



Serving Oregon Since 1980

(503) 370-8092

FAX: (503) 370-8565

www.ofsonline.org

OREGONIANS FOR FOOD & SHELTER

1320 Capitol Street NE ♦ Suite B-50 ♦ Salem, Oregon 97301

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.

STAFF

Katie Fast, Executive Director

E-mail: katie@ofsonline.org

Angi Bailey, Grassroots Coordinator

E-mail: angi@ofsonline.org

Scott Dahlman, Policy Director

E-mail: scott@ofsonline.org

Diann Washburn, Office Manager

E-mail: diann@ofsonline.org

BOARD OF DIRECTORS

Bruce Alber

Wilbur-Ellis Company

Jerry Anderson

Hancock Timber Resource Group

Seth Barnes

Oregon Forest & Industries Council

Luke Bergey

Miami Corporation

Barry Bushue, Vice Chairman

Oregon Farm Bureau Federation

Craig Campbell

Umatilla Electric Cooperative

James Curry

Monsanto

Amanda Dalton

Columbia Gorge Fruit Growers

Curt Dannen

Crop Production Services

Ken Dey

J.R. Simplot Company

John Enright

KWS Seeds, Inc.

Jim Fitzgerald

Far West AgriBusiness Association

Eric Geyer

Roseburg Forest Products

Jake Gibbs

Lone Rock Timber Management Co.

David Hampton

Hampton Resources

Doug Hoffman

WILCO – Winfield, LLC

Bill Hoyt

Oregon Cattlemen's Association

Carolyn Johnson

Rasmussen Spray Service, Inc.

Dennis Kelly

Syngenta Crop Protection, Inc.

Tami Kerr

Oregon Dairy Farmers Association

Rick Krohn

Pacific Northwest Aerial Applicators

Greg Loberg

West Coast Beet Seed Company

Randy Lyons

NORPAC Foods, Inc.

Jerry Marguth

Oregon Seed Council

Greg Miller

Weyerhaeuser Company

JP Mischkot

Glass Tree Care & Spray

Matt Novak

Oregon Vineyard Supply

David Phipps, Secretary-Treasurer

Oregon Golf Course

Superintendents Association

Annette Price

Pacific Power

Ted Reiss, Chairman

Seneca Jones Timber Company

Kevin Richards

Fox Hollow Ranch, LLC

Blake Rowe

Oregon Wheat Growers League

Caroline Silveira

DuPont

April Snell

Oregon Water Resources Congress

Bryan Stuart

Dow AgroSciences, LLC

Ian Tolleson

NW Food Processors Association

Chuck Wolsborn

Gresham Golf Course

SB 892 -- Relating to the aerial application of pesticides to forestland

22 March 2017

Testimony to the Senate Environment and Natural Resources Committee

Honorable Committee Members:

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 opposition to Senate Bill 892. We thank you for the opportunity to submit comments on this important issue.

As -1 amendments have been posted prior to the hearing, we will limit our comments to the proposed amendment, although many of our concerns apply equally to the underlying bill. Senate Bill 892 would require notification to the Oregon Department of Forestry (ODF) at least 15 days out of a planned forestry aerial pesticide application through the FERNs e-notification system. It also requires reporting of extensive application information within five business days of completion. All information would be posted on the ODF website via FERNs.

Solution in Search of a Problem

The underlying premise of SB 892 is that citizens should be notified about aerial pesticide applications on an exact date because they are somehow endangered by the operation. Aerial pesticide applications are performed by licensed professionals, following strict rules under the Oregon Forest Practices Act (FPA) as well as Oregon pesticide laws. Adverse incidents involving drift are rare, and alleged misapplications are investigated by the Oregon Department of Agriculture (ODA).

A search of recent complaints and related investigations from ODA show clearly that instances of drift from aerial applications in forestry are exceedingly rare. You can see from the data obtained from the ODA pesticides program (attached), that between 2011 and 2016 there were 35 complaint-driven cases involving the aerial application of pesticides in forestry. Of those, one investigation resulted in a Notice of Violation, and three resulted in a civil penalty being issued. That's four total violations over a five-year period where thousands of aerial applications on forestlands occurred.

Notifications are Already Available

Concerned citizens already have access to notifications of forestry operations, including pesticide applications. Forest landowners file with ODF at least 15 days before performing an operation and provide a window for when the activity may occur. In contrast to the proposal in SB 892, the current system provides flexibility for exactly when an application will take place.

