



OREGON
FARM
BUREAU

Locally Grown
and
GROWING STRONG

**Senate Environment & Natural Resources Committee
OFB Testimony re OR-OSHA Temporary Rules for COVID-19**

June 4, 2020

Chair Dembrow, members of the committee,

Thank you for the opportunity to provide information on the impacts OR-OSHA's Temporary Rules related to COVID-19 will have on farmers, ranchers, and other agri-businesses in Oregon. By way of background, the Oregon Farm Bureau is the state's largest agricultural trade association, representing nearly 7,000 farm and ranch families across the state. We offer this testimony and associated materials for the record as background information on OR-OSHA's temporary rules and the agricultural industry's advocacy throughout this process.

First and foremost, the health and wellbeing of employees is of the utmost importance to the agricultural industry. Most farmers work alongside their employees in the field, and consider them not only a part of their business, but their family. As such, whether or not the industry needs guidance for maintaining a healthy workplace during COVID-19 is not subject to debate. Instead, the agricultural industry has concerns about (1) how these specific rules came into effect versus other industry guidance that was vetted by public health authorities, (2) the costs and feasibility of complying with certain rules, including the ability to provide adequate housing for employees, and (3) the impact certain rules will have on growers' ability to harvest the healthy food and agricultural products we all depend on.

For background, on April 28th, OR-OSHA adopted new temporary rules that makes significant changes to in-field sanitation and agricultural labor housing rules in light of COVID-19. The rules come in response to a Petition that was filed by the Oregon Law Center and Virginia Garcia Memorial Health Center on March 20th. These rules were adopted while the agricultural industry was working with the Oregon Health Authority to create agricultural specific guidance for operating during COVID-19 that was consistent with CDC guidelines, and similar to other industries. The hope for the guidance was to proactively address many of the concerns addressed in the Petition, mitigate transmission of COVID-19 in the workplace, while still giving farms flexibility to make the guidelines work for their operations. Unfortunately, the rules superseded the release of this guidance, and failed to include needed flexibility and address many of the concerns raised in our comments.

While the agricultural industry certainly does not object to all of the rule requirements, such as increased trainings and notification requirements, we have consistently highlighted major concerns with the costs of complying with specific provisions during the pandemic, the impact certain rules will have on the supply of qualified housing available for employees, and supply chain issues that make compliance impossible in certain scenarios. These concerns are reflected in our initial comments and on a survey conducted by the industry to help quantify the economic impact of the rules (attached). Concerns with specific rules have also been compounded by reopening guidelines for related industries that conflict with these rules, such as the restaurant and summer camp guidance, which have been vetted by the Oregon Health Authority and leading medical professionals.

Moving forward, OFB is committed to working with OR-OSHA, ODA, the Office of the Governor, and the legislature to secure full and immediate funding for compliance with the rules, as most farms and ranches are unable to bear additional costs imposed by the rules. Moreover, we are continuing to advocate for alignment of the temporary rules with Oregon's reopening guidance for other sectors, and changes that eliminate conflicts with existing law.

Thank you for the opportunity to provide testimony today. Please do not hesitate to contact us if you have any questions or concerns.

A handwritten signature in black ink, appearing to read 'SB', with a long horizontal flourish extending to the right.

