

**Oregon OSHA  
Fiscal Impact Advisory Committee  
January 4, 2018  
Meeting Minutes**

**Attendees:**

Heather Case- Oregon OSHA	John Morgan- Facilitator-
Garnet Cooke- Oregon OSHA	Nargess Shadbeh- Oregon Law Center
Scott Dahlman- Oregonians for Food and Shelter	Renée Stapleton- Oregon OSHA
Mike Doke- Columbia Gorge Fruit Growers	Kate Suisman- NW Worker's Justice Project
Jenny Dressler- Oregon Farm Bureau	Michael Wood- Oregon OSHA
Becky Gilliam- Dalton Advocacy (By Phone)	

**Meeting called to order at 9:05 a.m.**

**Introductory Remarks by Michael Wood**

Michael began the meeting by making introductory remarks as to the purpose of the Fiscal Impact Advisory Committee (FIAC) and the role of the six core voting members.

**The group introduced themselves.**

**New Business**

**Questions regarding scope and purpose of group**

The group clarified that the FIAC should be discussing the cost of compliance with the rule as it is written in Oregon OSHA's formal proposal, the housing cost impact (which was described as the increase in cost, if any, this rule might have on the construction of a three bedroom residential dwelling), and the cost of compliance with the rule as proposed on small businesses in particular. A small business is defined as a business with 50 or less employees either throughout the year or at peak employment.

**Remarks from Renée Stapleton**

Renée presented the group with a number of handouts, including a response from Oregon OSHA to Columbia Gorge Fruit Growers' (CGFG) objection to the original OSHA fiscal impact statement. This [memo](#) was dated January 4, 2018. She also outlined the information Oregon OSHA had received from growers for the first fiscal impact statement, which included letters from the CGFG on September 7, 2017 and the November 3, 2017 objection letter. She also passed out the text of proposed changes from October 2017, which was the text of the rule as proposed. Essentially, Oregon OSHA's response to CGFG was that the basis of costs outlined by CGFG was not based on the text of the rule as proposed.

**Rule Text Discussion**

Garnet provided a quick summary of the rule as proposed, and referred the group to the chart included in the rule on page 3. The voting members of this group acknowledged that they have been involved in the advisory committee who helped provide feedback on the proposed rule, and understood the general text of the rule. There was some discussion from the group regarding certain provisions.

The group discussed whose decision it was to evacuate spaces or to remain in the shelter when that was an option by rule. Oregon OSHA responded that while this rule is governing employers, the agency recognizes that while employers can tell employees to remain inside or to evacuate, they cannot make employees do anything. The group requested clarifying language regarding the responsibility of employers as well as prohibiting leaving during application. There was also clarification requested at this time regarding the fiscal impact focus vs. focusing on the rule text itself.

At this time CGFG, through their representative, responded to Oregon OSHA's response to their objection to the fiscal impact statement. CGFG believe that the connection between the costs they cited in their communications with Oregon OSHA are not too tenuous/speculative to be considered, and are a very real possibility for their growers.

### **Discussion of Costs**

The group asked for clarification regarding the focus of the impact on small businesses and identified situations where that impact would be similar to the impact on large businesses and situations where impact on small business may be disparate, and what that means for the fiscal analysis. This focused on the number of employers affected in general.

There was some discussion among the group about whether or not they should examine average practices of employers versus the worst case scenario. The group also discussed whether or not they should take theoretical costs into account or whether or not they should look at strictly the text of what the rule requires when analyzing costs. The group was divided on this issue. With this topic, there was some discussion of grower practices when applying pesticides. The group discussed potentials of the rule and the growers perspective re: removal of trees.

The group discussed at length the lack of information regarding when and what pesticides were applied that required a respirator. Some group members felt that this would better inform an estimate of the cost of compliance with this rule. Others in the group disagreed, and stated that growers would not release that information. Also, this information can change frequently per season.

The discussion turned to information sharing versus creating a culture of fear, and the apparent intent of the rule to disseminate more information to workers regarding pesticide applications. The group agreed that it will be hard to quantify some costs that may be unintended or underlying within the rules, which may include the cost of missed opportunities of application timing and worker health impacts.

Nargess commented that she felt information regarding pesticide types and frequency of application was readily available to the growers, and that gathering this information based on practices of at least a couple of years would give some guidelines as to how frequently respirator required pesticides were applied.

## **Unintended Consequences**

The group discussed the scope of the rule as they saw it and unintended consequences for both workers and growers. Then the group moved to trying to identify what unintended consequences are realistically a cost of compliance with the rule. At this time, the current Statement of Need and Fiscal Impact was distributed to the group.

The group posed the question wondering what kind of evidence the group could receive from the growers that the outcomes CGFG identified (removing trees, etc), are more tangible than speculative. It was stated that the growers are unwilling at this time to provide that information and it would be hard for each grower to substantiate if they were to try to.

## **Variance process**

The group turned to Oregon Administrative Rule (OAR) 437-004-6406, the innovative methods rule. The group discussed what this rule intended, and clarified the variance process that employers can use to present innovative methods of reducing drift and protecting workers. The variance process occurs on a case-by-case basis, and is not guaranteed. There was a brief discussion of different areas of industry and the variances that Oregon OSHA has granted in the past.

Some in the group pointed out that the potential that an employer may be granted a variance cannot be used in the fiscal impact, as there is no industry-wide variance and no guarantee an employer would get a variance.

## **Posting Information and Agricultural Structures**

The group discussed the rule requirements regarding proximity of spraying to agricultural structures (as defined by the rule, includes buildings other than agricultural labor housing) and the potential cost of bulletin boards for posting near to those agricultural structures. This is referenced in OAR 437-004-6405(6). The group discussed both the costs of these boards and the maintenance of these boards. The words "close proximity" may mean that growers have to install additional notification boards above and beyond their central posting board they have now. - However some in the group pointed out that some postings could be placed in places where there were already bulletin boards, not requiring another formal bulletin board.

The group also looked to the idea that some growers in the state have processing facilities on their farms next to their fields, within the AEZ. One cost that needs to be revisited may be the lost production time if workers were required to evacuate the processing facility during processing. Scott and Jenny stated they would try and speak to growers with processing facilities to get an idea of this cost.

## **Liability of growers**

The group asked for clarification regarding the liability of growers for injuries that happen when employees evacuate, or if employees or other occupants of the household choose to disregard requests to evacuate from employers. Oregon OSHA provided clarification that the cost of penalties is not figured in to the cost of compliance in a fiscal impact statement. Additionally, growers will want to consult with their attorneys regarding tort liability that may result from injuries on the job or injuries of non-employee occupants of labor housing.

The group also briefly discussed the idea that there is no explicit storage requirement of household items inside or in bins, which goes to the substance of the rule rather than the fiscal impact.

The group identified that the training costs identified in the original fiscal impact statement may need to be revisited, if training needs to be repeated due to turnover. Nargess commented that training once a year would not be enough.

The group also discussed the statutory obligation of the agency in their fiscal impact statement. The agency is only obliged to use the best available information to them.

### **Action Items**

Jenny stated she would bring in some data from the smoke management regulations to look at some examples of lost production costs and costs that are not hypothetical.

Garnet will provide information regarding notification stations and notification requirements.

Jenny and Scott will see if they can contact growers regarding potential loss of production costs for those with production facilities on their farms.

Mike will speak to Steve Castagnoli at the Oregon Department of Agriculture regarding additional information.

### **Meeting adjourned 11:43 a.m.**

### **Next Meeting:**

The next meeting time and date to be determined due to scheduling issues with members. The group is planning to meet one more time before the end of January.