Historically, citizens have been able to subscribe to notifications from ODF about all forest operations, and they are provided paper copies of those notifications for a small fee. In 2015, a series of changes to Oregon pesticide laws were adopted by the legislature. Part of those reforms was funding for an update to the FERNS e-notification which will allow easy public access to notifications for free through the ODF website. That \$1.5 million dollar upgrade, of which almost \$560,000 of was paid for by industry, is set to go “live” in April of 2017.

Yet, before this upgrade is even live, we are looking at a massive expansion of notifications and reporting under SB 892. Let’s allow the new system to be fully implemented to see if there are still gaps before talks of reforms and expansion.

Application Records are Already Available as Needed

Under current law, pesticide applicators must create and keep application records for three years. If a question arises about a particular application, ODA (or ODF for forestry applications) has the authority to request copies of those records. ODA is the pesticide regulatory agency for the state and has a division devoted to the regulation of these products. These experts are best equipped to analyze this information for regulatory compliance.

Pesticide Reforms Adopted in 2015

In the 2015 Legislative Session several bills were introduced around pesticide use in general, and aerial applications specifically. Following hearings on those bills, and workgroups in both chambers, the legislature adopted a package of reforms, which we supported. Those reforms have been implemented over the last two years and include:

- Codifying 60ft buffers around dwellings or schools for forestry aerial applications. The 60ft buffers went into effect on January 1, 2016.
- Updates to the ODF Forestry Activity Electronic Reporting and Notification System (FERNS), to provide a no-cost public portal with access to forestry activity notifications. Will go “live” in April of 2017.

- Investing significantly in new investigators, case reviewers, administrative help, and laboratory capacity at Oregon Department of Agriculture (ODA) pesticide investigation division. ODA has hired four new investigators and a Citizen Advocate & Liaison.
- Creating a dedicated hotline for people to call who are concerned that they, or their property, have been exposed to pesticides. Concerned citizens can now call 211 to file a complaint or get information about a pesticide application.
- An increase in pesticide registration fees from \$160 to \$320. This additional revenue helps fund the new ODA positions and the new 24/7 pesticide hotline.
- Requiring Pesticide Analytical Response Center (PARC) to adopt standard operating procedures for use by PARC member agencies to use when responding to pesticide incidents. All PARC agencies now have in place SOPs for pesticide complaints.
- Doubling of civil penalties associated with a violation of Oregon pesticide laws.
- Authorizing ODA to require applicator retesting in the event of misapplication of pesticides, and suspension of license if the applicator fails the test.
- Loss of an applicator license if a violator fails to timely pay civil penalties.
- Requiring aerial applicators to obtain a separate aerial applicator certificate. The certificate requires 50 hours of aerial training, a national test, and ongoing education requirements.

Please Vote NO on SB 892

Sincerely,



Scott J. Dahlman
Policy Director

FOR DISCUSSION PURPOSES ONLY

Assumptions:

For fiscal years 2016 and 2017 data are not complete, in that some cases are not finished. (Oregon's state fiscal year runs from July 1 through June 30.)

A few cases from 2015 are not yet finished, but it is not anticipated that they will substantially alter these figures.

As of this tabulation no CPs have been issued on FY17 cases, and almost all NOV's issued for FY17 cases involve AUOs or AUFs, with MCAPs.

ODA has identified some discrepancies in earlier year figures.

Table 1. Complaint-driven cases FY11-FY17 by case type (Total = 1619)

| | FY11 | FY12 | FY13 | FY14 | FY15 | FY16 | FY17 |
|--|------|------|------|------|------|------|------|
| Application record inspection (ARI) | 3 | 2 | 1 | 2 | 7 | 5 | 2 |
| Ag-use follow up (AUF) | 72 | 71 | 54 | 77 | 98 | 98 | 45 |
| Ag-use observation (AUO) | 2 | 3 | - | - | 2 | 0 | 6 |
| Complaint/Tracking* | 116 | 48 | 34 | 28 | 52 | 111 | 27 |
| Marketplace inspection (MPI) | 1 | 2 | 1 | 1 | 4 | 1 | 9 |
| Non-ag use follow up (NUF) | 72 | 86 | 80 | 93 | 118 | 110 | 45 |
| Non-ag use observation (NUO) | 1 | 2 | 1 | - | 4 | 1 | 2 |
| Product label review (PLR)** | - | 16 | - | - | - | 1 | |
| Unassigned, or PEI | - | - | - | - | 1 | 1 | |
| Total | 267 | 230 | 171 | 201 | 286 | 328 | 136 |

* "Complaint" was no longer used as a case-type after FY11, it was replaced by "Tracking." Both terms refer to cases where an actual full investigation was not conducted. The change was made to prevent confusion with fully investigated cases that resulted from complaints.

