

# Worker Protection Standards Advisory Committee

Meeting Minutes  
August 30, 2017

Prepared by Oregon OSHA, they have not been approved they larger committee

**Location:** Oregon OSHA PFO

**Meeting Started:** 12:37PM

**Present:**

Ana Molena	Kaci Buhl
Blake Rowe	Kate Suisman
Carl Wilson (By Phone)	Kathy Keesee (By Phone)
Emily Green	Lili Hoag
Emily Smith (By Phone)	Lisa Arkin
Fred Berman	Mike Doke
Garnet Cooke (Oregon OSHA)	Mysti Frost
Grant Jackson	Nargess Shadbeh
Heather Case (Oregon OSHA)	Ramon Ramirez
Janet Fults	Reneé Stapleton (Oregon OSHA)
Jeff Stone	Rose Kachadoorian
Jenny Dresler	Scott Dahlman
Jerome Rosa	Trena VanDeHey (Oregon OSHA)

**Welcome and Introductions**

The group introduced themselves.

**Introductory Remarks:**

Reneé made some opening remarks and thanked the group for participating. Recapped the purpose of these meetings, and outlined what we would be doing at this meeting. This meeting was to go over people's comments/concerns regarding the potential draft language. Reneé also explained the potential rulemaking timelines to the group, and outlined the Hood River listening session. Reneé also brought up the advantages of being in our state's position, and reminded the group that our rulemaking can be different than other states that simply must adopt the federal language to these rules as is. Reneé also explained that we held back on doing rulemaking for this section during our last rulemaking regarding worker protection because Oregon OSHA wanted to be fully up to speed regarding potential hazards. Because of that, it would be difficult during this rulemaking to end the process by saying there are no hazards.

**Discussion:**

The group began their discussion speaking about the different perspectives of growers and workers/worker advocates.

Data: The group discussed the data surrounding the 100 foot application exclusion zone (AEZ) brought forth by the Environmental Protection Agency (EPA) in their rulemaking process. The group wondered where the data was regarding the 150 foot AEZ proposed in some draft language. Oregon OSHA explained the differences between respiratory hazards and dermal hazards and that the increased AEZ for respiratory hazards would equal more time for the pesticide to settle. The group also brought up that they would like to identify which pesticides require respirators (Note: there is more discussion about this further along in these minutes).

Compromise: The group discussed the fact that all participants are here because they are concerned about worker safety and finding sustainable ways to improve worker safety. The group identified that rulemaking is itself an exercise in compromise, and that every group or interest represented here is compromising something to try and reach a solution or a workable rule.

Notification and Questions Answered: Garnet answered some questions for the group. First, she stated that at this point, there are no set back requirements (meaning agricultural labor housing has no requirements to be set away from any crops), and that, in Oregon, the use of pesticides that require respirators is not as frequent as pesticides that do not require a respirator, although we have no official numbers for that. Some growers representatives agreed that the use is not as frequent. Garnet also addressed the idea that cabins or houses are not in the treated area, and that the treated area is the restricted area interval (REI) only, and that because of current rules, there should be no drift.

Garnet also mentioned that notification of spraying could be very do-able for growers, including oral notification, posted notification, and ways of getting information to non-employees occupying the housing.

The group spoke more about notification, including that notification needs to be in multiple languages, including indigenous languages and symbols for those workers who do not speak or read Spanish or are illiterate. The group identified a need to improve upon notification. The group also identified that growers would need to be thinking about notification to visitors and other occupants of housing. Some growers representatives stated that typically they are well informed of visitors on the property and should be able to include them in notification. A representative from PCUN (Pineros y Campesinos Unidos del Noroeste) offered to help Oregon OSHA and growers with developing usable signage and notification in other languages or using symbols.

The group also suggested that Oregon OSHA clear up the language in the draft- specifically 437-004-6405(2)(g) and (h) to make clear the requirements of employers and increase compliance.

Time: The group discussed the time situation, and the fact that draft language in the rule does not address any amount of time occupants of housing would need to be away from the AEZ. Some members of the group acknowledged that the REI is itself a time concept. Oregon OSHA stated that they would be willing to listen to any ideas regarding how to acknowledge time in a more concrete way.

Labor Housing Improvements/Alternative Housing: Discussion of these topics lead to some discussion of improvements to labor housing, and it was again acknowledged that that is outside the scope of this rulemaking. The group suggested potential alternate housing for workers during application times. The group also acknowledged that must more data would be needed before being able to require alternate housing within the rule.

Cross-Jurisdictional Role between agencies- EPA, OSHA, Department of Agriculture: The group discussed the role of the different agencies and their focus. Department of Agriculture representatives stated they have less evidence of infiltration of pesticides and agreed with a shelter in place idea during application of pesticides. Each of these agencies has or will have regulations in place regarding pesticide drift.

Garnet and representatives of the Oregon Department of Agriculture (ODA) spoke regarding the Department of Agriculture's inspection system. It is complaint based. ODA does do occasional use inspections to observe the application of pesticides. These use inspections do not necessarily involve doing pesticide sampling around labor housing. Oregon OSHA does joint inspections with ODA, however ODA has not received many complaints. ODA clarified that anonymous complaints are allowed to their agency. Oregon OSHA confirmed that anonymous complaints are allowed to their agency as well.

Members of the group provided data regarding ODA inspections in the last three years. There were two complaints involving spray drift onto agriculture labor housing and during inspection of each of these complaints, the housing was tested. One inspection revealed evidence of drift onto the housing, and one inspection revealed no evidence of drift.

The group discussed barriers to workers or occupants making complaints, including language barriers, literacy barriers, lack of understanding of forms, and fear of retaliation by employers.

