

Chapter 634

2007 EDITION

Pesticide Control

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GENERAL PROVISIONS

634.005 Short title; policy statement.

The purpose of this chapter, which shall be known as the State Pesticide Control Act and shall be enforced by the State Department of Agriculture, is to regulate in the public interest the formulation, distribution, storage, transportation, application and use of pesticides. Many materials have been discovered or synthesized which are necessary and valuable for the control of insects, plant diseases and weeds. Many more pesticides will be discovered and needed. Such materials, however, may injure health, property, wildlife or environment by being distributed, stored, transported, applied or used in an improper or careless manner. The pesticide industry of this state has achieved and maintained high standards in its formulation and use of pesticides while at the same time experiencing a minimum of injury to persons, property or the environment. Currently updating the law to maintain this achievement and to consider future new pesticides and problems is necessary for the protection of persons, property, wildlife and environment of this state. [Formerly 634.012]

634.006 Definitions. As used in this chapter unless the context requires otherwise:

(1) "Antidote" means a practical immediate treatment in case of poisoning and includes first-aid treatment.

(2) "Brand" or "trademark" means any word, name, symbol or any combination thereof adopted or used by a person to identify pesticides manufactured, compounded, delivered, distributed, sold or offered for sale in this state and to distinguish them from pesticides manufactured, compounded, delivered, distributed, sold or offered for sale by others.

(3) "Department" means the State Department of Agriculture.

(4) "Device" means any instrument or contrivance containing pesticides or other chemicals intended for trapping, destroying, repelling or mitigating insects or rodents or destroying, repelling or mitigating fungi, nematodes or such other pests as may be designated by the department, but does not include equipment used for the application of pesticides or other chemicals when sold separately from such pesticides or chemicals.

(5) "Private applicator" means a person who uses or supervises the use of any pesticide, classified by the department as a restricted-use or highly toxic pesticide, for the purpose of producing agricultural commodities or forest crops on land owned or leased by the person.

(6) "Highly toxic" means a pesticide or device determined by the department to be capable of causing severe injury, disease or death to human beings.

(7) "Landowner" means a person owning three acres or more within a proposed protected area; and in the case of multiple ownership of land, the owner is only a person whose interest is greater than an undivided one-half interest therein or who holds an authorization in writing from one or more of the other owners whose interest, when added to the interest of the person, are greater than an undivided one-half interest in the land.

(8) "Pesticide" includes:

(a) "Defoliant" which means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant with or without causing abscission;

(b) "Desiccant" which means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue;

(c) "Fungicide" which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any fungus;

(d) "Herbicide" which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed;

(e) "Insecticide" which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any insects which may be present in any environment whatsoever;

(f) "Nematocide" which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating nematodes;

(g) "Plant regulator" which means any substance or mixture of substances intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation or to otherwise alter the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants or soil amendments; or

(h) Any substance, or mixture of substances intended to be used for defoliating plants or for preventing, destroying, repelling or mitigating all insects, plant fungi, weeds, rodents, predatory animals or any other form of plant or animal life which is, or which the department may declare to be a pest, which may infest or be detrimental to vegetation, humans, animals, or be present in any environment thereof.

(9) "Pesticide applicator" or "applicator" means a person who:

(a) Is spraying or applying pesticides for others;

(b) Is authorized to work for and is employed by a pesticide operator; and

(c) Is in direct charge of or supervises the spraying or application of pesticides or operates, uses, drives or physically directs propulsion of equipment, apparatus or machinery, either on the ground or by aircraft in such activity.

(10) "Pesticide consultant" means a person, including governmental employees, who offers or supplies technical advice, supervision, aid or recommendations to the user of pesticides classified by the department as restricted-use or highly toxic pesticides, whether licensed as a pesticide dealer or not.

(11) "Pesticide dealer" means a person who sells, offers for sale, handles, displays or distributes any pesticide classified by the department as a restricted-use or highly toxic pesticide.

(12) "Pesticide equipment" means any equipment, machinery or device used in the actual application of pesticides, including aircraft and ground spraying equipment.

(13) "Pesticide operator" means a person who owns or operates a business engaged in the application of pesticides upon the land or property of another.

(14) "Pesticide trainee" means a person who:

(a) Is employed by a pesticide operator; and

(b) Is working and engaged in a training program under special certificate to qualify as a pesticide applicator.

(15) "Professed standard of quality" means a plain and true statement of the name and percentage of each active ingredient and the total percentage of all inert ingredients contained in any pesticide.

(16) "Protected area" means an area established under the provisions of this chapter to prohibit or restrict the application of pesticides.

(17) "Public applicator" means a person who is an employee of the State of Oregon or its agencies, counties, cities, municipal corporations, other governmental bodies or subdivisions thereof, irrigation districts, drainage districts and public utilities and telecommunications utilities and who performs or carries out the work, duties or responsibilities of a pesticide applicator.

(18) "Public trainee" means a person who is an employee of the State of Oregon or its agencies, counties, cities, municipal corpo-

rations, other governmental bodies or subdivisions thereof, irrigation districts, drainage districts and public utilities and telecommunications utility and who performs or carries out the work, duties or responsibilities of a pesticide trainee.

(19) "Registrant" means a person registering any pesticide pursuant to this chapter.

(20) "Restricted area" means an area established under the provisions of this chapter to restrict, but not prohibit, the application of pesticides.

(21) "Restricted-use pesticide" means any pesticide or device which the department has found and determined to be so injurious or detrimental to persons, pollinating insects, bees, animals, crops, wildlife, land or environment, other than the pests it is intended to prevent, destroy, control or mitigate, that additional restrictions are required.

(22) "Weed" means any plant which grows where not wanted. [1973 c.341 §3; 1987 c.447 §134]

634.007 [1995 s.s. c.3 §38a; repealed by 1996 c.10 §3 (634.055 enacted in lieu of 634.007)]

634.009 [1995 s.s. c.3 §38b; repealed by 1996 c.10 §5 (634.057 enacted in lieu of 634.009)]

634.010 [Repealed by 1953 c.118 §2]

634.011 [1995 s.s. c.3 §38c; repealed by 1996 c.10 §7 (634.060 enacted in lieu of 634.011)]

634.012 [1973 c.341 §2; renumbered 634.005 in 1995]

634.013 [1995 s.s. c.3 §38d; repealed by 1996 c.10 §9 (634.063 enacted in lieu of 634.013)]

634.015 [1995 s.s. c.3 §38e; repealed by 1996 c.10 §11 (634.065 enacted in lieu of 634.015)]

REGISTRATION, LABELING AND USE

634.016 Registration of pesticides and application devices; fee; contents of application; restriction on pesticide distribution and use; exemptions. (1) Every pesticide, including each formula or formulation, manufactured, compounded, delivered, distributed, sold, offered or exposed for sale in this state shall be registered each year with the State Department of Agriculture.

(2) Every device manufactured, delivered, distributed, sold, offered or exposed for sale in this state shall be registered each year with the department.

(3) The registration shall be made by the manufacturer or a distributor of the pesticide.

(4) The application for registration shall include:

(a) The name and address of the registrant.

(b) The name and address of the manufacturer if different than the registrant.

(c) The brand name or trademark of the pesticide.

(d) A specimen or facsimile of the label of each pesticide, and each formula or formulation, for which registration is sought, except for annual renewals of the registration when the label remains unchanged.

(e) The correct name and total percentage of each active ingredient.

(f) The total percentage of inert ingredients.

(5) The application for registration shall be accompanied by a registration fee to be established by the department for each pesticide and each formula or formulation. The registration fee may not exceed \$250 for each such pesticide, or each formula or formulation.

(6) The department, at the time of application for registration of any pesticide or after a declaration of a ground water management area under ORS 468B.180 may:

(a) Restrict or limit the manufacture, delivery, distribution, sale or use of any pesticide in this state.

(b) Refuse to register any pesticide which is highly toxic for which there is no effective antidote under the conditions of use for which such pesticide is intended or recommended.

(c) Refuse to register any pesticide for use on a crop for which no finite tolerances for residues of such pesticide have been established by either the department or the federal government.

(d) In restricting the purposes for which pesticides may be manufactured, delivered, distributed, sold or used, or in refusing to register any pesticide, give consideration to:

(A) The damage to health or life of humans or animals, or detriment to the environment, which might result from the distribution and use of such pesticide.

(B) Authoritative findings and recommendations of agencies of the federal government and of any advisory committee or group established under ORS 634.306 (10).

(C) The existence of an effective antidote under known conditions of use for which the material is intended or recommended.

(D) Residual or delayed toxicity of the material.

(E) The extent to which a pesticide or its carrying agent simulates by appearance and may be mistaken for human food or animal feed.

(7) The provisions of this section shall not, except as provided herein, apply to:

(a) The use and purchase of pesticides by the federal government or its agencies.

(b) The sale or exchange of pesticides between manufacturers and distributors.

(c) Drugs, chemicals or other preparations sold or intended for medicinal or toilet purposes or for use in the arts or sciences.

(d) Common carriers, contract carriers or public warehousemen delivering or storing pesticides, except as provided in ORS 634.322. [1973 c.341 §7; 1975 c.304 §9; 1989 c.709 §3; 1989 c.833 §66; 2007 c.162 §1]

634.020 [Repealed by 1953 c.118 §2]

634.022 Exemption from registration for experimental pesticides; approval required for use of experimental pesticides; applicability of law. (1) The provisions of ORS 634.016 are not applicable to pesticides used only for experimental or research purposes. Such pesticides shall be conspicuously labeled "For experimental purposes only and not for sale" in addition to the labeling requirements of ORS 634.026, except that they need not be labeled with directions for use or the professed standard of quality.

(2)(a) Subject to the exemptions set forth in paragraph (b) of this subsection, before any pesticide can be used for experimental or research purposes a person proposing to use such pesticides shall obtain approval of the State Department of Agriculture. Application for such approval shall contain such information as may be required by the department, including the location and size of the plot on which the experiment or research is to be carried out, the nature of the pesticide to be utilized, the person responsible for such activities and the intended disposition of any crops grown upon the experimental or research plot.

(b) The provisions of paragraph (a) of this subsection are not applicable to:

(A) Federal or state agencies.

(B) Experiments or research carried on in greenhouses.

(3) If any person uses pesticides for experimental purposes as provided by this section contrary to the instructions and approval issued by the department, the department may immediately revoke such approval and refuse to issue its approval to such persons on future applications. [1973 c.341 §9; 1995 c.79 §324]

634.026 Pesticide labeling requirements; highly toxic pesticides; applicability of law. (1) If not otherwise required or prescribed by federal law or rule, each package or container of every pesticide shall be labeled with:

(a) The name and address of the manufacturer or person for whom it was manufactured.

(b) The brand name or trademark under which the material is sold.

(c) The professed standard of quality of the material.

(d) The net weight or volume of the contents.

(e) Adequate and necessary directions for its proper and intended use.

(2) In addition to the information required by subsection (1) of this section, any pesticide which is highly toxic shall be labeled with:

(a) A sign of a skull and crossbones.

(b) The word "poison" in red on the package printed on a background of contrasting color.

(c) A poison antidote for the material, if any.

(3) The provisions of subsection (2) of this section shall not apply to bleaching powder or chloride of lime. [1973 c.341 §10]

634.030 [Repealed by 1953 c.118 §2]

634.032 When pesticide is misbranded. Pesticides shall be deemed misbranded if:

(1) The package or container of such materials bears any false or misleading statement.

(2) The container or package of such materials is not labeled as required by ORS 634.026. [1973 c.341 §11]

634.036 When pesticide is adulterated. A pesticide shall be deemed to be adulterated if:

(1) It is a pesticide other than a herbicide, defoliant or desiccant, is intended for use on vegetation and contains any substance which is injurious to such vegetation when used as directed under normal growing conditions.

(2) The strength or purity of the pesticide is below the purported or professed standard of quality as expressed in its labeling, or any substance has been substituted wholly or in part for any ingredient of the pesticide, or any valuable constituent thereof has been omitted wholly or in part.