** It was decided after FY12 not to consider all PLRs to be complaint-driven.

Table 2. Non-complaint-driven cases FY11-FY17 by case type (Total = 2117)

| | FY11 | FY12 | FY13 | FY14 | FY15 | FY16 | FY17 |
|--|------|------|------|------|------|------|------|
| Application record inspection (ARI) | 101 | 55 | 126 | 51 | 74 | 105 | 81 |
| Ag-use follow up (AUF) | 8 | 3 | - | 4 | 1 | 8 | 19 |
| Ag-use observation (AUO) | 10 | 13 | 17 | 23 | 18 | 19 | 55 |
| Dealer record inspection (DRI) | 55 | 30 | 37 | 37 | 30 | 39 | 30 |
| Experimental use permit (EUP) | 2 | 1 | 1 | - | 2 | 2 | |
| Import inspection (IMP) | 1 | 1 | 1 | - | - | - | |
| Marketplace inspection (MPI) | 58 | 58 | 44 | 41 | 46 | 75 | 64 |
| Non-ag use follow up (NUF) | 4 | 2 | - | 3 | - | 1 | 3 |
| Non-ag use observation (NUO) | 14 | 13 | 24 | 15 | 14 | 14 | 12 |
| Producer establishment inspection (PEI) | 6 | 6 | 6 | 3 | 5 | 5 | 4 |
| Product label review (PLR) | 16 | 9 | 24 | 25 | 29 | 13 | 6 |
| Report of loss (ROL) | 36 | 61 | 22 | 65 | 29 | 25 | 20 |
| Tracking | - | 1 | 25 | 32 | 28 | 40 | 11 |
| Total | 311 | 253 | 327 | 299 | 276 | 346 | 305 |

More than 43 of the AUOs in FY17 are associated with MCAP agreements with Cannabis growers. At least 8 of the AUFs in FY17 are associated with such MCAP agreements.

FOR DISCUSSION PURPOSES ONLY

Table 3. Cases with Notice of Violation (NOV) FY11-FY17 by case type (Total = 327)

| | FY11 | FY12 | FY13 | FY14 | FY15 | FY16 | FY17 |
|-------------------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| Application record inspection (ARI) | 14 | 7 | 17 | 10 | 24 | 18 | |
| Ag-use follow up (AUF) | 11 | 13 | 8 | 15 | 19 | 10 | 4 |
| Ag-use observation (AUO) | - | - | - | 1 | 2 | 2 | 9 |
| Dealer record inspection (DRI) | 2 | 3 | - | 6 | 2 | 1 | |
| Marketplace inspection (MPI) | 8 | 7 | 4 | 5 | 7 | 7 | |
| Non-ag use follow up (NUF) | 16 | 13 | 11 | 10 | 19 | 15 | 1 |
| Non-ag use observation (NUO) | - | 2 | 3 | 1 | - | - | |
| Total | 51 | 45 | 43 | 48 | 73 | 53 | 14 |

Table 4. Number of entities with NOV FY11-FY17 by case type (Total = 498)

| | FY11 | FY12 | FY13 | FY14 | FY15 | FY16 | FY17 |
|-------------------------------------|-----------|-----------|-----------|-----------|------------|-----------|-----------|
| Application record inspection (ARI) | 27 | 24 | 32 | 28 | 41 | 4 | |
| Ag-use follow up (AUF) | 15 | 30 | 14 | 27 | 37 | 8 | 4 |
| Ag-use observation (AUO) | - | - | - | 3 | 4 | 1 | 9 |
| Dealer record inspection (DRI) | 2 | 2 | - | 6 | 2 | 1 | |
| Marketplace inspection (MPI) | 8 | 7 | 4 | 5 | 10 | 1 | |
| Non-ag use follow up (NUF) | 30 | 24 | 19 | 21 | 32 | 4 | 2 |
| Non-ag use observation (NUO) | - | 4 | 5 | 1 | - | - | |
| Total | 82 | 91 | 74 | 91 | 126 | 19 | 15 |