Samantha Bayer
Policy Counsel
Oregon Farm Bureau
samantha@oregonfb.org

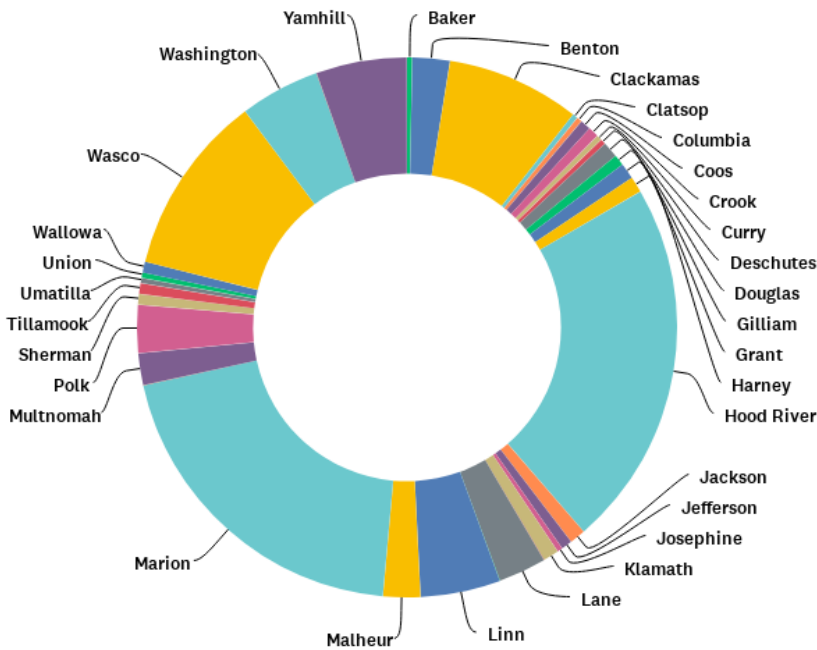
Impacts of OR-OSHA’s Temporary Rules for In-Field Sanitation & Agricultural Labor Housing

On April 29, 2020, Oregon OSHA released temporary rules calling for significant changes to in-field sanitation and agricultural labor housing criteria in light of COVID-19. The agricultural industry created a survey to understand the economic and practical impacts of these new rules on Oregon’s farmers and ranchers. All of the questions and a more detailed summary of the data can be located using this link: <https://www.surveymonkey.com/results/SM-278DR3ZX7/>.

Q1: What county do you operate in?

Collectively, 323 responded in total. The top three counties who responded were Hood River (69), Marion (63), and Wasco (34).

These three counties are also the most likely to experience impacts from the rules, as these counties produce labor intensive crops. For example, Hood River is one of the leading producers of high-quality tree fruit, particularly apples and pears, while The Dalles, is a major producer of sweet cherries. The Willamette Valley produces over 170 different crops and livestock.

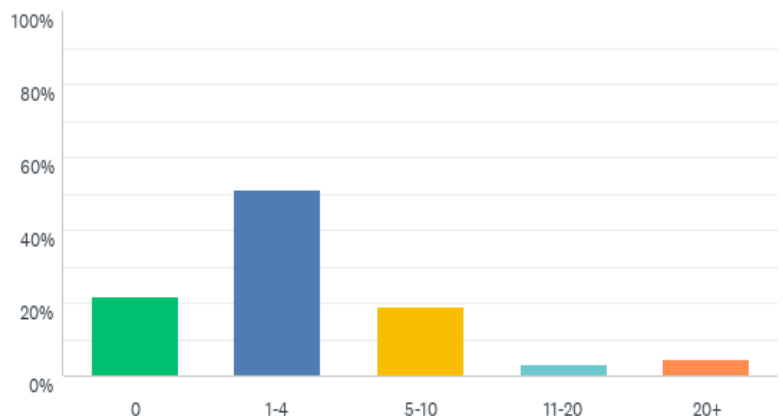


Q2: On average, how many employees (seasonal included) do you usually employ per season?



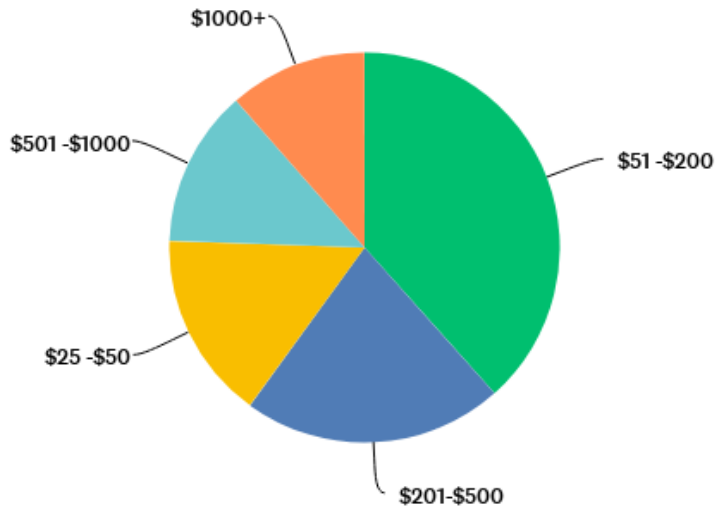
Q3: If you had to provide 1 toilet and handwashing facility per every 10 employees, how many new units would you need to purchase or rent?