(3) The contents of the package or container of pesticide do not meet their purported standard of quality in any other manner.

(4) The contents of the package or container represented to be a pesticide are not definitely effective for the purpose for which recommended. [1973 c.341 §12]

634.040 [Repealed by 1953 c.118 §2]

634.042 Unsafe use of certain pesticides on raw agricultural commodities; tolerances and exemptions; applicability to fertilizers, agricultural minerals and

lime mix. (1) Any poisonous or deleterious pesticide or any pesticide which, in the opinion of the State Department of Agriculture, is not generally recognized among experts qualified by scientific training and experience to evaluate the safety of pesticide chemicals as safe for use, added to a raw agricultural commodity, shall be deemed unsafe for the purposes of the application of ORS 616.235 (1)(b), unless:

(a) A tolerance for such pesticide chemical in or on the raw agricultural commodity has been prescribed by regulation promulgated by the department and the quantity of such pesticide chemical in or on the raw agricultural commodity is within the limits of the tolerance so prescribed; or

(b) With respect to use in or on such raw agricultural commodity, the pesticide chemical has been exempted from regulation promulgated by the department.

(2) While a tolerance or exemption from tolerance is in effect for a pesticide chemical with respect to any raw agricultural commodity, such raw agricultural commodity shall not, by reason of bearing or containing any added amount of such pesticide chemical, be considered to be adulterated within the meaning of ORS 616.235 (1)(a), provided such pesticide chemical is in compliance with the law and regulations promulgated thereunder.

(3) In a fertilizer, agricultural minerals, agricultural amendment or lime mix in which a pesticide is contained, all applicable provisions of this chapter must be complied with. In lieu of the requirements of ORS 634.026 (1)(c), the label or invoice on a certain mix may show the name and amount of the actual pesticide, together with the total amount of the entire mixture, including the amount of actual pesticide, to be applied to each acre. [1973 c.341 §13; 1979 c.29 §2; 1995 c.79 §325]

PESTICIDE USE REPORTING SYSTEM

Note: Sections 2 to 4, 6, 8 to 11, 15 and 22, chapter 1059, Oregon Laws 1999, provide:

Sec. 2. As used in sections 2 to 11 of this 1999 Act:

(1) "Pesticide" has the meaning given in ORS 634.006, but does not include antimicrobial pesticides as defined in the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 (P.L. 92-516, as amended).

(2) "Pesticide user" means any person who uses or applies a pesticide in the course of business or any other for-profit enterprise, or for a governmental entity, or in a location that is intended for public use or access.

(3) "Retail pesticide dealer" means a person who sells, offers for sale, handles, displays or distributes any pesticide but is not licensed as a pesticide dealer under ORS 634.112. [1999 c.1059 §2]

Sec. 3. The Legislative Assembly finds and declares that the development of a comprehensive, reliable and cost-effective system for collecting and organizing

information on all categories of pesticide use in Oregon is needed by government agencies, researchers, policy-makers and the public to ensure the public health and safety and to protect Oregon's water and environment. [1999 c.1059 §3]

Sec. 4. The State Department of Agriculture shall establish and implement a pesticide use reporting system to meet the need described in section 3, chapter 1059, Oregon Laws 1999. In establishing and implementing the system, the department shall:

(1) Design, develop and implement the system in order to collect, evaluate, summarize, retain and report information on the use of pesticides in each major category of use in Oregon, including agriculture, forestry, industrial, urban commercial and urban homeowner uses.

(2) At least one time each year, collect the best data practicable from each major category of pesticide use in a manner that reduces paperwork and reporting costs.

(3) Require all pesticide users to report basic information on their use of pesticides that includes:

(a) The location of use. For pesticide use within an urban area, as defined by the department by rule, the pesticide user shall report the location of use by identifying the five-digit zip code for the location. For pesticide use that is not within an urban area, the pesticide user shall report the location of use by identifying the third-level hydrologic unit for the location. As used in this paragraph, "third-level hydrologic unit" means the basin reporting level of the 12-digit hydrologic unit mapping system developed by the Federal Geographic Data Committee.

(b) The name and United States Environmental Protection Agency registration number for the pesticide product used.

(c) The quantity of pesticide product applied.

(d) The purpose of and type of site of the application.

(e) The month of the application.

(f) Subject to section 8, chapter 1059, Oregon Laws 1999, other data gathered by pesticide applicators that the department considers necessary to achieve the purposes of section 3, chapter 1059, Oregon Laws 1999.

(4) Develop a mechanism to ensure the accuracy, reliability and validity of the database by providing for an independent review of the pesticide use data and collection procedures by data quality assurance specialists.

(5) Develop a specific mechanism to identify household and other urban uses of pesticides. If this mechanism involves sales reporting by retail pesticide dealers, the department shall develop a minimum monthly sales quantity below which the retail pesticide dealer is exempt from reporting. [1999 c.1059 §4; 2005 c.743 §1]

Sec. 6. In carrying out its responsibilities under sections 2 to 9 of this 1999 Act, the State Department of Agriculture shall seek technical assistance as appropriate from at least the following entities:

- (1) Oregon Department of Administrative Services;
- (2) Department of Environmental Quality;
- (3) State Department of Fish and Wildlife;
- (4) State Forestry Department;
- (5) Department of Human Services;
- (6) Occupational Safety and Health Division of the Department of Consumer and Business Services;
- (7) Oregon Poison Center;
- (8) Pesticide Analytical and Response Center; and
- (9) Office of the State Fire Marshal. [1999 c.1059 §6]

Sec. 8. (1) In implementing the pesticide use reporting system, the State Department of Agriculture shall, at a minimum:

(a) Publish an annual report summarizing the pesticide use data reported to the department under section 4, chapter 1059, Oregon Laws 1999. The report shall include:

(A) An analysis of trends in pesticide use;

(B) An assessment of pesticide use reporting data accuracy; and

(C) Pesticide use information summarized by zip code or hydrologic unit as described in section 4 (3)(a), chapter 1059, Oregon Laws 1999.

(b) Establish policy and adopt rules relating to the public release of data about pesticide sales or use consistent with the limitations provided in this section.

(2)(a) Data about pesticide use obtained under sections 2 to 9, chapter 1059, Oregon Laws 1999, are confidential if the data would reveal the identity of the owner or lessee or the specific location of property where a person has applied a pesticide:

(A) For a private agricultural or forestry operation; or

(B) On private property or public property leased to a private person.

(b) Data about pesticide sales obtained under sections 2 to 9, chapter 1059, Oregon Laws 1999, are confidential if the data would reveal a trade secret, as defined in ORS 646.461, of the retail outlet, multiple-outlet retailer or associated group of retailers that reports the data.

(c) The department may not collect pesticide use data under section 4, chapter 1059, Oregon Laws 1999, that would reveal the identity of the owner or lessee or the specific location of property where a person has applied a pesticide.

(3) The policy and rules that the department adopts under this section may not limit access to data for the following purposes:

(a) Information obtained as part of any investigation under any other provision of law;

(b) To release information obtained exclusively under sections 2 to 9, chapter 1059, Oregon Laws 1999, to any other local, state or federal agency, if the local, state or federal agency has agreed to maintain the confidentiality of any information that is required to be treated as confidential under this section, unless the public interest by clear and convincing evidence requires disclosure in the particular instance; and

(c) To release information obtained exclusively under sections 2 to 9, chapter 1059, Oregon Laws 1999, to a health or environmental researcher acting in an official capacity from an accredited university or accepted research institute who agrees to maintain the confidentiality of any information that is required to be treated as confidential under this section. [1999 c.1059 §8; 2001 c.915 §2; 2005 c.743 §2]

Sec. 9. (1) In addition to any other liability or penalty provided by law, the Director of Agriculture may impose a civil penalty in an amount of up to \$10,000 on any person for violation of a confidentiality agreement established under section 8 of this 1999 Act.

(2) The State Department of Agriculture shall develop by rule a schedule establishing the amount of civil penalty that may be imposed for a particular violation under subsection (1) of this section. Under the schedule, the amount of the civil penalty shall correlate to the severity of the breach of confidentiality.

(3) Any civil penalty under this section shall be imposed as provided in ORS 183.745. [1999 c.1059 §9]

Sec. 10. Nothing in sections 2 to 9 of this 1999 Act shall be construed to create a new private right of ac-

tion against any pesticide user or retail pesticide dealer. [1999 c.1059 §10]

Sec. 11. (1) As used in this section, "frivolous" means the matter is not supported by substantial evidence or the matter is initiated without reasonable prospect of prevailing.

(2) If any person files an action against another party as a result of the operation of the pesticide use reporting system created pursuant to sections 2 to 9 of this 1999 Act, and the court finds that the action is frivolous or was filed in bad faith or for the purpose of harassment, the court may impose an appropriate sanction upon the person who filed the action. The sanction may include an order to pay to the other party the amount of the reasonable expenses incurred by reason of the filing of the action, including reasonable attorney fees. [1999 c.1059 §11]

Sec. 15. The State Department of Agriculture may use up to \$40 of each pesticide, formula or formulation registration fee collected under ORS 634.016 during the period beginning January 1, 2008, and ending December 31, 2009, to implement the pesticide use reporting system under sections 2 to 9, chapter 1059, Oregon Laws 1999, as long as the Legislative Assembly appropriates an equivalent amount of moneys from the General Fund for the system. [1999 c.1059 §15; 2005 c.743 §3; 2007 c.162 §2]

Sec. 22. Sections 2 to 4, 6 to 11, 15 and 21 of this 1999 Act are repealed on December 31, 2009. [1999 c.1059 §22]

634.050 [Repealed by 1953 c.118 §2]

STATEWIDE REGULATION OF PESTICIDES

634.055 Legislative findings. The Legislative Assembly hereby determines that the citizens of this state benefit from a system of safe, effective and scientifically sound pesticide regulation. The Legislative Assembly further finds that a uniform, statewide system of pesticide regulation that is consistent, coordinated and comports with both federal and state technical expertise is essential to the public health, safety and welfare and that local regulation of pesticides does not materially assist in achieving these benefits. [1996 c.10 §4 (enacted in lieu of 634.007)]

634.057 State preemption of local pesticide regulation. No city, town, county or other political subdivision of this state shall adopt or enforce any ordinance, rule or regulation regarding pesticide sale or use, including but not limited to:

- (1) Labeling;
- (2) Registration;
- (3) Notification of use;
- (4) Advertising and marketing;
- (5) Distribution;
- (6) Applicator training and certification;
- (7) Licensing;
- (8) Transportation;
- (9) Packaging;
- (10) Storage;
- (11) Disclosure of confidential information; or

(12) Product composition. [1996 c.10 §6 (enacted in lieu of 634.009)]

634.060 Actions allowed by city, town, county or other political subdivision. Notwithstanding ORS 634.057, a city, town, county or other political subdivision of this state may adopt a policy regarding the use of pesticides on property owned by the city, town, county or other political subdivision adopting the policy. [1996 c.10 §8 (enacted in lieu of 634.011)]

634.063 Exceptions to state preemption of pesticide regulation. Nothing in ORS 634.057 shall limit the authority of a city, town, county or other political subdivision of this state to adopt or enforce a local ordinance, rule or regulation strictly necessary to comply with:

(1) The Uniform Building Code published by the International Conference of Building Officials, as amended and adopted by the Director of the Department of Consumer and Business Services;

(2) A uniform fire code; or

(3) Any requirement of a state or federal statute or regulation pertaining to pesticides. [1996 c.10 §10 (enacted in lieu of 634.013)]

634.065 Department consideration of concerns raised by city, town, county or political subdivision. In administering this chapter, the State Department of Agriculture shall consider any concern raised by a city, town, county or other political subdivision of the state regarding the regulation of pesticides. [1996 c.10 §12 (enacted in lieu of 634.015)]

LICENSING AND CERTIFICATION

634.106 Applicability of ORS 634.112 to 634.126 and 634.146. ORS 634.112 to 634.126 and 634.146 shall not apply to:

(1) Manufacturers of materials engaged in research or experimental work on pesticides.

