

State of Oregon Department of Agriculture
June 23, 2016

Aerial applicator rules
Response to Comments on proposed rules
Comment period: May 1 - 27, 2016

Comment Period May 1, 2016 to May 27, 2016	ODA provided a public comment period on the proposed aerial applicator rules OAR to provide for licensing and training requirements for aerial pesticide applicators
Public Hearing	On May 24, 2016, a public hearing was held in Salem. Eight people attended the hearing held in Salem.
Organizations or individuals providing comment	1 Scott Dahlman, Oregonians for Food and Shelter 2 Sharon Selvaggio, Northwest Center for Alternatives to Pesticides

Respondents	Comments
1	Overall supports the rules, but has concerns about the requirements for training. Restricting to actual flight time does not recognize the many “on the ground” trainings that are also important to pesticide use, such as planning, communication, mixing and loading of pesticides. These should be considered and counted as part of the mandatory aerial training hours requirement.
	ODA Response
	ODA agrees that the “on the ground” activities such as planning, communication, mixing and loading of pesticides are essential to proper pesticide use, however, the statute clearly states that the training is “ <u>on flights</u> conducted for the purpose ... applying pesticides by aircraft”.
2	Supports the text of the rule with one exception, allowing a sworn statement to be submitted to satisfy the documentation requirements for the 50 hours of in-flight training is grossly inadequate because there is no way to verify the sworn statement. Provided suggestions to address this concern, including requiring an adequate record of dates, times, locations, and activities completed for the 50 hours of flight training. Also indicated that ODA should spot-check records to assure accountability.
	ODA Response
	A signed sworn statement or declaration by an individual is a legal statement that achieves the legislative intent, providing proof that an individual has achieved the mandated 50 hours of flight training required by law. ORS 561.200(2) authorizes agents of the State Department of Agriculture to inspect any books, records, plant, equipment, etc.

	<p>Under ORS 561, the department is authorized to check/audit flight training records in order to verify records exist in support of sworn statements submitted by individuals. Pilots maintain a comprehensive log of flying time and associated activities. In addition, pesticide applicators maintain extensive records of pesticide applications both for business purposes and to meet the requirements of state law. These records serve as a source of documentation, and are a means for ODA to audit and verify declarations by individuals.</p> <p>ODA agrees that a strategy that includes auditing a subset of declarations to verify the existence and accuracy of records to support the declaration is a valid tool to insure compliance with the law. ODA will implement a strategy to audit and verify a subset of the declarations as provided by ORS 561.200(2).</p>
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561.200 Prohibitions against the obstruction of officers, agents or employees. (1) No person, firm or corporation shall refuse to allow any authorized officer, agent or employee of the State Department of Agriculture to enter upon the premises of the person, firm or corporation or to inspect any books, records, plant, equipment, apparatus, vehicles or any other thing or place of the person, firm or corporation which it is such officer's, agent's or employee's duty to inspect.

(2) No person, firm or corporation shall refuse to produce books, records, apparatus and equipment for the inspection of such officer, agent or employee upon demand, or refuse to allow samples to be taken by such officer, agent or employee, when they are by law authorized so to do.

(3) No person, firm or corporation shall otherwise interfere with such officer, agent or employee in the lawful exercise of duties, either by active or passive resistance or by refusal to cooperate in every reasonable manner with the officer agent or employee in the carrying out of lawful duties.

561.275 Inspecting premises and facilities of department licensees. Insofar as it is necessary for the State Department of Agriculture in the enforcement and carrying out of the laws under its supervision or jurisdiction, the department may, during the normal business hours of the business being inspected, inspect premises, machinery, equipment and facilities of the places or businesses subject to or required to be licensed under such laws. [1967 c.437 §5]