Most employers will have to provide between 1-4 new toilet and handwashing facilities, which can cost up to \$5,000 per unit to purchase. Costs could also increase depending upon market factors. There are also significant supply chain barriers to acquiring these units.



Q4: On average, how much would it cost you a week to clean each unit 3x a day?

Over half of employers will have to spend \$50 - \$500 per week in order to cleaning and sanitize toilet and handwashing facilities as required by the new rules. This estimate does not include the costs for cleaning and sanitizing agricultural labor housing and employer provided vehicles, as required by the rules.



Q5: Under the new rules, how many employees would be without housing based on your current workforce?

The survey indicates that we could see nearly **5,000** employees without housing because of the new rules.

Q7: How much does it cost to build and maintain a single OSHA compliant unit?

The average answer estimated well over **\$100,000** for how much it costs to build and maintain a single OSHA compliant housing unit.

Q8: Is there a hotel or motel within a 15-mile radius of your farm?

The survey indicates that **72%** have hotels or motels near their farms, which they will need to house employees displaced from the new rules.

OSHA’s new rules reduce the amount of housing available for employees. Overwhelmingly, employers who answered the survey stated that with the bunk bed restriction and the spacing requirements, most employers will only be able to fit 1-2 individuals per unit. Over half of those who answered will have up to 10 employees displaced under the new rules, while over ten farms estimated they would have 100+ employees without housing. This means that employers will need to build more housing or use hotels and motels located near their farms to house employees.



Q10: Are there other costs associated with the new rules or that you have already experienced because of COVID-19?

The most common concern expressed by employers was the costs associated with providing PPE for employees. Additionally, there was immense concern about the ability to provide transportation for employees who now cannot live onsite.



Locally Grown
and
GROWING STRONG

April 13, 2020

Heather Case
Department of Consumer and Business Services/Oregon OSHA
P.O. Box 14480
Salem OR 97309

VIA EMAIL: tech.web@oregon.gov; Heather.Case@oregon.gov

RE: Petition to Amend 437-004-1100 Relating to Field Sanitation and Related to Work and 437-004-1120 Relating to Agricultural Labor Housing and Related Facilities in response to the COVID-19 pandemic

Thank you for the opportunity to provide public comment on the Petition to Amend 437-004-1100 Relating to Field Sanitation and Related to Work and 437-004-1120 Relating to Agricultural Labor Housing and Related Facilities in response to the COVID-19 pandemic. By way of background, the Oregon Farm Bureau Federation (OFBF) represents nearly 7,000 farm and ranch families from across the state. Employee health and safety are always of the utmost importance to Oregon's farm and ranch employers and our organization. Many farmers work alongside their employees in the field every day, and consider them not only apart of their business, but their family.

As such, OFBF firmly believes that agricultural employers should be and are implementing new policies to maintain a healthy workplace in light of COVID-19. This is why OFBF has distributed specific guidance, which we have attached to this letter, to help farmers and ranchers maintain a healthy workplace and minimize risk of transmission of COVID-19. This guidance is based on the best available information from state and federal agencies, and is consistent with recommendations from the US Centers for Disease Control and Prevention (CDC). The first version of this guidance was distributed on March 24th, and we have subsequently updated it a number of times. It is available to the public on our OFBF COVID-19 landing page - <https://oregonfb.org/covid19/>. We have also continually shared this guidance over the past weeks with the Oregon Health Authority, Oregon OSHA, PCUN, Oregon Law Center, and others. Through this guidance, we've proactively and voluntarily addressed many of the concerns expressed in the Petition because our members are committed to keeping their employees healthy and safe.