(2) Persons engaged in the business of a pesticide operator or applicator only in the application of any pollenicide.

(3) Persons licensed as veterinarians under ORS chapter 686 who are engaged in the practice of veterinary medicine within the scope of their veterinary medicine practice and employees of licensed veterinarians when acting within the scope of their employment.

(4) A farmer or forestland owner applying pesticides, other than restricted-use pesticides, by use of equipment of the farmer or forestland owner for others on an occasional basis not amounting to a principal or regular occupation, if the farmer does not publicly hold out as a pesticide applicator and if the pesticides that are applied are furnished by

the owner of the land on which such pesticides are applied.

(5) Persons who do not advertise or publicly hold themselves out as being in the business of applying pesticides but whose main or principal work or business is the maintenance of small or home lawns, shrubs or gardens.

(6) Persons who do not advertise or publicly hold themselves out as being in the business of applying pesticides and whose principal activity or business as related to pesticides is selling pesticides or selling or leasing equipment.

(7) Railroads, to the extent that the application of pesticides is by their regular employees, on land or property under their ownership, supervision, control or jurisdiction, except that if power-operated spray equipment is used for applying volatile herbicides, the application shall be under the direct supervision of a licensed public applicator. [1973 c.341 §22; 1995 c.360 §1; 2001 c.307 §1]

634.110 [Repealed by 1953 c.117 §2]

634.112 Renewal of licenses or certificates; delinquency. (1) Except as provided in ORS 634.142 (2), any license or certificate issued or required of a pesticide consultant, dealer, operator, applicator, private applicator or trainee by this chapter shall expire on December 31 following issuance or on such date as may be specified by rule of the State Department of Agriculture. At least 30 days prior to the expiration date, the department shall by mail notify each person holding a license or certificate of the expiration date thereof.

(2) Applications for all licenses or certificates required of a pesticide consultant, dealer, operator, applicator, private applicator or trainee, or renewal thereof, shall be made to the department on forms prescribed by the department and accompanied by the prescribed fee.

(3) All such licenses or certificates are personal to the applicant and may not be transferred to any other person.

(4) Nothing in this chapter shall be construed as requiring a person, helping or assisting in the application of pesticides by a licensed pesticide applicator or certified private applicator or the pesticide application business through the performance of manual labor only, to obtain a license or certificate, if the actual application of pesticides is made by:

(a) A licensed pesticide applicator or a certified private applicator; or

(b) A person applying pesticides under ORS 634.106.

(5) Failure to pay the renewal license fees when due by a pesticide consultant, dealer, operator or applicator, or failure to pay the renewal certificate fees by a trainee, shall forfeit the right to engage in the activities of a pesticide consultant, dealer, operator, applicator or trainee, as the case may be. Any person whose pesticide consultant, dealer, operator or applicator license, or trainee certificate has been forfeited, shall not be issued a license, certificate or renewal license or renewal certificate except upon written application to the department accompanied by a sum of money equal to the license or certificate fee which should have been paid.

(6) If such person is a pesticide consultant or applicator and does not pay the license fee during the first month in which the license fee is delinquent, thereafter such pesticide consultant or applicator shall not only pay the required license fee but shall also obtain a passing grade in a reexamination given by the department for pesticide applicators as prescribed in ORS 634.122, or otherwise demonstrate knowledge of the subject to the satisfaction of the department.

(7) No penalty reexamination shall be required of a person whose application for renewal of a license or certificate is accompanied by a signed statement that prior to the application the person has not operated or worked as a pesticide consultant, applicator or trainee, as the case may be, during the previous six months or since the expiration date of the last license or certificate of the person, whichever time is less. If the department later verifies this signed statement is false, then notwithstanding the provisions of ORS chapter 183, the department may immediately suspend the license or certificate which was issued as a result of such statement. Such suspension shall only be removed after the person has complied with the applicable provisions of subsections (5) and (6) of this section. [1973 c.341 §14; 1975 c.304 §10; 1979 c.232 §1; 2007 c.768 §40]

634.116 Pesticide operator license; authorized activities; fees; pesticide applicator license; liability insurance; limitation on damages; rules; exemptions.

(1) A pesticide operator's license, or supplements thereto, shall authorize the licensee to engage in one or more of the classes of pest control or pesticide application business prescribed by the State Department of Agriculture under ORS 634.306 (2). The department may not issue a pesticide operator license to the United States, the State of Oregon or federal, state or local agencies, instrumentalities, political subdivisions, counties, cities, towns, municipal corporations, irrigation, drainage or other districts or other federal, state or local governmental bodies.

(2) During a license period, and after a person has been issued a license to engage in certain classes of pest control or pesticide application business during a license period, the department upon receiving an additional application and applicable fees, may authorize the licensee to engage in additional classes of pest control or pesticide application business for the remainder of the license period as prescribed in ORS 634.306 (2).

(3)(a) The department shall establish a pesticide operator license fee not to exceed \$90 for the first class of pest control or pesticide application business as prescribed in ORS 634.306 (2) and not to exceed \$15 for each additional class.

(b) After a person makes first application for a specific license period, if later during the same license period the person desires to engage in additional classes of pest control or pesticide application businesses, such person shall pay the fee for each additional class established by the department not to exceed \$20.

(4) At least one owner or part owner of the pest control or pesticide application business shall also obtain and maintain a pesticide applicator's license if the pesticide operator is a sole proprietorship or a partnership. At least one officer or employee shall obtain and maintain a pesticide applicator's license if the pesticide operator is a corporation. If a pesticide operator is found to be in violation of this subsection, the pesticide operator's license, notwithstanding ORS chapter 183, is automatically suspended until the pesticide operator is in compliance. If the business is owned by one individual, the department shall make no charge for the pesticide applicator license issued to the individual under ORS 634.122.

(5) The department shall not issue or renew a pesticide operator's license until the applicant or licensee has furnished evidence to the department, in the form of a public liability policy issued by an insurance company qualified to do business in Oregon, protecting the applicant or licensee against liability for injury or death to persons and loss of or damage to property resulting from the application of pesticides, or in lieu of a policy, has furnished a deposit of cash, surety bond or other evidence of financial responsibility acceptable to the department that may be applied by the department to the payment of damages resulting from operator liability. However:

(a) Except as required under paragraph (b) of this subsection, the financial responsibility required by this section shall not apply to damages or injury to crops, real or personal property being worked upon by the applicant.

(b) If the applicant or licensee is to be engaged in the business of controlling or eradicating structural pests, or pests within a public or private place, or pests within private or public places where food is served, prepared or processed or where persons are regularly housed, the financial responsibility required by this section shall apply to damages or injury to real or personal property being worked upon, as well as all the other real and personal property set forth in this section.

(6) The financial responsibility required by subsection (5) of this section must be not less than \$25,000 for bodily injury to one or more persons and not less than \$25,000 for property damage.

(7) Notwithstanding the provisions of ORS chapter 183, if the licensed pesticide operator fails to maintain the financial responsibility required by subsections (5) and (6) of this section, the license is automatically suspended until the department again verifies the pesticide operator is in compliance with subsections (5) and (6) of this section. The liability insurance company shall notify the department in writing at least 30 days prior to any cancellation of an insurance policy required by this section.

(8) Notwithstanding the provisions of ORS 105.810 and 105.815 or other laws to the contrary, the amount of damages for which a pesticide operator or pesticide applicator is liable as a result of use of pesticides, or financial responsibility for the same is limited to actual damages only.

(9) The department shall return the deposit required by subsection (5) of this section to the pesticide operator if the pesticide operator at any time establishes exemption from the financial responsibility requirements under this chapter. After the expiration of two years from the date of an injury, death, loss or damage, the department shall return any deposit remaining to the pesticide operator or to the personal representative of the pesticide operator except that the department shall not make a return if the department has received notice that an action for damages arising out of the provisions of this section has been filed against the pesticide operator for whom the deposit was made, and the department has determined that the action is pending or that any judgment resulting from the action remains unpaid.

(10) If the pesticide operator is to spray by aircraft, then the department, in addition to other provisions of this section relating to financial responsibility, may by rule allow aircraft pesticide operators to reduce, suspend or terminate the liability insurance, applicable to spraying by aircraft, and re-

quired by subsections (5) and (6) of this section during certain periods of the year.

(11) The department may by rule allow liability insurance policies required by subsections (5) and (6) of this section to include deductible clauses of amounts to be determined by the department.

(12)(a) The United States, the State of Oregon or federal, state or local agencies, instrumentalities, political subdivisions, counties, cities, towns, municipal corporations, irrigation, drainage or other districts or other federal, state or local governmental bodies are not required to obtain a license as a pesticide operator or to furnish evidence of financial responsibility to the department when:

(A) Applying pesticides to property under their ownership, possession, control or jurisdiction;

(B) Applying pesticides pursuant to an order issued by the department for purposes of controlling or eradicating noxious weeds or pests; or

(C) Applying pesticides to property under the ownership, possession, control or jurisdiction of another federal, state or local agency, instrumentality, political subdivision, county, city, town, municipal corporation, irrigation, drainage or other district or other federal, state or local governmental body or of a homeowners association as defined under ORS 94.550 if:

(i) The land is in a jurisdiction adjacent to property under their ownership, possession, control or jurisdiction;

(ii) The application is done in conjunction with, or as an extension of, an application of pesticides to property under their ownership, possession, control or jurisdiction; and

(iii) The pesticide application is done on a cost recovery, cooperative trade of services or no cost basis, and not as a source for profit.

(b) A public utility or telecommunications utility is not required to obtain a license as a pesticide operator or to furnish evidence of financial responsibility to the department when applying pesticides to property under the ownership, possession or control of the utility.

(c) In addition to any application allowed under paragraph (a) of this subsection, a vector control district is not required to obtain a license as a pesticide operator or to furnish evidence of financial responsibility to the department when applying pesticides for the prevention, control or eradication of a public health vector as defined in ORS 452.010 to property under the ownership,

possession, control or jurisdiction of another federal, state or local agency, instrumentality, political subdivision, county, city, town, municipal corporation, irrigation, drainage or other district or other federal, state or local governmental body or of a homeowners association as defined under ORS 94.550 if the pesticide application is done on a cost recovery, cooperative trade of services or no cost basis, and not as a source of profit.

(13) Subject to subsection (15) of this section, the employees of the agencies, instrumentalities, subdivisions, counties, cities, towns, municipal corporations, districts, governmental bodies or utilities described in subsection (12) of this section who perform or carry out the work, duties or responsibilities of a pesticide applicator are subject to the provisions of this chapter, except they shall be issued "public applicator" licenses or, if they carry out the work, duties or responsibilities of a pesticide trainee, shall be issued "public trainee" certificates, if they otherwise comply or qualify with the provisions of this chapter relating thereto.

(14) The public applicator license or public trainee certificate shall be:

(a) Issued by the department upon payment of the fee for the pesticide applicator license or pesticide trainee certificate.

(b) Valid and used by the licensee or certificate holder only when applying pesticides as described in subsection (12) of this section.

(c) Renewed, suspended or revoked each year in the same manner, under the same provisions and at the same time as other pesticide applicator licenses and trainee certificates are renewed, suspended or revoked.

(15) The provisions of subsection (13) of this section apply only to:

(a) The application of restricted-use pesticides; or

(b) The application of any pesticide by using a machine-powered device.

(16) Prior to applying pesticides to land described in subsection (12)(a)(C) of this section, a public applicator shall inform the person requesting pesticide application of the possible availability of alternative sources of assistance, including sources in the private sector that are registered with the department or with industry trade or professional organizations.

(17) A federal, state or local agency, instrumentality, political subdivision, county, city, town, municipal corporation, irrigation, drainage or other district or other federal, state or local governmental body may not solicit or advertise for pesticide application business in areas outside its jurisdiction.

