

HB 4062 and HB 2031 Implementation Stakeholder Group, Meeting Notes

DATE	LOCATION	START TIME	END TIME
9/20/2023	Hybrid	1:00 pm	1:47 pm

FACILITATOR	CONTACT EMAIL	CONTACT PHONE
Colton Bond	Colton.Bond@oda.oregon.gov	503.986.6485

Workgroup Members

Alexis Wenker- Oregon Golf Course Superintendents Association

Jana McKamey- Oregon Winegrowers Association

Jenny Dresler- On behalf of Oregon Farm Bureau Federation

Jon von Behren- Oregon School Facilities Management Association

Katie Murray- Oregonians for Food & Shelter

ODA Staff Present

Andrea Sonnen – Oregon Department of Agriculture, Lead Pesticide Investigator

Colton Bond – Oregon Department of Agriculture, Licensing Specialist

Crystin Kincaid– Oregon Department of Agriculture, Pesticide Licensing

Gilbert Uribe Valdez – Oregon Department of Agriculture, Pesticides Program Manager

Introduction

- Meeting is called to order by Colton Bond.
- Introductions of ODA staff and workgroup members

Recap and Update on Potential Rulemaking Timeline

- **Colton Bond** reviewed House Bill 4062 and House Bill 2031 and how they relate to this rulemaking exercise.
 - HB 4062 created and established fees for two new “noncommercial” license types. This left details as far as recordkeeping, continuing education, etc., open to discussion on how this will be addressed in rule.
 - HB 2031 in part, grants the Oregon Department of Agriculture the authority to impose a civil penalty for violation of the State Pesticide Control Act or associated administrative rules related to restricted-use pesticides. This was required to bring ODA into compliance with new federal regulations. There are related amendments in the pre-proposal, draft rule text that will harmonize definitions with statutory changes made in the bill.
 - Colton stated that the overall goal is to implement these authorities in a way that’s consistent with federal and state law while also reducing regulatory burden of pesticide licensing requirements without reducing protections for humans and the environment.
- **Colton Bond** reviewed what was discussed in the last meeting regarding the pre-proposal, draft rule text. The following are the suggestions made by the workgroup members:
 - Flexibility to avoid needing two sets of licenses for those who do a mix of noncommercial and commercial applications with the same employer.
 - Harmonize pesticide application recordkeeping and continuing education requirements for

commercial and noncommercial applicators. This allows the licensing flexibility described above and is also important for compliance with federal regulations that impose standards for recordkeeping, etc.

- Clarity in communications when in the process of formal rulemaking to ensue it is clear that the new license type is not reducing the protections for people or the environment.
- Time the implementation in such a way as to reduce costs. The goal is to time implementation so people can apply for a 2024 noncommercial applicator license between mid-November and the end of the calendar year so there wouldn't be an overlap in multiple licenses and duplicate fees.
- Clarify licensing terms such as "pesticide applicator" where the plain meaning is different than in statute.
- Allow private school employees the ability to utilize certain categories such as *Agriculture*, *Forest*, and *Public Health* when appropriate. The school IPM law does not permit a private applicator license to be utilized to making pesticide applications on a school campus.
 - *No additional comments were made.*
- **Colton Bond** gave an update on the potential rulemaking timeline.
 - September 27, 2023, is the recommended date to submit Rulemaking Notice for Publication in the October Oregon Bulletin published by the Secretary of State. This would allow three days for any necessary corrections and then it would be finalized and published on October 2, 2023. The comment period would begin once this is published.
 - There are two tentative virtual Rulemaking Hearings scheduled for October 17th and October 18th.
 - October 22nd is the earliest date to close the comment period, but the current goal is to close the comment period on October 25th. This would allow interested parties time to incorporate topics or ideas they've heard in the hearings into their own comments.
 - This would potentially allow these rules to become effective on November 17, 2023, which is the first day that ODA processes license applications for the following calendar year. If additional things needed to be worked out, this timeline could be pushed back to December. This would still allow clean a switch to the noncommercial license during license renewal, but would require additional communication with applicants to avoid confusion.
 - *No questions or comments were made.*