Table 5. Cases with civil penalty (CP) FY11-FY17 by case type (Total = 119)

| | FY11 | FY12 | FY13 | FY14 | FY15 | FY16 | FY17 |
|-------------------------------------|-----------|-----------|-----------|-----------|-----------|-----------|----------|
| Application record inspection (ARI) | 8 | 3 | 4 | 6 | 4 | 4 | 0 |
| Ag-use follow up (AUF) | 9 | 6 | 2 | 8 | 11 | 8 | 0 |
| Ag-use observation (AUO) | - | - | 1 | 3 | - | 1 | 0 |
| Dealer record inspection (DRI) | 2 | 3 | - | 3 | 2 | 1 | 0 |
| Marketplace inspection (MPI) | 1 | 2 | 1 | 4 | - | 1 | 0 |
| Non-ag use follow up (NUF) | 2 | 3 | 3 | 5 | 4 | 4 | 0 |
| Total | 22 | 17 | 11 | 29 | 21 | 19 | 0 |

*As of this tabulation no FY17 cases had yet been issued CPs.

FOR DISCUSSION PURPOSES ONLY

Table 6. Number of entities with CP FY11-FY17 by case type (Total = 185)

| | FY11 | FY12 | FY13 | FY14 | FY15 | FY16 | FY17 |
|-------------------------------------|------|------|------|------|------|------|------|
| Application record inspection (ARI) | 12 | 4 | 6 | 7 | 5 | 5 | 0 |
| Ag-use follow up (AUF) | 18 | 8 | 4 | 13 | 20 | 13 | 0 |
| Ag-use observation (AUO) | - | - | 1 | 5 | - | 1 | 0 |
| Dealer record inspection (DRI) | 2 | 3 | - | 3 | 2 | 1 | 0 |
| Marketplace inspection (MPI) | 1 | 2 | 1 | 4 | - | 1 | 0 |
| Non-ag use follow up (NUF) | 3 | 4 | 6 | 15 | 8 | 7 | 0 |
| Total | 36 | 21 | 18 | 47 | 35 | 28 | 0 |

FY17 is incomplete, as of this tabulation no CP had yet been issued for any FY17 case.

Table 7. Complaint-driven cases FY11-FY17 - broken out by categories

| | FY11 | FY12 | FY13 | FY14 | FY15 | *FY16 | FY17 |
|---|------|------|------|------|------|-------|------|
| Aerial | 26 | 22 | 16 | 25 | 35 | 32 | 10 |
| | | | | | | | |
| General Ag | 44 | 85 | 57 | 80 | 44 | 112 | 55 |
| General Ag + Aerial | 23 | 21 | 13 | 16 | 30 | 12 | 6 |
| Cannabis | | | | | | | 8 |
| Forestry | 9 | 8 | 7 | 7 | 10 | 21 | 5 |
| Forestry + Aerial | 2 | 1 | 2 | 6 | 9 | 15 | 2 |
| | | | | | | | |
| Homeowner (homeowner made the pesticide application) | 22 | 20 | 11 | 19 | 29 | 7 | 4 |
| | | | | | | | |
| All Others (this number is very approximate) | 164 | 64 | 78 | 64 | 203 | 188 | 55 |
| All others + Aerial | 1 | 0 | 1 | 3 | 0 | 5 | 2 |
| Total | 267 | 230 | 171 | 201 | 286 | 328 | 147 |

Tracking devices are assigned by the Case Reviewer. Not all cases started in FY16 have been reviewed so this number is subject to change.

General Ag refers to pesticide applications performed on any agricultural crop or site, excluding the separately tabulated forestry and cannabis cases. General Ag cases are typically AUFs or AUOs, with some ARIs .

Examples for All Others – Misapplication (wrong site, drift, over-rate, etc.) by commercial/public applicators, predatory business practices, unlicensed applicators, unlicensed companies, sales or distribution of unregistered products, falsifying of records.

Total is from previous table. Some cases may involve aerial and forestry, etc. so some things may be double-counted.

FOR DISCUSSION PURPOSES ONLY

Table 8. Percentage of complaint-driven cases with NOV FY11-FY17 – broken out by categories

| | FY11 | FY12 | FY13 | FY14 | FY15 | FY16 | FY17 |
|---|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Aerial | 4% (1) | 9% (2) | 19% (3) | 4% (1) | 9% (3) | 3% (1) | 0% (0) |
| General Ag | 18% (8) | 13% (11) | 14% (8) | 19% (15) | 43% (19) | 9% (10) | 0% (0) |
| General Ag + Aerial | 4% (1) | 10% (2) | 23% (3) | 6% (1) | 7% (2) | 8% (1) | 0% (0) |
| Cannabis | | | | | | | 25% (2) |
| Forestry | 0% | 13% (1) | 0% | 0% | 10% (1) | 0% (0) | 0% (0) |
| Forestry + Aerial | 0% | 0% | 0% | 0% | 11% (1) | 0% (0) | 0% (0) |
| Homeowner (homeowner made the pesticide application) | 5% (1) | 5% (1) | 9% (1) | 16% (3) | 7% (2) | 43% (3) | 0% (0) |
| All Others | 8% (13) | 22% (14) | 14% (11) | 13% (8) | 17% (22) | 8% (15) | 2% (1) |

Example of how percentage was obtained: Number of aerial complaint cases resulting in an NOV divided by number of aerial complaints.