[1973 c.341 §15; 1975 c.304 §11; 1987 c.317 §1; 1987 c.447 §135; 1993 c.599 §1; 2001 c.307 §2; 2005 c.96 §1; 2007 c.258 §9]

634.120 [Repealed by 1953 c.117 §2]

634.122 Applicator license; qualifications; examination; fee. (1) An applicant for a pesticide applicator's license is entitled to be examined for or to be issued a license or supplements thereto by the State Department of Agriculture, if the applicant:

(a) Is at least 18 years of age; and

(b) Proves to the satisfaction of the department that the applicant:

(A) Has had experience as a pesticide trainee for the minimum period and in the manner prescribed by the department;

(B) Has educational qualifications, experience or training which is equal to the minimum standards and requirements established by the department; or

(C) Has been licensed in Oregon as a pesticide applicator and actively engaged in such work during the prior license period, as shall be prescribed by the department.

(2) An applicant for a pesticide applicator's license shall be required to demonstrate satisfactorily by written examination or any reexamination given by the department, an adequate knowledge of:

(a) The characteristics of pesticides and the effect of their application to particular crops.

(b) The practices of application of pesticides.

(c) The conditions and times of application of pesticides and the precautions to be taken in connection therewith.

(d) The applicable laws and rules relating to pesticides and their application in this state.

(e) Integrated pest management techniques, as defined in ORS 634.650, for pest control.

(f) Other requirements or procedures which will be of benefit to and protect the pesticide applicator, the persons who use the services of the pesticide applicator and the property of others.

(3) Based upon the license application and the request of the applicant, the department may examine the applicant only in any one or more of the classes of pest control or pesticide application businesses established by the department under ORS 634.306 (2).

(4)(a) A pesticide applicator license fee shall be established by the department not to exceed \$50 for the first class of pest control or pesticide application business as prescribed in ORS 634.306 (2) and not to exceed \$7.50 for each additional class.

(b) After a person makes first application for a license or renewal thereof for a specific license period, if later during the same license period such person desires to engage in additional classes of pest control or pesticide application business as prescribed in ORS 634.306 (2), such person shall pay the fee for each additional class established by the department not to exceed \$12.50.

(5) Examinations or reexaminations for pesticide applicator's licenses shall be given by the department at such time and in any of its branch offices or other locations it deems expedient, and shall be under the supervision of its employees or appointees. The department is authorized to:

(a) Appoint without pay or reimbursement, employees of other state agencies who are authorized to give examinations.

(b) Prepare and maintain various types of examinations and types and schedules of reexaminations and to take all other measures deemed necessary to insure that persons receiving passing grades thereto have been fairly and reasonably tested as to their ability and that there have been no fraudulent or dishonest means used by the applicants in applying for or in the taking of examinations or reexaminations.

(6) If it verifies an applicant has received a passing grade on the examination or reexamination and otherwise has complied with the provisions of this chapter, the department shall issue a pesticide applicator's license.

(7) Each person who has failed to receive a passing grade or for other reasons was not issued a license as a result of an examination or reexamination given by the department, shall pay \$5 to partially reimburse the department for its costs to administer each reexamination to the applicant. [1973 c.341 §16; 1975 c.304 §12; 1991 c.943 §6; 1993 c.599 §2; 1995 c.79 §326]

634.126 Trainee certificate; renewal; fee. (1) In accordance with regulations promulgated by the State Department of Agriculture, as provided in ORS 634.306 (1), the department shall issue or renew its pesticide trainee's certificate if the applicant or certificate holder:

(a) Is at least 18 years of age;

(b) Is employed by a licensed pesticide operator;

(c) Is working under the direct supervision and control of a licensed applicator; and

(d) Is in compliance with the applicable provisions of this chapter and regulations promulgated thereunder.

(2) The fees for a pesticide trainee's certificate, or renewal thereof, shall be the same

as the license fee for a pesticide applicator. [1973 c.341 §17; 1997 c.249 §193]

634.130 [Repealed by 1953 c.117 §2]

634.132 Consultant license; fee; qualifications; examination; applicability of law. (1) The annual license fee for a pesticide consultant shall be established by the State Department of Agriculture not to exceed \$40.

(2) An applicant for a pesticide consultant's license shall be required to demonstrate satisfactorily by written examination or any reexamination given by the department, an adequate knowledge of:

(a) The characteristics of pesticides and the effect of their application to particular crops.

(b) The practices of application of pesticides.

(c) The conditions and times of application of pesticides and the precautions to be taken in connection therewith.

(d) The applicable laws and rules relating to pesticides and their application in this state.

(e) Other requirements or procedures which will be of benefit to and protect the pesticide applicators, the persons who use the services of the pesticide applicator and the property of others.

(3) Based upon the license application and the request of the applicant, the department may examine the applicant only in any one or more of the classes of pesticides established by the department under ORS 634.306 (2).

(4) Examinations or reexaminations for pesticide consultant's licenses shall be subject to ORS 634.122 (5) to (7).

(5) This section shall not apply to licensed pesticide applicators or operators. [1973 c.341 §18; 1975 c.304 §13; 1993 c.599 §3]

634.136 Dealer license; fee; applicability of law. (1) The annual license fee for a pesticide dealer shall be established by the State Department of Agriculture not to exceed \$75. A separate license shall be required for each sales outlet or location.

(2) This section shall not apply to:

(a) Any licensed pesticide operator who sells restricted-use or highly toxic pesticides as a part of services, or through licensed employees, through the use of the equipment of the licensed pesticide operator.

(b) Any state, federal or governmental agency providing restricted-use or highly toxic pesticides to its own employees for use in its own programs.

(c) Any person who sells, offers for sale, handles or distributes pesticide-fertilizer

mixtures only in packages of 25 pounds or less in size. [1973 c.341 §19; 1975 c.304 §14; 1993 c.599 §4]

634.140 [Repealed by 1953 c.117 §2]

634.142 Private applicator certificate; standards; fee. (1) The State Department of Agriculture shall issue or renew a private applicator's certificate if the applicant or certificate holder meets the certification standards established by the department pursuant to ORS 634.306 (14).

(2) A fee, established by the department, shall be assessed for a private applicator's certificate or renewal thereof. The fee may not exceed \$25. The time for which a certificate is valid shall be five years. [1973 c.341 §20; 1979 c.232 §2; 2003 c.14 §390]

634.146 Records required of operators; retention period; report to owner of treated field crops. (1) Pesticide operators shall prepare and maintain records on forms approved by the State Department of Agriculture. Such records shall include:

(a) The name of the person for whom the pesticide was applied.

(b) The approximate location of the land or property on which the pesticide was applied.

(c) The date and approximate time of application.

(d) The person who supplied the pesticides.

(e) The trade name and the strength of such pesticides.

(f) The amount or concentration (pounds or gallons per acre of active ingredient or concentration per approximately 100 gallons).

(g) The specific property, crop or crops to which the pesticide was applied.

(h) The summary information of equipment, device or apparatus used and, if applied by aircraft, the Federal Aviation Administration number.

(i) The names of the pesticide applicator or pesticide trainees who did the actual application or spraying.

(2) The records, which shall be kept for a period of at least three years from the date of application of pesticides, shall be available during business hours for review and inspection by the department.

(3) Upon receiving a request from any owner of field crops on which pesticides were applied, the pesticide operator within 40 days after making such application shall give or forward to the owner a written statement setting forth the information described in subsection (1)(a), (b), (c), (e), (f) and (g) of this section. [1973 c.341 §21; 2001 c.104 §248]

LIABILITY CLAIMS PROCEDURE

634.172 Procedure for making liability claim against landowner or pesticide operator; investigation of report of loss; claim procedure not waiver of governmental immunity. (1) No action against a landowner, person for whom the pesticide was applied or pesticide operator arising out of the use or application of any pesticide shall be commenced unless, within 60 days from the occurrence of the loss, within 60 days from the date the loss is discovered, or, if the loss is alleged to have occurred out of damage to growing crops, before the time when 50 percent of the crop is harvested, the person commencing the action:

(a) Files a report of the alleged loss with the State Department of Agriculture;

(b) Mails or personally delivers to the landowner or pesticide operator who is allegedly responsible for the loss a true copy of the report provided for under paragraph (a) of this subsection; and

(c) Mails or personally delivers to the person for whom the pesticide was applied a true copy of the report required under paragraph (a) of this subsection if that person is not the person commencing the action.

(2) Any person who claims to have sustained any loss arising out of the use or application of any pesticide by any state agency, county or municipality may file a report of loss with the department, and mail or personally deliver a true copy of such report of loss to the state agency, county or municipality allegedly responsible, within the time provided in subsection (1) of this section.

(3) Upon receiving a report of loss as provided by this section:

(a) The department may investigate, examine and determine the extent and nature of the damage alleged to have been caused to property or crops. The department shall not determine the source of the damage, the person who may have caused the damage or the financial extent of the loss or damage. The department shall prepare and file in its office a report of the investigation, examination and determination. Copies of the report made by the department may be given upon request to persons who are financially interested in the matter.

(b) The department at the request of, and without cost to, any persons financially interested in the matter may undertake to mediate an equitable settlement of the controversy.

(4) Upon receiving a request therefor from any person, other than a person who

may file a report of loss as provided by subsection (1) or (2) of this section, the department may investigate, examine and determine the extent and nature of damage alleged to have been caused to property or crops arising out of the use or application of any pesticide by any other person or any state agency, county or municipality, provided that the person making such request reimburses the department for its work. The department shall not determine the source of the damage, the person who may have caused the damage or the financial extent of the loss or damage. The department shall prepare and file in its office a report of the investigation, examination and determination. Copies of the report made by the department may be given upon request to persons who are financially interested in the matter.

(5) Nothing in this section shall be construed as a waiver by the State of Oregon or any state agency, county or municipality of any immunity against suit which otherwise may exist.

(6) Notwithstanding ORS 634.006 (7), as used in this section, "landowner" includes any person, firm, corporation, the state, any county within the state, or municipality, shown by records of the county to be the owner of land or having such land under contract for purchase. [1973 c.341 §23; 1991 c.351 §1; 1995 c.96 §2]

PROTECTED AND RESTRICTED AREAS

634.206 Continuation of protected and restricted areas created by former law. There hereby is created a protected area or restricted area territorially identical respectively with each protected area or restricted area existing as of October 5, 1973, or a restricted area established pursuant to ORS 573.537 and in effect June 1, 1973, if such existing protected area or restricted area was established or succeeded pursuant to the provisions of ORS chapter 573. Each protected area or restricted area hereby created shall bear the name of the formerly designated protected area or restricted area with which it is territorially identical. It shall succeed to the duties, obligations, property, rights and privileges of such formerly designated protected area or restricted area and shall function as authorized by the provisions of this chapter. [1973 c.341 §24]

634.210 [Amended by 1953 c.685 §12; repealed by 1961 c.294 §1 (634.211 enacted in lieu of 634.210)]

634.211 [1961 c.294 §2 (enacted in lieu of 634.210); subsection (2) enacted as 1965 c.22 §2(1); paragraph (b) of subsection (11) derived from 1965 c.22 §2(2); 1969 c.268 §4; repealed by 1973 c.341 §37]

634.212 Formation of protected areas; petition; filing fee; guidelines for determinations by director.

(1) Upon receiving a petition of any 25 or more landowners, representing at least 70 percent of the acres of land, situated within the territory proposed to be a protected area, the State Department of Agriculture may establish a protected area, in accordance with the provisions of ORS 561.510 to 561.590 governing the procedures for the declaration of quarantines, except the consent of the Governor is not required.

(2) The petition, referred to in subsection (1) of this section, shall include the following:

(a) The proposed name of the protected area.

(b) The description, including proposed boundaries, of the territory proposed to be a protected area.

(c) A concise statement of the need for the establishment of the protected area proposed.

(d) A concise statement of the pesticides and the times, methods or rates of pesticide applications to be restricted or prohibited and the extent such are to be restricted or prohibited.

(e) A request that a public hearing be held by the department.

(f) The name of the person authorized to act as attorney in fact for the petitioners in all matters relating to the establishment of a proposed protected area.