With this said, OFBF does not believe OSHA should adopt temporary rules at this time. A majority of the concerns expressed in the Petition are adequately addressed and enforceable under existing Oregon OSHA Rules, the Governor's Executive Order 20-12, and supplemented by COVID-19 guidance from the US Centers for Disease Control and state agencies. Under the OSHA General

Duty Clause, employers must provide a safe workplace for their employees free of any hazards that might cause them serious harm. This standard, as well as existing rules for in-field sanitation and agricultural land housing, are not relaxed because of COVID-19. Moreover, Executive Order 20-12 requires that businesses must close if they cannot comply with social distancing requirements consistent with the Oregon Health Authority's policies. Farms and ranches are treated the same under this Order as any other business in the state.

If agricultural specific guidance is needed for COVID-19, it should be in the form of policies from the Oregon Health Authority or voluntary guidance from Oregon OSHA, and should include science-based recommendations that are consistent with guidance from the US Centers for Disease Control.¹ This Petition calls for new layers of regulation for the agricultural industry only, mandating extreme changes to business practices and company infrastructure, which no other industry in Oregon is being required to do. Additionally, many of the proposed rule changes are wholly unrelated to COVID-19, lack any scientific basis for minimizing exposure to COVID-19, and are economically impossible for Oregon's family farms to execute in this uncertain time.

Agricultural producers already operate on thin margins. Implementing these changes will substantially increase the overhead costs of family businesses, make production of locally raised food products unstable, and could decrease the availability of locally produced food available in the market. The proposed rule amendments pose a very real and direct threat to food security, which Oregonians should not have to face now or ever.

These requests come at a time when farmers are already struggling. COVID-19 related market disruptions have hit farmers and ranchers particularly hard. Prior to COVID-19, producers were already under tremendous pressure – net income on farms is half of what it was five years ago, Oregon faces recent market collapses across several industries due to trade disruptions, new markets are collapsing, and long-time processor, NORPAC, recently closed. Market prices are at record lows across many commodities, and farmers are already grappling with significant recent regulatory costs imposed by the Oregon legislature. At the same time, farming is seasonal in nature and cannot respond to changing market pressures overnight. Immediate impacts from COVID-19 include failure of markets for those who sell directly to restaurants, cancellation of festivals and direct marketing opportunities many farms depend on, closure to international markets to shipments due to the virus, and enormous pressure on the food system to shift processing and distribution from restaurant and food service to retail. In short, farmers are already struggling to keep up with these changing times and ensure they have jobs for their employees, and they cannot afford added burdens at a time when they are already working hard to protect their employees on their farms.

Therefore, Oregon OSHA should not initiate rulemaking based on this Petition. The goals and objectives of the Petition could be solved through guidance from OSHA and OHA, and

¹ OFBF has been made aware of draft guidance from OHA and Oregon OSHA for agricultural businesses and COVID-19. Unfortunately, the draft guidance as written is inconsistent with current guidance from the CDC and fails to incorporate necessary information to reduce the transmission of COVID-19. As stated above, while agricultural specific guidance is needed, this guidance must include science-based recommendations that are consistent with guidance from the CDC, and must not include recommendations that put employers, employees, and our communities at risk of transmitting COVID-19.

collaborative efforts between agricultural organizations and employee advocacy groups.

More detailed comments on the substance of the Petition are below:

I. Proposed Amendments Relating to Field Sanitation:

Change location of toilets: The Petition states that “[T]here is little opportunity for outdoor workers to wash their hands with soap and water after sneezing or coughing as their access to such facilities is at least ¼ of a mile away under the OR OSHA field sanitation provision.” Under OAR 437-004-1110(6)(g), “Toilets must be within a five-minute or one-quarter mile unobstructed walk for all workers.” Any business with facilities farther than ¼ of a mile away are out of compliance with existing rules. While we are unaware of instances of employers not complying with these rules, Oregon OSHA should focus on enforcement of existing rules – new rules are not needed for a standard that is adequate under existing law.