Actual numbers in () after percentages.

Table 9. Percentage of complaint-driven cases with CP FY11-FY17 – broken out by categories

| | FY11 | FY12 | FY13 | FY14 | FY15 | FY16 | FY17 |
|---------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Aerial | 23% (6) | 0% | 13% (2) | 8% (2) | 14% (5) | 6% (2) | 0% (0) |
| General Ag | 20% (9) | 6% (5) | 4% (2) | 6% (5) | 23% (10) | 5% (6) | 0% (0) |
| General Ag + Aerial | 26% (6) | 0% | 15% (2) | 0% | 17% (5) | 17% (2) | 0% (0) |
| Cannabis | | | | | | | |
| Forestry | 0% | 13% (1) | 0% | 29% (2) | 10% (1) | 0% (0) | 0% (0) |
| Forestry + Aerial | 0% | 0% | 0% | 33% (2) | 11% (1) | 0% (0) | 0% (0) |
| All Others | 1% (2) | 5% (3) | 5% (4) | 8% (5) | 3% (4) | 1% (1) | 0% (0) |

No homeowners received a CP.

Example of how percentage was obtained: Number of aerial complaint cases resulting in a CP divided by number of aerial complaints.

Actual numbers in () after percentages.

FOR DISCUSSION PURPOSES ONLY

Table 10. Length of investigation and enforcement activities

| | FY11 | FY12 | FY13 | FY14 | FY15 | FY16 | FY17 |
|--|------|------|------|------|------|------|------|
| Total No. of cases initiated | 578 | 483 | 498 | 500 | 562 | 682 | 441 |
| Days to completion | 111 | 84 | 65 | 102 | 127 | 74 | |
| No. of cases with enforcement | 68 | 56 | 45 | 89 | 87 | 72 | 20 |
| Days for Investigator to Complete | | | | | | | |
| All Cases | 45 | 51 | 42 | 57 | 76 | 56 | |
| Cases with enforcement | 98 | 82 | 68 | 108 | 125 | 166 | |
| Days from investigation done to notice issued | 162 | 95 | 90 | 172 | 240 | 185 | |
| Days from notice served to final order issued | 143 | 52 | 62 | 37 | 32 | 19 | |

As of this tabulation almost all NOV's issued for FY17 cases involve AUOs or AUFs with MCAPs, and atypically shortened times for issuing Notices and Final Orders.

"Total No. of cases initiated" in this table may not equal the associated sum of the Total from Table 1 and the Total from Table 2 because incomplete case may not yet be marked as "complaint" or "no complaint."



Oregon Department of Forestry

E-Notification Project Update

**Joint Committee on Ways and Means
Subcommittee on Natural Resources**

February 18, 2016

E-Notification System History



Project goals:

- **Ability to submit Notifications of Operations electronically**
- **Electronic communication and reporting tools for supervisors**
- **Integrated Geographic Information System capability**
- **Mobile capability, allowing Stewardship Foresters to take the system with them into the field**

E-Notification System History



- **2011** – Independent review of ODF’s administration of the Forest Practices Act
- **2011** – Legislative request to develop an electronic notification system
- **2012** – LEAN process, customer input
- **2013** – Vendor selection, development begins
- **2014** – E-Notification and inspections go live
- **2015** – Mobile inspections go live



Benefits Realized

- **100% of notifications submitted electronically**
- **Integrated geospatial component**
- **Reduced administrative work load and mailing expense**
- **Eliminates paper based inspection process for stewardship foresters**

HB5019 Package 151 (2015 Legislative Session)