(g) A concise statement of any desired limitations of the powers and duties of the governing body of the proposed protected area.

(3) If more than one petition, referred to in subsection (1) of this section, is received by the department describing parts of the same territory, the department may consolidate all or any of such petitions.

(4) Each petition, described in subsection (1) of this section, shall be accompanied by a filing fee of \$125. Upon receipt of such petition and payment of such fee, the department shall prepare and submit to the petitioners an estimated budget of the costs of establishing such proposed protected area, including cost of preparation of the estimated budget, of the hearing and of the preparation of required documents. Within 15 days of the receipt of the estimated budget, the petitioners shall remit to the department the difference between the filing fee and total estimated budget. If the petitioners fail to remit such difference, the department shall retain the filing fee and terminate the pro-

cedure for establishment of a proposed protected area. If, upon completion of the procedure for establishment of a proposed protected area, there remains an unexpended and unencumbered balance of funds received by the department under this section, such balance shall be refunded to the petitioners through their designated attorney in fact.

(5) In making a determination pursuant to the authority granted under ORS 561.520 (3), the Director of Agriculture shall consider, among other factors, the following:

(a) The agricultural and horticultural crops, wildlife or forest industries to be affected and their locations.

(b) The topography and climate, including temperature, humidity and prevailing winds, of the territory in which the proposed protected area is situated.

(c) The characteristics and properties of pesticides used or applied and proposed to be restricted or prohibited. [1973 c.341 §25; 1999 c.59 §185; 2005 c.22 §446; 2007 c.71 §197]

634.213 [1961 c.642 §18; repealed by 1973 c.341 §37]

634.215 [1953 c.685 §12; 1961 c.294 §3; repealed by 1973 c.341 §37]

634.216 Protected area as governmental subdivision upon completion of required filings.

In addition to the filings of an order establishing a protected area as required by ORS 561.530 (1), a certified copy of such order shall be filed with the Secretary of State, accompanied by a map of a scale of at least one inch per mile, which documents shall be maintained as a public record in the office of the Secretary of State. Upon such required filings, the protected area shall be deemed to be a governmental subdivision of the state and a public body corporate. [1973 c.341 §26]

634.217 [1953 c.685 §12; 1961 c.294 §4; repealed by 1973 c.341 §37]

634.220 [1953 c.685 §12; 1961 c.294 §5; repealed by 1973 c.341 §37]

634.222 Determination of lawful establishment of protected area in actions or proceedings; certified copy of filed order as evidence.

In any suit, action or proceeding involving the validity or enforcement of any proceeding or action of a protected area, the protected area shall be deemed to have been established in accordance with the provisions of this chapter upon proof of the filing of an order as required by ORS 634.216. A copy of such order, certified as filed by the Secretary of State, shall be admissible evidence in any such suit, action or proceeding and shall be proof of the filing and contents thereof. [1973 c.341 §31]

634.225 [1953 c.685 §12; 1961 c.294 §6; repealed by 1973 c.341 §37]

634.226 Protected area governing committee; member election and terms; committee officers; duties and powers; rulemaking authority. (1) A protected area, established pursuant to the provisions of this chapter, shall be governed and administered by an area committee consisting of five members. The term of office of each member, except as provided in paragraphs (b) and (c) of this subsection, shall be three years. Such area committee shall be established in accordance with the following:

(a) Within 30 days after the establishment of a protected area, as provided in ORS 634.216, the State Department of Agriculture shall give notice that petitions to nominate candidates for three positions on such committee shall be accepted by the department. Such notice shall be given by publication at least once in a newspaper of general circulation in the protected area and by delivery of a copy of the notice to the county clerk of the county in which the protected area is situated, who thereafter shall post the same in a conspicuous public place. Such notice shall contain:

(A) The address of the department;

(B) The time within which the petition to nominate is to be filed;

(C) The fact that 25 or more electors, or two-thirds of the electors then registered, if there are less than 25, residing within the protected area must subscribe such petition;

(D) The fact that such electors may subscribe the nominating petition of more than one candidate for a position on said committee; and

(E) The fact that a candidate must reside within the protected area.

(b) Upon receipt of any nominating petitions described in subsection (1)(a) of this section, the department shall prepare ballots containing the names of the candidates, in alphabetical order of surnames, and a space for at least one write-in candidate. If no nominating petitions are received by the department, this fact shall be stated upon the ballot and at least three spaces provided thereon for write-in candidates. Such ballots shall also state the time within which the ballots are to be returned to the department and the address of the department. All electors within the boundaries of the territory as determined by the department are eligible to vote in the referendum. The department shall determine the results of such election and shall file with the Secretary of State a declaration of the results of such election, which declaration shall be maintained as a public record in the office of the Secretary of State. The three candidates receiving the largest number of the votes cast in such

election shall be the three elected members of the area commission, whose terms of office, to be determined by lot, shall be one, two and three years respectively.

(c) Upon determining the results of the election provided in paragraph (b) of this subsection, the department shall appoint two members to the area committee, which appointments shall be subject to the approval of the majority of the three elected members of said committee. Such appointed members shall be residents of the protected area and have knowledge of pesticides, pesticide application and existing conditions, affecting pesticide application. The terms of office, to be determined by lot, shall be one and two years respectively, and the department shall thereafter appoint the successors in office of such members, as well as those of elected members whose office is vacated prior to the expiration of a term.

(2)(a) Upon the establishment of the area committee, the members thereof shall designate a chairperson, secretary and treasurer, which designations may, from time to time, be changed. A majority of the area committee shall constitute a quorum and an act by a majority of such quorum shall constitute an official act of the area committee.

(b) The area committee shall:

(A) Provide for surety bonds for all persons entrusted with funds or property of the protected area;

(B) Prepare and maintain accurate and complete records of all activities, meetings, orders and regulations of the protected area;

(C) Employ, as deemed necessary, persons to assist the area committee in its administration and enforcement activities, including issuance of permits to applicators;

(D) Not engage in the business of buying or selling pesticides;

(E) Promulgate, in consultation with the department, regulations as provided in subsection (4) of this section;

(F) Carry out the procedures for the establishment of a restricted area as provided in ORS 634.232;

(G) Prepare and make public at annual meetings to be called by the area committee chairperson, annual reports and audits; and

(H) Be authorized to receive funds from any source and use the same to carry out and enforce ORS 634.212 to 634.242.

(3) Each year after the establishment of a protected area and at least 15 days prior to the annual meeting called pursuant to subsection (2)(b)(G) of this section, the area committee shall notify the department of the annual meeting time. Upon receipt of such notice, the department shall initiate and

carry out the procedures for election of members to vacancies on the area committee and shall follow the procedures for elections provided in subsection (1) of this section. The candidates shall be elected and take office as provided in subsection (1) of this section.

(4)(a) In accordance with the provisions of ORS chapter 183, the area committee shall promulgate regulations governing or prohibiting the application of pesticides within the protected area, by aircraft or otherwise, which relate to the time, place, method of pesticide application and other matters necessary to prevent damage or injury to susceptible crops, insects, wildlife or forests.

(b) In promulgating such regulation, the area committee shall consider, among other things, the:

(A) Topography and climate, including temperature, humidity and prevailing winds;

(B) Characteristics and properties of pesticides used or applied; and

(C) Location of susceptible crops, insects, wildlife or forests.

(c) Any interested person may petition to enlarge or restrict the regulation of pesticide application by filing a petition to amend the regulations of the protected area with the area committee which, in consultation with the department and in accordance with the provisions of ORS chapter 183, shall allow or deny such petition and amend the regulations of the protected area accordingly. [1973 c.341 §27; 1997 c.249 §194]

634.230 [Amended by 1953 c.685 §12; 1961 c.294 §7; 1965 c.22 §4; repealed by 1973 c.341 §37]

634.232 Restricted area formation; matters to be considered; additional area committee member. (1) At any time after the establishment of a protected area, the State Department of Agriculture at the request of the area committee of such protected area, may establish a restricted area in accordance with the provisions of ORS 561.510 to 561.590 governing the procedures for the declaration of quarantines, except the consent of the Governor shall not be required.

(2) The request, referred to in subsection (1) of this section, shall include the following:

(a) The description, including proposed boundaries, of the territory proposed to be a restricted area.

(b) A concise statement of the need for the establishment of the restricted area proposed.

(c) A concise statement of the pesticides and the times, methods or rates of pesticide application to be restricted.

(3)(a) In considering the establishment of a restricted area wherein herbicides are to be restricted, the outer boundaries of such proposed restricted area shall not be in excess of 10 airline miles beyond the outer boundary of the protected area, and if a restricted area wherein all other pesticides are to be restricted shall not be in excess of one airline mile beyond the outer boundary of the protected area.

(b) In considering the establishment of a restricted area, the factors set forth in ORS 634.212 (5) shall be considered.

(c) ORS 634.216 shall apply to the establishment of a restricted area, except that such restricted area shall be governed and administered by the area committee of the protected area, which committee shall have the same powers and duties set forth in ORS 634.226 (2)(b), and except such restricted area shall not be deemed to be a governmental subdivision of this state as a public body corporate.

(d) In the event that a restricted area is established pursuant to subsection (1) of this section, the area committee shall be expanded to include one additional member who resides in the restricted area, but outside of the protected area. The additional member shall be elected in accordance with ORS 634.226. [1973 c.341 §28]

634.233 [1961 c.294 §9; 1969 c.268 §5; repealed by 1973 c.341 §37]

634.234 [1969 c.268 §3; repealed by 1973 c.341 §37]

634.235 [1953 c.685 §12; 1961 c.294 §10; 1969 c.268 §6; 1971 c.620 §1; repealed by 1973 c.341 §37]

634.236 Increasing or decreasing size of protected area; consolidation of areas.

(1) Upon receiving a petition of any 25 or more landowners, representing at least 70 percent of the acres of land, situated within a protected area, the State Department of Agriculture may include additional adjacent territory in a protected area or withdraw territory from a protected area. The procedures to be followed by the department in considering such petition shall be those set forth in ORS 561.510 to 561.590 governing the procedures for the declaration of quarantines, except that the consent of the Governor shall not be required.

(2)(a) Upon receiving a petition of any 25 or more landowners, representing at least 70 percent of the acres of land, situated within two or more adjacent protected areas, the department may consolidate such adjacent protected areas. The procedures shall be the same as described in subsection (1) of this section.

(b) In the event of consolidation of protected areas, the corporate existence and terms of office of the area committee mem-

bers of the preexisting protected areas shall terminate upon the filing of the order described in ORS 634.216. ORS 634.216 applies to the newly consolidated protected area, and all rights, powers, assets and duties of the several preexisting protected areas shall be vested in, and assumed by the newly consolidated protected area.

(c) The establishment, organization, duties and authority of the area committee of the consolidated protected area shall be in accordance with ORS 634.226. [1973 c.341 §29]

634.240 [Amended by 1953 c.685 §12; 1961 c.294 §11; 1969 c.131 §4; repealed by 1973 c.341 §37]

634.242 Taxing power of area committee; limitation on amount of levy. (1) The area committee of a protected area may levy and cause to be collected an ad valorem tax for the purpose of paying the obligations of the protected area incurred in the administration of its responsibilities under this chapter.

(2) The levy in any one year shall not exceed one-fortieth of one percent (0.00025) of the real market value of all taxable property within the protected area, computed in accordance with ORS 308.207. The taxes shall be levied and collected at the time and in the manner provided for the levy and collection of state and county taxes, and shall be paid by the county officers collecting the same to the treasurer of the protected area. [1973 c.341 §30; 1991 c.459 §438]

634.245 [1953 c.685 §12; repealed by 1969 c.268 §16]

634.250 [Amended by 1953 c.685 §12; 1961 c.294 §12; 1969 c.268 §7; 1971 c.699 §19; repealed by 1973 c.341 §37]

634.260 [Repealed by 1973 c.341 §37]

634.270 [Repealed by 1973 c.341 §37]

634.280 [1965 c.22 §3; repealed by 1973 c.341 §37]

634.300 [1969 c.268 §8; repealed by 1973 c.341 §37]

ADMINISTRATION AND ENFORCEMENT

634.306 General duties and powers of department; rules. In accordance with the provisions of ORS chapter 183, the State Department of Agriculture is authorized to promulgate regulations necessary to carry out the purposes and intent of this chapter, including but not limited to the following:

(1) Establish and maintain a program required for a person to work or engage in the application or spraying of pesticides as a pesticide trainee. In this regard, the department may take into consideration:

(a) Requirements for submission of applications by pesticide trainees.