The Petition also states that OSHA should “Require toilets and particularly handwashing sinks for the workers at the entrance to their worksites and as they leave the workplace in the fields.” However, this requirement would likely put growers in conflict with the federal Food Safety Modernization Act (FSMA), which requires toilet facilities to be designed and located away from fields to “[p]revent contamination of covered produce, food contact surfaces, areas used for a covered activity, water sources, and water distribution systems with human waste.” See 21 CFR § 112.129(b)(1).

Increasing number of toilets and hand washing facilities: The Petition states that current rules should be changed to mandate one handwashing and toilet facility per every five workers. Additionally, the petition suggests that all facilities should be cleaned at a minimum of three times a day, and there should also be adequate amount of potable water available to allow workers to thoroughly wash their hands for twenty (20) seconds. Under OAR 437-004-1110(6)(a), one toilet and one handwashing facility must be provided per every 20 workers. In addition, hand-washing facilities must include an adequate supply of potable water, soap, and single-use towels. Toilet facilities must already be maintained in a safe and sanitary condition. Additionally, construction and location of onsite fixed or portable toilets must comply with the rules of the Department of Environmental Quality’s Onsite Wastewater Systems and Construction Standards.

While OFBF agrees that the frequency of cleaning of existing facilities should be increased during COVID-19 and other protective measures should be enacted (see OFBF Interim Employer Guidance for COVID-19), mandating the addition of more toilets and handwashing facilities, as well as requiring them to be cleaned three times a day, would be economically and practically unfeasible for employers.

Additionally, complying with this rule change in a timely manner is likely impossible due to a lack of available prefabricated toilet and handwashing facilities available in the state at this time (see attached quote from distributor), as well as the lack of available CDC recommended cleaning supplies and toilet paper on the market. Moreover, the Petition fails to cite any science-based evidence indicating that the current number of toilet and handwashing facilities required under existing rule are inadequate to prevent the spread of COVID-19. Instead, the proposed increase in

toilet and handwashing facilities, coupled with the lack of available cleaning supplies, possibly creates more contaminated surfaces and opportunities for transmission of the virus.

Oregon OSHA should not make changes to existing rules unless the changes are supported by evidence-based science and will not increase the risk of transmission of COVID-19.

Creating mandated shade areas: The Petition states that current rules should be adopted to require employers to “identify designated shaded areas for break periods with adequate space to maintain at least three feet between workers. The break areas must have ready access to toilets and sinks.” The Petition also suggests that Oregon should adopt a California provision that requires employers to construct mobile trailers parked close to each other with a canopy and portable toilets and sinks.

Mandatory shade designations have never been adopted in Oregon. Oregon has a considerably colder and wetter climate than California where these mandatory shade areas have been deemed necessary. OFBF fails to see how COVID-19 warrants the need for designated shade areas, and Petitioners fail cite and scientific evidence linking the need for shade and COVID-19. Additionally, while some employers may have the economic means to provide mobile trailers with shade canopies and bathrooms, many employers do not. These mobile trailer units are incredibly expensive, and can begin retailing at an upwards of \$10,000 each. Most family farmers in Oregon do not have the cashflow to make this type of investment at this time. Additionally, like many other industries in Oregon, the fabrication and shipping of such units are substantially curtailed by pandemic. OFBF questions the feasibility of farmers being able to get these units, even if they have the ability to purchase them, which most do not. Further, OFBF questions whether asking employees to take breaks in and near these toilet facilities is appropriate, sanitary, and compatible with social distancing requirements.

Regulating transportation: The Petition states that “If providing or causing transportation, assure that the workers can sit at least three feet apart and maintain clean and sanitary seats and handles on a daily basis.”

First, it is unclear what “causing transportation” means. Second, while OFBF agrees that employers should maintain clean and sanitary seats and handles on a daily basis, and apply social distancing protocols if they are providing transportation for employees during the workday (see OFBF Interim Employer Guidance for COVID-19), a majority of employees are responsible for their own transportation or supply their own ride-share opportunities to the workplace. Regulating employees in their private vehicles is outside of the scope of OSHA’s authority. The Governor’s Executive Order 20-12 already calls for social distancing requirements that addresses this concern, and it is incumbent upon employees to self-enforce the Order when driving to work.

