligible to obtain a pesticide applicator license with the Demonstration and Research category based on the issuance of a consultant's license with the same category.

Documents Relied Upon, and where they are available: ORS Chapter 634, OAR 603-057 and ODA pesticide consultant list available on line at www.oregon.gov/ODA/PEST.

Fiscal and Economic Impact: The requirement to take a test for the category of Demonstration and Research will incur a cost ranging from \$10-\$25 per exam for commercial and public applicators/trainees. Adding an additional major category to a new license or an existing applicator license will incur an additional cost of \$7.50 per license.

Statement of Cost of Compliance:

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

Oregon State University is the primary state agency with pesticide consultants conducting pesticide trials for experimental or research purposes. A pesticide license or consultant license is issued to the person, not the agency, so the impact on an agency should be minimal.

2. Cost of compliance effect on small business (ORS 183.336): No known adverse impact.

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

ODA has 626 Pesticide Consultants with the Demonstration and Research Category who may utilize these rule changes.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

ODA will use current licensing program to add Demonstration and Research Category. ODA will develop and maintain a Demonstration and Research study manual and associated certification examinations.

c. Equipment, supplies, labor and increased administration required for compliance: Costs will be absorbed into existing programs.

How were small businesses involved in the development of this rule? Many consultant business persons were included in the advisory committee.

Administrative Rule Advisory Committee consulted?: Yes


Signature

Lisa Charpillot-Hanson
Printed name

5/12/09
Date

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

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

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

(I) Method of application;

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

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

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

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

(N) 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) The experimental use permit requires that the permit holder prepare, maintain, and provide records in the same manner as in ORS 634.146.

(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 the measures taken to prevent the food or feed item from being used.

(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 ORS 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;

603-057-0110

Pesticide Operator, Applicator, and Trainee Categories

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

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

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

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

(a) Authorized by an experimental use permit issued by the United States Environmental Protection Agency;

(b) Authorized by an experimental use permit issued by the department as provided in OAR 603-057-0160; or

(c) By a federal or state agency that is exempt from obtaining an experimental use permit as provided in OAR 603-057-0160(2)(b).

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

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

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

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

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

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

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

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

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 subsection (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 Pesticide 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 his/her license following successful completion of the written examination for the Demonstration and Research category.

([3] 4) A pesticide consultant licensed pursuant to this section in the category Demonstration and Research [may also] is eligible to be licensed as a pesticide applicator in the category of Demonstration and Research[, as defined in OAR 603-057-0110(3),] without further examination. [, provided he makes] An application for such 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. [at the same time he makes application for a pesticide consultant's license. Such licensing may also be documented as a Demonstration and Research special endorsement on the pesticide consultant license.]

([4] 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.

([5] 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.

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

([7] 8) A pesticide consultant licensed pursuant to this section shall also be [considered] 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. [use on his own lands or crops.] 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.