(b) Minimum and maximum periods of work or experience required for pesticide trainees.

(c) Work performance records or reports to be maintained by pesticide trainees or their employers.

(d) Acceptance of educational qualifications, applicable work or experience in similar or other fields in lieu of, or as a part of, periods of employment or work by pesticide trainees.

(e) Forms and types of pesticide trainee certificates to be issued by the department, authorizing trainees to apply pesticides in all or part of the classes of operations or businesses set forth in subsection (2) of this section.

(f) Laws and requirements relating to other professional, trade or industry trainee or apprenticeship programs in this or other states.

(g) Special requirements if the pesticide trainee is to apply pesticides by the use of aircraft, and the advisability of allowing participation in federal flight training programs to be substituted, all or in part, for training requirements under this chapter.

(2) Establish and maintain classifications of the various pesticides and of the various pest control or pesticide application businesses in order to facilitate the licensing or certification and regulation of pesticide consultants, operators, applicators, private applicators and trainees. In this regard the department may take into consideration:

(a) Various types, formulations and characteristics of pesticides used and their purposes.

(b) Various methods of application of such pesticides.

(c) Precautions required for safe and effective application of such pesticides.

(3) Designate pesticides authorized to be used or applied, or prohibited from use or application, by persons in order to qualify for an exemption under ORS 634.106.

(4) Establish and maintain classifications of pesticides and devices which are deemed to be highly toxic or restricted-use pesticides or devices. In this regard, the department shall take into consideration:

(a) Laws and regulations of the federal government, including the provisions of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, and the Federal Environmental Pesticide Control Act.

(b) Laws and regulations of other states.

(c) Advice and counsel of experts in pesticides from industry, universities and colleges and other governmental agencies or bodies.

(5) Establish and maintain types of pesticide consultant or applicator examinations

and reexaminations, schedules for required reexaminations and other measures deemed necessary for fair and reasonable testing of applicants as provided in ORS 634.122 (5).

(6) Designate the conditions under which pesticide operators spraying by aircraft may reduce, suspend or terminate the liability insurance required by ORS 634.116, and the periods of time therefor. In this regard, the department may take into consideration:

(a) Changes in climate or seasons.

(b) Periods when certain crops are or have been harvested.

(c) Restricted or limited use of various types or classes of pesticides.

(d) Possibilities of injury or death to persons and loss or damage to real or personal property.

(7) Establish the conditions and amounts allowed for deductible classes in the liability insurance required by ORS 634.116.

(8) Establish and maintain programs of instruction or educational courses for pesticide consultants, operators, applicators and private applicators in cooperation with Oregon State University or others, wherein, as far as is practicable, provisions are made so as to allow such pesticide operators and applicators to participate only in the instruction or courses directly or indirectly related to their particular activities. Attendance of licensees may be required.

(9) Prepare and distribute a manual, or other form of publication, containing information helpful and beneficial to persons engaged in pesticide application or use or to persons preparing to qualify for licensing as a pesticide operator, consultants or applicator and establish charges therefor.

(10) Establish, from time to time, advisory groups or committees to assist the department in formulation of policies, plans or regulations under this chapter. Each member of any such group or committee so established shall be entitled to compensation and expenses as provided in ORS 292.495, which shall be charged to the department.

(11) Establish registration fees for pesticide brands and formulae or formulations thereunder.

(12) Establish restrictions or prohibitions as to the form of pesticides allowed to be mixed, applied or added to fertilizers, seed or grains.

(13) Establish restrictions, methods and procedures in the storage, transportation, use or application of restricted-use pesticides or highly toxic pesticides in order to protect humans, pollinating insects, bees, animals, crops, wildlife, land or environment.

(14) Establish and maintain a system for certification of private applicators. In this regard, the department shall take into consideration:

(a) Laws and regulations of the federal government, including the provisions of the Federal Environmental Pesticide Control Act of 1972, 86 Stat. 973, and the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 135 et seq., as amended thereby, and regulations thereunder.

(b) Minimum periods of experience required and types of experience, education or work acceptable.

(c) Forms and types of private applicator certificates to be issued by the department, authorizing private applicators to apply pesticides in all or part of the classifications of pesticides set forth in subsection (4) of this section.

(15) Establish requirements for the reporting of pesticide sales, distribution or use by any person. [1973 c.341 §32; 1999 c.1059 §13]

Note: The amendments to 634.306 by section 17, chapter 1059, Oregon Laws 1999, become operative December 31, 2009. See section 19, chapter 1059, Oregon Laws 1999. The text that is operative on and after December 31, 2009, is set forth for the user's convenience.

634.306. In accordance with the provisions of ORS chapter 183, the State Department of Agriculture is authorized to promulgate regulations necessary to carry out the purposes and intent of this chapter, including but not limited to the following:

(1) Establish and maintain a program required for a person to work or engage in the application or spraying of pesticides as a pesticide trainee. In this regard, the department may take into consideration:

(a) Requirements for submission of applications by pesticide trainees.

(b) Minimum and maximum periods of work or experience required for pesticide trainees.

(c) Work performance records or reports to be maintained by pesticide trainees or their employers.

(d) Acceptance of educational qualifications, applicable work or experience in similar or other fields in lieu of, or as a part of, periods of employment or work by pesticide trainees.

(e) Forms and types of pesticide trainee certificates to be issued by the department, authorizing trainees to apply pesticides in all or part of the classes of operations or businesses set forth in subsection (2) of this section.

(f) Laws and requirements relating to other professional, trade or industry trainee or apprenticeship programs in this or other states.

(g) Special requirements if the pesticide trainee is to apply pesticides by the use of aircraft, and the advisability of allowing participation in federal flight training programs to be substituted, all or in part, for training requirements under this chapter.

(2) Establish and maintain classifications of the various pesticides and of the various pest control or pesticide application businesses in order to facilitate the licensing or certification and regulation of pesticide consultants, operators, applicators, private applicators and trainees. In this regard the department may take into consideration:

(a) Various types, formulations and characteristics of pesticides used and their purposes.

(b) Various methods of application of such pesticides.

(c) Precautions required for safe and effective application of such pesticides.

(3) Designate pesticides authorized to be used or applied, or prohibited from use or application, by persons in order to qualify for an exemption under ORS 634.106.

(4) Establish and maintain classifications of pesticides and devices which are deemed to be highly toxic or restricted-use pesticides or devices. In this regard, the department shall take into consideration:

(a) Laws and regulations of the federal government, including the provisions of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, and the Federal Environmental Pesticide Control Act.

(b) Laws and regulations of other states.

(c) Advice and counsel of experts in pesticides from industry, universities and colleges and other governmental agencies or bodies.

(5) Establish and maintain types of pesticide consultant or applicator examinations and reexaminations, schedules for required reexaminations and other measures deemed necessary for fair and reasonable testing of applicants as provided in ORS 634.122 (5).

(6) Designate the conditions under which pesticide operators spraying by aircraft may reduce, suspend or terminate the liability insurance required by ORS 634.116, and the periods of time therefor. In this regard, the department may take into consideration:

(a) Changes in climate or seasons.

(b) Periods when certain crops are or have been harvested.

(c) Restricted or limited use of various types or classes of pesticides.

(d) Possibilities of injury or death to persons and loss or damage to real or personal property.

(7) Establish the conditions and amounts allowed for deductible classes in the liability insurance required by ORS 634.116.

(8) Establish and maintain programs of instruction or educational courses for pesticide consultants, operators, applicators and private applicators in cooperation with Oregon State University or others, wherein, as far as is practicable, provisions are made so as to allow such pesticide operators and applicators to participate only in the instruction or courses directly or indirectly related to their particular activities. Attendance of licensees may be required.

(9) Prepare and distribute a manual, or other form of publication, containing information helpful and beneficial to persons engaged in pesticide application or use or to persons preparing to qualify for licensing as a pesticide operator, consultants or applicator and establish charges therefor.

(10) Establish, from time to time, advisory groups or committees to assist the department in formulation of policies, plans or regulations under this chapter. Each member of any such group or committee so established shall be entitled to compensation and expenses as provided in ORS 292.495, which shall be charged to the department.

(11) Establish registration fees for pesticide brands and formulae or formulations thereunder.

(12) Establish restrictions or prohibitions as to the form of pesticides allowed to be mixed, applied or added to fertilizers, seed or grains.

(13) Establish restrictions, methods and procedures in the storage, transportation, use or application of

restricted-use pesticides or highly toxic pesticides in order to protect humans, pollinating insects, bees, animals, crops, wildlife, land or environment.

(14) Establish and maintain a system for certification of private applicators. In this regard, the department shall take into consideration:

(a) Laws and regulations of the federal government, including the provisions of the Federal Environmental Pesticide Control Act of 1972, 86 Stat. 973, and the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 135 et seq., as amended thereby, and regulations thereunder.

(b) Minimum periods of experience required and types of experience, education or work acceptable.

(c) Forms and types of private applicator certificates to be issued by the department, authorizing private applicators to apply pesticides in all or part of the classifications of pesticides set forth in subsection (4) of this section.

634.310 [1969 c.268 §9; repealed by 1973 c.341 §37]

634.312 Department to develop programs for solution of pesticide and synthetic chemical problems. The increasing formulation, distribution, application and use of pesticides and other synthetic chemicals have created serious problems with storage, disposition and transportation of pesticides and other synthetic chemicals which cannot or should not be distributed, applied or used. Such problems include but are not limited to the recall and storage of pesticides and other synthetic chemicals prohibited from distribution, application or use because of a violation of or noncompliance with a law or regulation. The State Department of Agriculture shall review scientific information relating to such problems and develop immediate and long-range programs or plans for solutions to such problems, and for these purposes seek the advice of governmental agencies or bodies. [1973 c.341 §4; 1993 c.742 §112]

634.316 List of highly toxic and restricted-use pesticides. The State Department of Agriculture may establish, maintain and amend lists of pesticides and devices which are highly toxic or restricted-use pesticides or devices. [1973 c.341 §8]

634.320 [1969 c.268 §10; repealed by 1973 c.341 §37]

634.322 Enforcement powers of department. In carrying out and enforcing the provisions of this chapter, the State Department of Agriculture is authorized:

(1) To collect samples of pesticides from any source, for analysis to determine compliance with this chapter.

(2) In accordance with the provisions of ORS 561.605 to 561.630, to seize or embargo any pesticide or device which is misbranded, adulterated or otherwise in violation of this chapter.

(3) Notwithstanding the provisions of ORS 561.605 to 561.630, whenever the department has reasonable cause to believe a pesticide or device is being formulated, dis-

tributed, stored or transported in violation of any of the provisions of this chapter, to issue and serve a written "stop sale, use or removal" order to and upon the owner or person in custody of any such pesticide or device. In the event the owner or person in custody is not available for service of the order, the department may attach a copy of the order to the pesticide or device. Upon issuance of the order, the pesticide or device shall not be sold, used or removed until the provisions of this chapter have been complied with and the pesticide or device has been released, by written notice of the department, under conditions specified by the department.

(4) In accordance with the provisions of ORS chapter 183, to revoke, suspend or refuse to issue or renew any license or certificate if it determines that an applicant, licensee or certificate holder has violated any of the provisions of this chapter.

(5) In accordance with the provisions of ORS chapter 183, to amend, suspend or revoke the registration of a pesticide for violation of any of the provisions of this chapter.