COVID-19 specific trainings: The Petition states that trainings must be provided to employees that include at minimum “[...] 1) ways to stay safe, 2) no retaliation; and 3) their health and safety complaints will be taken seriously.” Additionally, the Petition states that “growers and agricultural associations are looking to the OHA to provide the necessary training materials and in the appropriate languages so that they can easily deliver it to their workers.”

OFBF agrees with the Petitioner that agricultural training materials in appropriate languages would be a helpful resource for OHA to provide. However, new rules for COVID-19 trainings are not necessary because trainings are already required under current OSHA rules. Additionally, COVID-19 trainings are being done in employee safety committee meetings and new employee orientation meetings. OFBF has also encouraged new and continual trainings as more information about COVID-19 becomes available in our OFBF Interim Employer Guidance for COVID-19, and we have included links to CDC posters and handouts in a number of different languages.

II. Proposed Amendments to Agricultural Labor Housing:

Limit occupancy to only two individuals per unit: The Petition states that employers should not be able to “assign more than two unrelated individuals to the same cabin or unit.”

Currently, farms generally already assign families into the same units without addition of unrelated individuals. Additionally, a vast majority of farms do not have the housing capacity available to provide a unit or cabin for every two employees. Complying with this new requirement would mandate the construction of potentially hundreds of new housing units and cabins. It is estimated to cost up to \$750,000 to build OSHA compliant farmworker housing units.² As stated earlier, most farms cannot afford to take on these highly expensive construction projects at this time and it would be economically infeasible to comply with this requirement. Additionally, COVID-19 has caused significant shortages throughout Oregon’s supply chain, making it unlikely that new housing could be built within the necessary time frame, even if farms were able to afford it, which they cannot.

Increase the number of toilets, washing machines, dryers, and handwashing facilities in housing units: The Petition states that employers should increase the number of toilets to one (1) toilet per five (5) people, one washing machine and dryer for each group of twelve (12) individuals, and new handwashing sinks next to each food preparation area. Under OAR 437-004-1120, employers must provide at least one toilet for every 15 occupants or fraction thereof for each gender in the labor housing. Additionally, employers must provide laundry trays, tubs, or machines with plumbed hot and cold water in the combined ratio of 1 for each 30 occupants. Employers must already provide at least one hand washing sink or basin with hot and cold water under pressure for every 6 occupants.

Similarly, to the impracticality of constructing new housing units, farmers cannot bear the cost of adding this number of new toilets, washing machines, dryers, and hand washing facilities in existing housing at this time. Additionally, the Petition fails to justify how existing requirements for toilets, laundry facilities, and sinks are inadequate to provide for the health and safety of workers during COVID-19. The Petition also fails to cite any science-based evidence indicating that the current number of toilet and handwashing facilities required under existing rule are inadequate to prevent the spread of COVID-19. Again, Oregon OSHA should not make changes to existing rules unless the changes are supported by evidence-based science and will not increase the risk of transmission of COVID-19.

² <https://www.oregon.gov/ohcs/HD/DRP/AWHTC/2020-AWHTC-ANGL.pdf>

Increase the frequency of sanitization and provide cleaning supplies: The Petition states that employers should be required to clean all surfaces in the bathroom, handwashing, and common kitchen facilities with products addressing the spread of COVID-19 at least two times a day. The Petition states that “the cost of such maintenance and work should not be shifted to the workers.” Additionally, the Petition states that employers must provide handwashing, surface and floor cleaning supplies and vacuums to the residents to clean and sanitize their own spaces daily. Again, the Petition states that the cost of such supply should not be the workers’ responsibility.