Work to be Completed

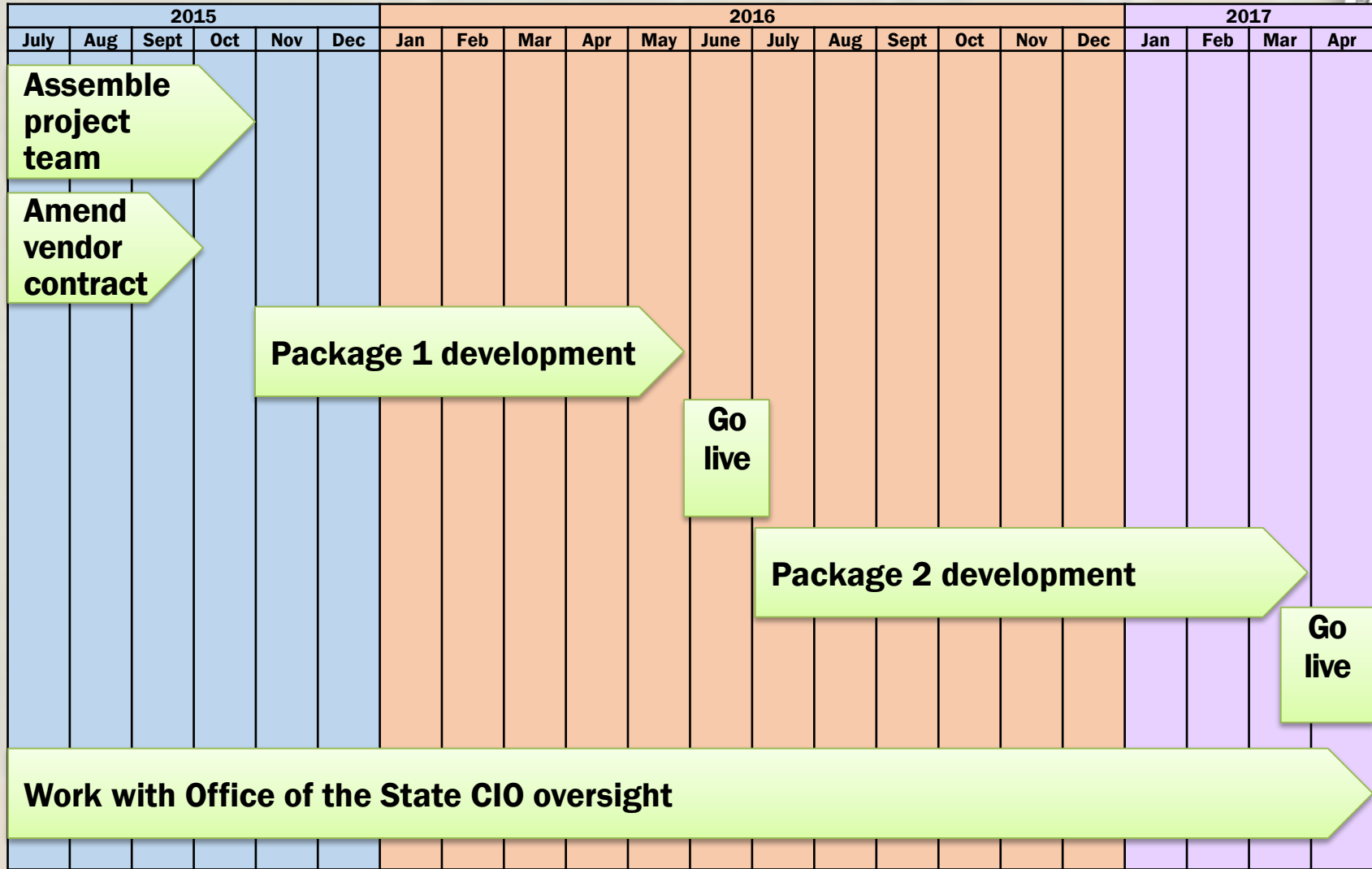
- Customer workflow improvement
- Reporting tools for supervisors
- Enhance Geographic Information System components for protected resource review
- Public Portal for Subscriptions to Notifications



HB5019 Package 151 (2015 Legislative Session)

| | | |
|--|--------------------------------|---------------------|
| 1. Development Package 1 - Customer workflow improvement and reporting capacity | | \$ 550,000 |
| 2. Development Package 2 – Public Portal for Subscriptions to Notifications | | \$ 515,000 |
| 3. Support and Maintenance (Biennial Cost) | | \$ 120,000 |
| 4. Limited Duration Project Manager 3 Position (includes associated S&S) | | \$ 212,398 |
| Total | FTE Summary: 1.0 LD FTE | \$ 1,397,398 |

Project Timeline





Thank you! Questions?

Lena Tucker
Deputy Chief Private Forests
Lena.L.Tucker@oregon.gov
503-945-7529