(6) To establish limitations and procedures deemed necessary and proper for the protection of persons, pollinating insects, bees, animals, crops, wildlife, land or environment, on the following:

- (a) Quantities of packages;
- (b) Quantities of sales;
- (c) Uses or applications;
- (d) Methods of sale, including prescription or permit requirements; or
- (e) Persons to whom sold.

(7) To inspect any records required to be maintained by persons formulating, distributing, using or selling the pesticides described in ORS 634.306 (4), and to cause monitoring of the effects of such pesticides on human or animal life in any area where it is used or applied by a recognized and qualified person or agency.

(8) To enter into cooperative and reciprocal agreements with the federal government, or any of its agencies, for the purpose of enforcement of the provisions of this chapter or federal laws and regulations on the same subject matters, and to receive and expend funds pursuant to such agreements in furtherance of such purpose.

(9) To cooperate with, and request the assistance of, Oregon State University, governmental agencies or other persons for the purpose of enforcement of the provisions of this chapter.

(10)(a) To act jointly in, and with the concurrence of the State Forester and a re-

search specialist designated by Oregon State University, the issuance of permits for the use of isopropyl ester of 2,4-D or any other ester of equal or higher volatility with regard to plant damage. Each such permit shall specify:

- (A) The particular ester allowed;
- (B) The boundaries of the area in which it may be used; and
- (C) The prescribed time limit and condition under which it may be applied.

(b) Such permits shall only be issued when the issuing authority determines that the use of the ester will not damage agricultural and forest products and susceptible crops. In making such determination, the issuing authority shall consider research data, topography, climate, temperature, humidity, prevailing winds, characteristics of the ester and location of agricultural and forest products and susceptible crops. Such permits may be issued subject to conditions prescribed by the issuing authority. Issuance of such permit shall not be construed as a waiver of any of the provisions of this chapter. [1973 c.341 §33; 1979 c.232 §3]

634.326 Use of moneys received by department. (1) The State Department of Agriculture shall deposit all fees paid to it under the provisions of this chapter in the Department of Agriculture Service Fund. Such moneys are continuously appropriated to the department for the purpose of administering and enforcing the provisions of this chapter.

(2) An amount of the fees and moneys referred to in subsection (1) of this section not to exceed 10 percent of registration fees received under ORS 634.016 may be used by the department pursuant to agreements entered into between the department and the Dean of the College of Agricultural Sciences of Oregon State University, with the advice of the Minor Crops Advisory Committee for the purposes set forth in subsection (3) of this section.

(3) The amounts provided for in subsection (2) of this section shall be used by the Dean of the College of Agricultural Sciences of Oregon State University for research projects and investigations agreed upon by the dean and the department directed toward obtaining pesticide use registrations needed by growers to produce crops economically in Oregon. [1973 c.341 §35; 1979 c.499 §33; 1989 c.709 §4]

634.330 [1969 c.268 §11; repealed by 1971 c.699 §22]

634.340 [1969 c.268 §12; repealed by 1971 c.699 §22]

634.350 [1969 c.268 §2; 1971 c.699 §18; repealed by 1973 c.341 §37]

634.352 [1973 c.341 §5; 1979 c.232 §4; 1993 c.742 §111]

634.356 [1973 c.341 §6; 1993 c.742 §111]

634.360 [1969 c.268 §13; repealed by 1971 c.699 §22]

PROHIBITIONS

634.372 Prohibited acts. A person may not:

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

(2) As a pesticide applicator or operator, intentionally or willfully apply or use a worthless pesticide or any pesticide inconsistent with its labeling, or as a pesticide consultant or dealer, recommend or distribute such pesticides.

(3) Operate a faulty or unsafe pesticide spray apparatus, aircraft or other application device or equipment.

(4) Perform pesticide application activities in a faulty, careless or negligent manner.

(5) Refuse or neglect to prepare and maintain records required to be kept by the provisions of this chapter.

(6) Make false, misleading or fraudulent records, reports or application forms required by the provisions of this chapter.

(7) Operate pesticide applicators' apparatus, machinery or equipment without a licensed pesticide applicator or certified private applicator performing the actual application, or supervising such application if such is performed by a pesticide trainee. This prohibition does not apply to the operation of tractors, trucks or other vehicular equipment used only under the supervision of a certified private applicator.

(8) As a pesticide applicator, work or engage in the application of any classes of pesticides without first obtaining and maintaining a pesticide applicator's license, or apply pesticides that are not specifically authorized by such license.

(9) As a pesticide operator, engage in the business of, or represent or advertise as being in the business of, applying pesticides upon the land or property of another, without first obtaining and maintaining a pesticide operator's license. The operator also may not engage in a class of pesticide application business that is not specifically authorized by license issued by the State Department of Agriculture. The operator also may not employ or use any person to apply or spray pesticides who is not a licensed pesticide applicator or pesticide trainee.

(10) As a pesticide trainee, work or engage in the application of any class of pesticides without first obtaining and maintaining a pesticide trainee's certificate and is otherwise in compliance with the provisions of this chapter.

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

(12) Act as, or purport to be, a pesticide consultant without first obtaining and maintaining a pesticide consultant's license.

(13) 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.

(14) 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.

(15) Deliver, distribute, sell or offer for sale any pesticide that is misbranded.

(16) Formulate, deliver, distribute, sell or offer for sale any pesticide that is adulterated.

(17) Formulate, deliver, distribute, sell or offer for sale any pesticide that has not been registered as required by ORS 634.016.

(18) Formulate, deliver, distribute, sell or offer for sale any powdered pesticide containing arsenic or any highly toxic fluoride that is not distinctly colored.

(19) Distribute, sell or offer for sale any pesticide except in the manufacturer's original unbroken package.

(20) 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. The person also may not make such application contrary to the conditions or terms of the permit so issued.

(21) 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).

(22) 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 therefrom as provided in ORS 634.322 (3).

(23) Fail to comply with any provision or requirement of sections 2 to 9, chapter 1059, Oregon Laws 1999, or rules adopted thereunder. [1973 c.341 §34; 1987 c.158 §121; 1995 c.360 §2; 1999 c.1059 §14; 2001 c.307 §3]

Note: The amendments to 634.372 by section 18, chapter 1059, Oregon Laws 1999, become operative December 31, 2009. See section 19, chapter 1059, Oregon

Laws 1999. The text that is operative on and after December 31, 2009, including amendments by section 4, chapter 307, Oregon Laws 2001, is set forth for the user's convenience.

634.372. A person may not:

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

(2) As a pesticide applicator or operator, intentionally or willfully apply or use a worthless pesticide or any pesticide inconsistent with its labeling, or as a pesticide consultant or dealer, recommend or distribute such pesticides.

(3) Operate a faulty or unsafe pesticide spray apparatus, aircraft or other application device or equipment.

(4) Perform pesticide application activities in a faulty, careless or negligent manner.

(5) Refuse or neglect to prepare and maintain records required to be kept by the provisions of this chapter.

(6) Make false, misleading or fraudulent records, reports or application forms required by the provisions of this chapter.

(7) Operate pesticide applicators' apparatus, machinery or equipment without a licensed pesticide applicator or certified private applicator performing the actual application, or supervising such application if such is performed by a pesticide trainee. This prohibition does not apply to the operation of tractors, trucks or other vehicular equipment used only under the supervision of a certified private applicator.

(8) As a pesticide applicator, work or engage in the application of any classes of pesticides without first obtaining and maintaining a pesticide applicator's license, or apply pesticides that are not specifically authorized by such license.

(9) As a pesticide operator, engage in the business of, or represent or advertise as being in the business of, applying pesticides upon the land or property of another, without first obtaining and maintaining a pesticide operator's license. The operator also may not engage in a class of pesticide application business that is not specifically authorized by license issued by the State Department of Agriculture. The operator also may not employ or use any person to apply or spray pesticides who is not a licensed pesticide applicator or pesticide trainee.

(10) As a pesticide trainee, work or engage in the application of any class of pesticides without first obtaining and maintaining a pesticide trainee's certificate and is otherwise in compliance with the provisions of this chapter.

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

(12) Act as, or purport to be, a pesticide consultant without first obtaining and maintaining a pesticide consultant's license.

(13) 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.

(14) 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.

(15) Deliver, distribute, sell or offer for sale any pesticide that is misbranded.

(16) Formulate, deliver, distribute, sell or offer for sale any pesticide that is adulterated.

(17) Formulate, deliver, distribute, sell or offer for sale any pesticide that has not been registered as required by ORS 634.016.

(18) Formulate, deliver, distribute, sell or offer for sale any powdered pesticide containing arsenic or any highly toxic fluoride that is not distinctly colored.

(19) Distribute, sell or offer for sale any pesticide except in the manufacturer's original unbroken package.

(20) 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. The person also may not make such application contrary to the conditions or terms of the permit so issued.

(21) 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).

(22) 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 therefrom as provided in ORS 634.322 (3).

THIRAM STUDY AND RESTRICTIONS

634.410 Study of effects of thiram on health and safety; evaluation; report. The Workers' Compensation Board shall cause the Occupational Health Section to conduct a study or insure that a study is conducted, of the effects on occupational health and safety of the use in reforestation activities of tree seedlings treated with the pesticide thiram or any formulation containing the chemical tetramethylthiuram disulfide. The study shall include evaluation of alternative precautionary measures that may be taken to protect the health and safety of individuals involved in reforestation activities who handle tree seedlings treated with thiram. The board shall report its findings and recommendations to the State Department of Agriculture not later than December 1, 1976. [1975 c.777 §2]

634.415 Rules to insure adequate precautionary measures in use of thiram in reforestation. The Workers' Compensation Board shall as a result of the study direct the Occupational Health Section to promulgate rules and regulations to insure that adequate precautionary measures and procedures are followed during the use of thiram in reforestation operations. [1975 c.777 §3]

634.420 Limit on use of thiram; effect of study. Notwithstanding any other provision of this chapter, the State Department of Agriculture shall not register or otherwise authorize the use of the pesticide thiram as a repellent on forest tree seedlings after June 1, 1977, unless a report to the department made pursuant to ORS 634.410 to 634.425 states that thiram may be used for such purpose without creating a serious health or safety hazard to individuals in-

volved in reforestation activities who handle tree seedlings treated with thiram and that adequate precautionary measures may be reasonably undertaken to offset any substantial hazards involved in the use of thiram. [1975 c.777 §4]

634.425 Construction of ORS 634.410 to 634.425. Nothing in ORS 634.410 to 634.425 shall be construed so as to limit the authority of the State Department of Agriculture to refuse registration of the chemical thiram prior to June 1, 1977. [1975 c.777 §5]

TRIBUTYLTIN COMPOUNDS

634.500 Definitions for ORS 634.500 to 634.520. As used in ORS 634.500 to 634.520:

(1) "Low-leaching tributyltin antifouling paint or coating" means a tributyltin-based marine antifouling paint or coating that has a steady state release rate of not more than 5.0 micrograms per square centimeter per day as determined in accordance with a United States Environmental Protection Agency (EPA) testing procedure as outlined in the EPA data call-in notice of July 29, 1986, on tributyltin in antifoulant paints under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136. If a lower release rate is determined by the Environmental Quality Commission to be necessary to protect health or the environment, such rate, if adopted by rule by the commission, shall be the acceptable release rate.

(2) "Tributyltin-based marine antifouling paint or coating" means a paint, coating or treatment that contains tributyltin or a triorganotin compound used as a substitute for tributyltin and that is intended to control fouling organisms in a freshwater or marine environment.

