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A non-profit coalition to promote the efficient production of quality food and fiber while protecting human health, personal property and the environment, through the integrated, responsible use of pest management products, soil nutrients and biotechnology.

Comments on ODA proposed rule OAR 603-057-0108

23 May 2016

Oregonians for Food & Shelter (OFS) is a grassroots coalition of farmers, foresters, and other technology users focused on natural resource issues involving pesticides, fertilizer, and biotechnology. We are writing you today in regards to the Oregon Department of Agriculture (ODA) proposed rule OAR 603-057-0108 which implements the new aerial applicator certificate. We thank you for the opportunity to submit comments on this important issue.

The aerial applicator certificate was part of House Bill 3549 which made several changes to the pesticide statute. OFS supported HB 3549, including the new aerial applicator certificate requirements, in the legislature as reasonable changes to pesticide regulation.

Overall, we think the Department has done a fine job of capturing the intent of the aerial applicator certificate law in the proposed rules. ODA did adequate stakeholder outreach, and seemed to consider their input.

With that being said, we continue to have concerns with the requirements around training hours. The rule requires that those hours are only counted if the trainee is performing actual flight time. This ignores the fact that there are many "on the ground" activities related to aerial applications of pesticides that are part of the training regimen for aerial applicators. While in-flight time is important, the planning, communication, and mixing and loading of the pesticides are also critical parts of a safe pesticide application. We believe that those activities should be counted in the training hours for an applicant.

Thank you again for taking comments on the proposed rule. The new aerial applicator certificate will help ensure that Oregon aerial applicators of pesticides are educated and qualified for the task. We support that goal, but are hopeful that the Department will reconsider what it includes in the training hour requirements.

Thank you for your consideration.

Scott J. Dahlman
Policy Director



NORTHWEST CENTER FOR
ALTERNATIVES TO PESTICIDES

May 26, 2016

Katy Coba, Director
c/o Sue Gooch, Rules Coordinator
Oregon Department of Agriculture
635 Capitol St. NE
Salem, OR 97301

Dear Ms. Coba,

We have reviewed the final proposed text of the rule OAR 603-057-0108. We appreciate the opportunity to have served on the advisory committee that provided feedback to the Oregon Department of Agriculture (ODA) in the drafting of this rule.

The rule implements a portion of H.B. 3549, passed during the 2015 legislative session, and is intended to define the conditions under which training of potential aerial applicators are considered adequate so as not to impose risk to public health and safety. The language from H.B. 3549, Section 3 (2)(c) requires that the Department may issue an aerial applicator's certificate to an individual who (among other requirements):

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

The proposed rule reflects the law by requiring proof for "at least 50 hours of flight training experience...on flights conducted for the purpose of carrying out, or training to carry out, spraying or otherwise applying pesticides by aircraft." (Section 7 (e) (B).

We support the text of the rule, with an exception.

- a) We believe that Section 7(e) as currently written is too weak. The proposed language allows applicants to validate their 50 hours of in-flight training with a sworn statement. The incidents of overspray of residents and schools created controversy around the current regulatory practices surrounding aerial spraying, which were the impetus for the bill.

What would a sworn statement look like? Suppose it is a simple statement: "I have completed 50 hours of flight training on flights conducted for the purpose of training to carry out spraying." If so, this would be very inadequate. The public asked for, and expects a commitment of accountability from aerial applicators, including that they are adequately trained for the highly difficult task of applying pesticides by air in terrain that is often mountainous, without risking overspray of sensitive sites. The law requires buffers for inhabited dwellings and school sites, and these are narrow (only 60 feet), which means that the skill level of the pilot needs to be extremely well developed. We encourage ODA to

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interpret H.B. 3549 through this rule to encourage that accountability. Memory of hours spent on tasks can be faulty if not backed up with daily documentation. Fifty hours is a substantial requirement and should be treated that way. Other licenses granted by the state (such as massage therapist licenses, hairdresser licenses, and various others) require a minimum number of hours of training, which is verifiable through attendance records, in addition to passing an exam. The public deserves no less oversight for aerial pesticide applicator certificate holders. Since training hours must take place under a supervisor, there should be an expectation that the training hours are fully documented and double verified, and provided as part of the applicant's application materials for the certificate.

As such, we recommend that ODA tighten Section 7(e) (b) as follows:

- Require a record of dates, times, locations, and activities undertaken for each of the flight training hours submitted, and
- Require a name, company affiliation, and signature of the person who supervised the trainee on these training flights for each training session.

We also recommend that ODA tighten Section 7(e) (a) as follows:

- Require a company supervisor's statement of the length of time that the pilot has worked for the company and the estimated number of flight hours undertaken by that person in the last 2 years, and
- Require a name, company affiliation, and signature of the person who supervised the pilot.

We would hope that ODA would spot-check these records to send a message of accountability to the industry.

Finally, we understand that the industry would like to interpret the requirement from the law "on flights" as including flight-preparation activity such as mixing and loading. This is a slippery slope. While time spent learning these techniques is good and helpful, we think ODA should be very cautious about weakening a common-sense interpretation of the law, and should ensure that applicants are aware time not spent actually flying does not count toward the 50-hour training requirement.

Thank you for the opportunity to comment.

Sharon Selvaggio

Sharon Selvaggio
Healthy Wildlife and Water Program Director