Research: The discussion turned to the idea of research, including education of workers on how to identify whether or not drift is occurring. The group also suggested more education to workers regarding drift and how to make complaints in general to both ODA and OSHA and how to identify who to make a complaint to. The group discussed potentially working with workers to hang spray paper to help them identify for themselves when/if drift is occurring. Garnet stated she spoke with Jeff Jenkins at Oregon State University regarding a potential study. However there are not only some issues with funding, but some issues with OSHA leading a study, as it could be seen as a conflict of interest since OSHA is a regulatory agency. OSHA itself has no research arm. Oregon OSHA would have to reach out to another organization to do the research, but that is something Oregon OSHA could look in to- potentially to study the effectiveness of the rule itself after the rule is in place. Group members that conduct these kinds of studies stated that it would not be that difficult to conduct a study regarding pesticides and studying application.

Discussion of Section 3 of draft language: The group discussed paragraph (3) in the draft language, titled 'Choosing to evacuate the AEZ or stay in an enclosed area'. The group sought clarification regarding whether or not this meant that an employer would make the choice for a worker to stay or go. Oregon OSHA representatives explained the difference between respiratory and dermal protection and the differences in actions needed depending on the type of protection. The group discussed the arrangement of some housing on farms. Some housing is set back from the crop or orchard, but some housing is right up next to the crop or orchard, with no buffer area. Oregon OSHA explained that the AEZ provides protection that is in addition to the REI. The group also discussed again the idea of removal to an alternate space and spoke of the idea of compromise. The group also discussed the inclusion of the innovations section as a way to incentivize growers to examine this idea as well.

150 Feet: The group discussed the AEZ suggestion of 150 feet again. Group members again stated that data was needed. Some in the group stated that it is not good enough to just say that the EPA looked at these distances. The idea of alternative housing was brought up again. Oregon OSHA representatives

reminded the group that we need to look at the fiscal impact of these different ideas, as that is something that must be addressed by the agency in rulemaking.

The rest of the draft, including notification: The group moved on to discuss other section of the draft language, which included paragraph (2)(g), notification. The group discussed the idea of a central bulletin board among the housing, accessible to both workers and occupants who may not be workers. The group was in favor of this idea. Language and symbol usage on potential notices was again discussed. The group also liked the idea of a flag notification system, putting a colored flag (red or green for example) near the housing to signify to workers and occupants when they needed to pay attention and go look for an announcement at the central board. The group also brought up challenges to the notification system, which included the fact that, depending on weather, growers may make last minute decisions on whether or not to go through with spraying that day. Oftentimes, those last minute decisions are made at very inconvenient times, such as the middle of the night.

The group agreed that notification should consist of multiple avenues and that employers should use multiple ways to notify people of pesticide application. This could include the ideas stated above, as well as posting notices on the doors of housing, oral communication to occupants and workers directly, and to ask the workers themselves how they might like to be notified of application. Some of the worker's advocacy groups stated that they could ask workers this question and let us know some of their input. The group also discussed conversations between the growers and workers regarding information sharing- what pesticide is being applied and when, and the potential symptoms of exposure. Representatives from ODA agreed that if growers could get a list of pesticides that they use to someone at ODA, they could compile that list and find out which ones require the use of a respirator.

The group stated that paragraph (2)(g)(A) through (E) was a little unclear as to what is required when, and suggested that this language be made clearer for compliance purposes.

The group also discussed paragraph (2)(h) and looked at the appropriateness of Agricultural Worker training for occupants who are not workers. The group suggested that training made available to occupants be something more meaningful to the occupants. The group also identified that Oregon OSHA should make the consequences of non-compliance clear to growers.

Final Group Remarks: The group discussed more regarding conditions of labor housing. Some group members expressed that they felt this draft language was not a compromise and did not take into account the different qualities of labor housing, or children and their unique vulnerabilities. Group members notified the group of the existence this last legislative session of a farmworker housing task force. Some members of our group are also members of this task force. They will be continuing to bring up the issues of agriculture labor housing and will be working on this again next legislative session and in-between. They urged group members to get involved in that task force as a good forum to discuss agriculture labor housing.

Closing Remarks: Reneé closed the meeting by thanking everyone for attending and for their comments. She stated this is a tough rulemaking, as Oregon OSHA needs to look at a compromise of being protective to workers without an undue burden on growers. She stated Oregon OSHA will be pulling together all group comments (which can also be provided by email or letter) by September 7th and will be having a conversation with the Administrator regarding rulemaking. Reneé stressed that time is not in our favor, as we need to adopt something that can come into effect at the first of the year to fill the

hole made with previous rulemaking. This rulemaking can also be a structure for change in the future as well.

Reneé implored the group to consider economic impacts of compliance and to give those ideas to Oregon OSHA. She wants the group to consider the costs of a 100 foot AEZ, a 150 foot AEZ and any other differences in cost regarding compliance. Oregon OSHA will incorporate these into their decision making. Health impacts were brought up, which are very hard to determine.

Oregon OSHA stated we need this information by September 7<sup>th</sup> to incorporate into the proposed language. Oregon OSHA at this time plans to file proposed rulemaking on September 15<sup>th</sup>.

**Action Item:** ODA agreed that if growers could get them a list of commonly used pesticides, they would compile that list and identify the ones that require use of a respirator.

**Meeting Adjourned:** 2:45PM

**Next Meeting:** No next meeting planned. Participants can continue to send in comments regarding the proposed draft language via email. The current plan is to file proposed rule language by September 15<sup>th</sup>, and formal hearings will be held after that to continue the rulemaking process.