Summary of updates to pre-proposed draft rule text

- **Colton Bond** reviewed and summarized the changes that were made to the pre-proposal, draft rule text. These changes were made to reflect the suggestions given in the last meeting.
 - Kept pre-proposal, draft rule allowing those doing commercial and noncommercial work the flexibility to operate under commercial licensing.
 - Updated pre-proposal, draft rule text to include definitions for each license type and utilize terms consistent with the terms printed on licenses.
 - Added noncommercial applicator license type to *Agriculture*, *Forest*, and *Public Health* categories.
 - Kept pre-proposal, draft rule text language that would allow the same application recordkeeping and continuing educations requirements for noncommercial applicators as for commercial applicators.
 - Additionally, ODA developed a licensing scenarios handout which presented licensing requirements for common and unique scenarios.
- **Colton Bond** asked for questions or comments on the changes.
 - *None were given.*

Group Discussion

- **Colton Bond** opened the discussion of general examples of what it might look like for licensees if the corrections to the pre-proposal, draft rule text were adopted. He mentioned that he is still working on the technical elements of assessing some factors, but he wanted to give a sense of the current analysis.

- There are individuals who are applying restricted use pesticides to land or property that they or their employer owns or leases, and are fumigating their own wine barrels, applying pesticides at private schools, and making pesticide applications on golf courses. In these cases, most people are already licensed and will need to make a switch in license type. Three examples of this are:
 - Applicators who currently have a commercial applicator license (employer is required to have a Commercial Pesticide Operator license) who apply Restricted Use Pesticides to their own or their employer's property for purposes other than agricultural production. The commercial applicators will be making a switch to the noncommercial applicator license to do that work on their own or their employer's property. The fees, recordkeeping and continuing education requirements are all the same when making this switch. There is potentially a cost reduction associated with making this change as the employer would not need to renew the Commercial Pesticide Operator license resulting in a net savings in license fees for the business.
 - Applicators who are applying pesticides to others property *and* applying Restricted Use Pesticides to their own or their employer's property for purposes other than agricultural production. These applicators could continue to operate under commercial applicator and operator licensing. In this case, no changes are proposed for the requirements of those licenses.
 - Applicators fumigating wine barrels and corks who are currently using a Private Applicator License. In consultation with US Environmental Protection Agency, it was determined that this license does not support that kind of use. That is because it specifies use of Restricted Use Pesticides in production of an agricultural commodity, which the grapes may be, but the barrels/corks that are being treated, and the wine itself, are not. These applicators are going to need to switch to the noncommercial license. It is estimated that there will be an increase in costs with respect of licensing fees, passing exams to qualify for the new licenses, recordkeeping requirements, and an increase in the amount of required continuing education credits. The private license allows the supervision of applications made by unlicensed individuals. This change would result in additional costs for those supervised coworkers needing to be licensed as a Pesticide Apprentice or Immediately Supervised trainee. It is estimated that there will be an increase in costs with respect of licensing fees. Additionally, for Pesticide Apprentices it is estimated that there will be increased costs to pass an exam to qualify for the new license and meet continuing education requirements.
 - **Jana McKamey** asked what outreach is going to look like once things are finalized.
 - **Colton Bond** responded that the intention is to utilize email outreach that defines who would be impacted, how they can obtain this new license, how long it takes, etc. The plan is to start broad to let people know about the general changes and then works towards a more targeted communication. Most likely emails and fact sheets will be developed to distribute to those specific communities.
 - **Alexis Wenker** requested infographics and one-pagers that could be sent out to membership.
 - **Colton Bond** said he would try to develop some that are more tailored to specific groups such as golf courses.
 - **Katie Murray** suggested ODA create a webpage that has things like case examples, FAQs etc. that could be shared in newsletters.
 - **Colton Bond** mentioned there is a rulemaking webpage and this information could be added. There are also plans to translate some of the messaging into Spanish.
 - **Jon Von Behren** reiterated the request for communication and outreach materials. He suggested flowcharts to help determine which type of license is necessary

depending on the work being performed.

- **Colton Bond** added this to the list items to work on developing.
- **Colton Bond** asked the group if they were comfortable moving forward with the draft, pre-proposal rule text and the proposed timeline. He mentioned following up separately with members who were not present in this meeting.
 - *Everyone agreed.*

Adjourn

- Colton Bond adjourns the meeting.