While OFBF agrees that the frequency of cleaning of existing facilities and communal spaces should be increased during COVID-19 and other protective measures should be enacted (see our OFBF Interim Employer Guidance for COVID-19), many employers consider employee housing units to be the private residences of employees. As such, the suggested rules under the Petition are highly paternalistic, and discount the autonomy and privacy of workers who already maintain clean living spaces.

Eliminate the use of pads and assign mattresses: The Petition would eliminate the use of pads and require employers to assign mattresses with washable covers for incoming residents. Under OAR 437-004-1120(16)(f), employers have the option of providing mattresses or 2-inch foam pads. Under existing rule, all pads must have covers and be clean. The Petition fails to cite any science-based evidence indicating that the current use of covered pads increases the risk of transmission of COVID-19. To the contrary, many of the pads provided by employers have plastic, nylon, or laminate covers that are arguably easier to clean and disinfect than washable fabric mattress covers.

To reiterate, Oregon OSHA should not make changes to existing rules unless the changes are supported by evidence-based science and will not increase the risk of transmission of COVID-19.

Separate housing for quarantined individuals: The Petition states that employers should be required to designate cabins for those who may temporarily need to isolate themselves if they are working (or their family members) and are waiting testing for COVID-19.

OFBF agrees the Petition that farmworker housing units present challenges in terms of quarantining individuals experiencing COVID-19 symptoms. We agree with the Petition that *ideally* a separate cabin or housing unit would be available for those who need to isolate. However, in an outbreak scenario, this may be impossible for employers who do not have surplus housing units. There should be alternative housing sites for farmworkers available, but the solution should not be new rules mandating the construction of new housing units, but instead economic assistance from state and federal agencies to provide access to emergency housing such as hotels, motels, or even college dormitories.

However, if any changes to OSHA housing rules are made, it should be waiving certain criteria to allow for these emergency housing options. Under current law, is unlikely that most rental housing, hotels, or motels would comply with existing OSHA agricultural labor housing rules.³ It is unclear

³ For context, under ORS 90.262 the statewide standard for habitability for tenants is only 70 square feet for a bedroom. The City of Portland’s code requirements (Title 29 Property Maintenance Regulations) for a dwellings, including hotels and apartment units, require only “a minimum area of at least 70 square feet of floor area” for a room used for sleeping purposes, with just an increase of 50 square feet for each

whether college dormitories, as suggested by the Petition, would qualify under existing law. Enacting the proposed rule changes would immediately reduce the amount of qualified housing available for on-site farmworker housing, let alone emergency housing options. Oregon should be creating more opportunities for emergency housing and temporary shelter during COVID-19, not less.

III. **Expansion of Employee Benefits:**

The Petition states that there must be increased access to healthcare benefits including the expansion of unemployment insurance, expansion of Paid Sick Leave, and expansion of OFLA. While OFBF understands the desire for changes to certain employer-provided benefits during COVID-19, it is outside the scope of OSHA's authority to make changes to these programs, which are administered by the Oregon Employment Department and the Bureau of Labor and Industry.

Thank you for the opportunity to provide these comments. If you have any further questions, please do not hesitate to contact me.

Sincerely,



Samantha Bayer
Associate Policy Counsel
Oregon Farm Bureau Federation
samantha@oregonfb.org

person over two occupants. Additionally, ceiling heights may be a minimum of only 6 feet 8 inches. Additionally, in hotels and apartment houses where private toilets, lavatories, or baths are not provided, there must be on each floor at least one toilet, one lavatory, and one bathtub or shower each provided at the rate of one for every 12 residents (without regard for gender). Last, laundry machines are not required to be provided for residents.

April 13, 2020

Heather Case, Rules Coordinator
Department of Consumer and Business Services/Oregon OSHA
P.O. Box 14480
Salem OR 97309

Re: Petition to Amend 437-004-1100 Relating to Field Sanitation and Related to Work and 437-004-1120 Relating to Agricultural Labor Housing and Related Facilities in response to the COVID-19 pandemic

Thank you for the opportunity to provide comments on the petition to amend Oregon OSHA rules relating to field sanitation and agricultural labor housing in response to the COVID-19 pandemic. Collectively, our organizations represent farmers, ranchers, orchards, nurseries, wine growers, dairies, producers, and agri-business throughout Oregon. First and foremost, the health and safety of employees and their families are of the utmost importance to our organizations and our members. As such, we have each made it a priority to proactively distribute guidance and information to our members that includes the best available information on maintaining healthy workplaces during COVID-19.