(3) "Waters of the state" has the meaning given that term in ORS 468B.005. [1987 c.207 §2]

634.505 Prohibition against sale of compound that releases certain substances in water; exception. Except as provided in ORS 634.510 to 634.520, a person may not sell, offer to sell or use in this state tributyltin-based marine antifouling paint or coating unless a method of using such paint or coating exists that does not result in the release of tributyltin or derivative or organotin into the waters of the state. [1987 c.207 §3]

634.510 Conditions for sale. A tributyltin-based marine antifouling paint or coating may be sold or used in this state if the paint or coating is:

(1) Sold and used in accordance with ORS 634.515 and 634.520; and

(2)(a) A low-leaching tributyltin antifouling paint or coating used on aluminum hulls;

(b) A low-leaching tributyltin antifouling paint or coating used on a ship that is more than 25 meters in length; or

(c)(A) In a spray can containing 16 ounces or less of paint or coating; and

(B) Commonly referred to as an outboard or lower drive unit paint. [1987 c.207 §4]

634.515 Sale by pesticide dealer; duties of customer. (1) Except as provided in subsection (2) of this section, in addition to any other limitation on a restricted use pesticide under this chapter, on and after September 27, 1987:

(a) A low-leaching tributyltin antifouling paint or coating may be sold in Oregon only by a pesticide dealer licensed under ORS 634.112.

(b) A pesticide dealer licensed under ORS 634.112 may sell low-leaching tributyltin antifouling paint or coating only to a person who certifies in writing that the paint or coating is to be used for one of the uses allowed under ORS 634.510.

(2) Notwithstanding any provision of this chapter or any rule adopted thereunder, a pesticide dealer may sell low-leaching tributyltin antifouling paint or coating to any person, whether or not the person is a licensed applicator. [1987 c.207 §5]

634.520 Report of sales to department.

(1) Any pesticide dealer licensed under ORS 634.112 who sells low-leaching tributyltin antifouling paint or coating shall submit a periodic report to the State Department of Agriculture.

(2) The report required under subsection (1) of this section shall be submitted to the department on a periodic basis as established by the department. The report shall include the following information about sales of low-leaching tributyltin antifouling paint or coating:

(a) The name of any person purchasing the paint or coating;

(b) The amount sold to each purchaser; and

(c) The use for which the purchaser certified the paint or coating was to be used. [1987 c.207 §6]

634.525 [Formerly 488.885; repealed by 1991 c.67 §6]

PESTICIDE ANALYTICAL RESPONSE CENTER

634.550 Center governing board; duties and powers. (1) There is created a Pesticide Analytical and Response Center with a governing board consisting of the following members:

(a) The Director of Agriculture or designee.

- (b) The State Forester or designee.
 - (c) The State Fish and Wildlife Director or designee.
 - (d) The Director of the Department of Environmental Quality or designee.
 - (e) The Director of Human Services or designee.
 - (f) The Administrator of the Occupational Safety and Health Division or designee.
 - (g) The State Fire Marshal or designee.
 - (h) The Director of the Poison Control and Drug Information Program of the Oregon Health and Science University or designee.
 - (i) One citizen from the state at large appointed jointly by the Director of Agriculture and the Director of Human Services.
- (2) The Director of Agriculture shall appoint an administrator for the Pesticide Analytical and Response Center, who shall be responsible to the board for performance of the duties of the center and the board.
- (3) The Director of Agriculture or designee and the Director of Human Services or designee shall alternate as chairperson of the board for terms of one year each. When one is serving as chairperson, the other shall serve as vice chairperson.
- (4) The board shall seek expert consultation from the extension service toxicology program, the Center for Research on Occupational and Environmental Toxicology and such other sources as may be needed.
- (5) The functions of the board are to:
- (a) Direct the activities and priorities of the administrator of the center.
 - (b) Centralize receiving of information relating to actual or alleged health and environmental incidents involving pesticides.
 - (c) Mobilize expertise necessary for timely and accurate investigation of pesticide incidents and analyses of associated samples.
 - (d) Identify trends and patterns of problems related to pesticide use.
 - (e) Make recommendations for action to a state agency when a majority of the board considers that such action may be warranted on the basis of the findings of an incident investigation or on the basis of identification of a trend or pattern of problems. Recommended actions may include, but not be limited to, regulatory action, modification of administrative rules, proposal of new legislation, public education and consultation to industry.
 - (f) Report in a standardized format the results of the investigations of pesticide incidents.

(g) Establish by consensus, procedures for carrying out its responsibilities within the limits of available resources.

(h) Prepare and submit to each session of the Legislative Assembly a report of the activities of the center that includes a record of recommendations made by the board and the actions resulting from the board's work.

(6) Upon receipt of a recommendation from the board, a state agency shall respond in a timely manner to inform the board of actions taken or the reasons for taking no action on the recommendation.

(7) Any medical information received by a member of the board or by a staff member of the center in the course of carrying out the duties of the center or the board shall be held confidential as provided in ORS 192.518 to 192.529 and 433.008.

(8) The functions of the board do not supersede the regulatory authority of any agency and are not in lieu of the regulatory authority of any agency. [1991 c.729 §2; 2001 c.2 §1; 2003 c.86 §14]

MINOR CROPS ADVISORY COMMITTEE

634.600 Committee members; appointment; compensation and expenses; duties.

(1) There is created the Minor Crops Advisory Committee in the State Department of Agriculture consisting of six members appointed by the Director of Agriculture and the coordinator of the Interregional Project Number 4 program at Oregon State University who shall be a permanent member.

(2) The director, as far as practicable, shall make appointments to the advisory committee so that the committee is representative of all segments of agriculture.

(3) Each appointed member shall serve a term of three years beginning July 1 of the year of appointment. A member shall continue to serve until a successor is appointed. Vacancies in office shall be filled by appointment for the unexpired term.

(4) The committee shall meet at the call of the chairperson or the Director of Agriculture. A majority of the members present at any meeting shall constitute a quorum, and a majority vote of the quorum at any meeting shall constitute an official act of the committee.

(5) At the first meeting after July 1 of each year, the committee shall select a chairperson. The Dean of the College of Agricultural Sciences of Oregon State University and the Director of Agriculture, or their representatives, shall be ex officio members without the right to vote.

(6) Members of the committee shall be eligible for compensation and expenses as provided in ORS 292.495.

(7) The committee shall:

(a) Advise the department in the administration of ORS 634.016 to 634.042 as relates to minor crop use registrations;

(b) Cooperate with the United States Department of Agriculture's Interregional Project Number 4 and the United States Environmental Protection Agency in obtaining federal registrations of pesticides for minor crop uses; and

(c) Maintain close contact between the department and agricultural producers regarding the need for research to support registration of pesticides for minor crops. [1989 c.709 §2]

INTEGRATED PEST MANAGEMENT

634.650 Definitions for ORS 634.650 to 634.665. As used in ORS 634.650 to 634.665:

(1) "Integrated pest management" means a coordinated decision-making and action process that uses the most appropriate pest control methods and strategy in an environmentally and economically sound manner to meet agency pest management objectives. The elements of integrated pest management include:

(a) Preventing pest problems;

(b) Monitoring for the presence of pests and pest damage;

(c) Establishing the density of the pest population, which may be set at zero, that can be tolerated or correlated with a damage level sufficient to warrant treatment of the problem based on health, public safety, economic or aesthetic thresholds;

(d) Treating pest problems to reduce populations below those levels established by damage thresholds using strategies that may include biological, cultural, mechanical and chemical control methods and that shall consider human health, ecological impact, feasibility and cost effectiveness; and

(e) Evaluating the effects and efficacy of pest treatments.

(2) "Pest" means any vertebrate or invertebrate animal, pathogen, parasitic plant, weed or similar or allied organism which can cause disease or damage to crops, trees, shrubs, grasses or other plants, humans, animals or property. [1991 c.943 §1]

Note: 634.650 to 634.665 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 634 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

634.655 Policy. The Legislative Assembly declares that it is the policy of the State of Oregon to require all state agencies that have pest control responsibilities to follow the principles of integrated pest management. [1991 c.943 §2]

Note: See note under 634.650.

634.660 Agencies required to implement integrated pest management. Each of the following state agencies or services shall implement integrated pest management practices when carrying out the agency's duties related to pest control:

(1) State Department of Agriculture, including the control of noxious weeds.

(2) State Department of Fish and Wildlife.

(3) Department of Transportation.

(4) State Parks and Recreation Department.

(5) State Forestry Department.

(6) Department of Corrections.

(7) Oregon Department of Administrative Services.

(8) The Department of State Lands.

(9) Each Oregon institution of higher education, for the institution's own building and grounds maintenance. [1991 c.943 §3; 2003 c.14 §391]

Note: See note under 634.650.

634.665 Agencies to provide personnel training; appointment of coordinators; duties. (1) Each state agency or institution listed under ORS 634.660 shall provide integrated pest management training for employees responsible for pest management.

(2) Each state agency or institution listed under ORS 634.660 shall designate an integrated pest management coordinator. The integrated pest management coordinator shall manage the integrated pest management program of the agency or institution. [1991 c.943 §4; 2001 c.413 §11]

Note: See note under 634.650.

634.670 [1991 c.943 §5; repealed by 2001 c.413 §12]

CIVIL PENALTIES

634.900 Penalty for certain violations; amount. (1) In addition to any other liability or penalty provided by law, the Director of Agriculture may impose a civil penalty on a person for violation of any of the provisions of this chapter relating to pesticide application, sale or labeling. The civil penalty for a first violation shall be not more than \$1,000. For a subsequent violation, the director may impose a civil penalty of not more than \$2,000.

(2) Notwithstanding subsection (1) of this section, if the violation of a provision relat-

ing to pesticide application, sale or labeling results from gross negligence or willful misconduct, the civil penalty for a first or subsequent violation may not exceed \$10,000.

(3) A civil penalty may not be imposed under this section for violations other than those involving pesticide application, sale or labeling violation under this chapter. [1989 c.943 §2; 2007 c.592 §1]

Note: Section 2, chapter 592, Oregon Laws 2007, provides:

Sec. 2. The amendments to ORS 634.900 by section 1 of this 2007 Act apply to civil penalties imposed for violations of pesticide application, sale or labeling laws committed on or after the effective date of this 2007 Act [June 25, 2007]. [2007 c.592 §2]

634.905 When penalty payable; notice; hearing. (1) Any civil penalty under ORS 634.900 shall be imposed as provided in ORS 183.745.

(2) Notwithstanding ORS 183.745, the person to whom the notice is addressed shall have 10 days from the date of service of the notice in which to make written application for a hearing before the Director of Agriculture. [1989 c.943 §3; 1991 c.734 §57; 1999 c.59 §186]

634.910 Reduction of penalty; criteria. A civil penalty imposed under ORS 634.900 may be remitted or reduced upon such terms and conditions as the Director of Agriculture considers proper and consistent with the public health and safety. [1989 c.943 §4]

634.915 Schedule for penalty amounts; criteria; rules. (1) The State Department of Agriculture shall adopt by rule a schedule establishing the amount of civil penalty that may be imposed for a particular violation.

(2) In imposing the penalty pursuant to the schedule authorized by this section, the Director of Agriculture shall consider the following factors:

(a) The past history of the person incurring a penalty in taking all feasible steps or

procedures necessary or appropriate to correct any violation.

(b) Any prior violations of statutes, rules or orders pertaining to pesticide application, sale or labeling.

(c) The gravity and magnitude of the violation.

(d) Whether the violation was repeated or continuous.

(e) Whether the cause of the violation was an unavoidable accident, negligence or an intentional act.

(f) The violator's cooperativeness and efforts to correct the violation.

(g) The immediacy and extent to which the violation threatens the public health or safety. [1989 c.943 §5]

634.920 [1989 c.943 §§6,7; repealed by 1991 c.734 §122]

634.925 Disposition of penalties collected. All penalties recovered under ORS 634.900 to 634.915 shall be deposited by the State Treasurer in the Department of Agriculture Service Fund. Such moneys are continuously appropriated to the State Department of Agriculture to be used for information and education related to pesticide application. [1989 c.943 §8]

CRIMINAL PENALTIES

634.990 [Amended by 1961 c.294 §13; repealed by 1973 c.341 §37]

634.992 Criminal penalties. Violation of any of the provisions of this chapter is an unclassified misdemeanor and is punishable, upon the first conviction, by a fine of not more than \$1,000, or by imprisonment in the county jail for not more than one year, or both, and upon a second or additional conviction, by a fine of not more than \$2,000, or by imprisonment in the county jail for not more than one year, or both. [1973 c.341 §36]