While we agree with many of the sentiments in the Petition, including a strong desire to receive more guidance that is consistent with the US Centers for Disease Control and specific to agriculture, we do not believe a rulemaking based on this Petition is warranted.

First, Oregon OSHA should not initiate this rulemaking because a majority of the proposed rule changes are adequately addressed and enforceable under existing OSHA Rules, the Governor's Executive Order 20-12, and guidance from the CDC and Oregon Health Authority. Under the OSHA General Duty Clause, employers must provide a safe workplace for their employees free of any hazards that might cause them serious harm. This standard is not relaxed because of COVID-19. Moreover, Executive Order 20-12 requires that businesses must close if they cannot comply with social distancing requirements consistent with the Oregon Health Authority's policies. Agriculture is treated the same under this Order as any other business.

However, the Petition adds new burdensome regulation for the agricultural industry, mandating extreme changes to business practices and company infrastructure, which no other industry in Oregon is being required to do. Additionally, many of the proposed rule changes are wholly unrelated to COVID-19, lack any scientific basis for minimizing exposure to COVID-19, or are impossible to execute in an abbreviated timeframe. Further, some of the proposed rule changes in the Petition are outside of the scope of OSHA's authority and infringe upon the autonomy and privacy of farm employees, including regulating farm employees in their private vehicles off the worksite.

If any changes are made, OSHA should waive certain criteria to allow for agricultural housing providers to create more emergency housing options, so that they are able to swiftly respond in COVID-19 outbreak scenarios. The Petition would make housing more difficult and expensive to supply, and would result in the immediate reduction of qualified housing available for farm employees. Oregon should be creating more options for shelter and housing at this time, not less.

Lastly, agricultural producers already operate on thin margins. Implementing the changes outlined in the Petition would cause substantial economic hardship for agricultural employers and would ultimately result in a loss of available jobs and wages in the agricultural industry. 97% of Oregon farms and ranches are family owned and operated. Implementing these changes will substantially increase the overhead costs of these family business, make production of locally raised food products unstable, and could decrease the availability of locally produced food. The proposed rule amendments pose a very real and direct threat to food security, which Oregonians should not have to face now or ever.

We thank you for the opportunity to share these concerns and look forward to continuing this important discussion on how to best protect employers and employees during COVID-19.



Michael Wood
Director, OR-OSHA
350 Winter St NE, 3rd Floor
PO Box 14480
Salem, OR 97309-0405

VIA Email: Michael.Wood@oregon.gov

Director Wood,

We are writing to you today to express immense concern about OSHA's Temporary Rules relating to field sanitation and agricultural housing in light of COVID-19, which were released on April 29th. Collectively, our organizations represent farmers, ranchers, orchards, nurseries, wine growers, dairies, producers, and agri-business throughout Oregon. First and foremost, the health and safety of employees and their families are of the utmost importance to our organizations and our members. While we do not take issue with the substance of some of the rules, we have significant concerns about the costs and feasibility of complying with certain rules by May 11th, when they come into effect.

In short, the rules require severe changes to business practices and company infrastructure that farmers and ranchers cannot make in this timeframe. We understand that all industries will be asked to make changes in order to prevent the spread of COVID-19 as the state slowly reopens, but no other industry in Oregon is being required to implement the types of significant and systemic changes that the agricultural industry is being directed to do. In fact, the guidelines for reopening, written and vetted by public health officials, are much less restrictive than the rules our industry is being directed to follow for the next six months.

Our industry created a survey to understand the impacts that these rules will have on our members, and the data indicates that the costs for complying with these rules are so significant that many farms and ranches will simply not be able to open or harvest this season. Additionally, the rules drastically limit how many employees can live on site, and most employers estimate that these rules cut their available housing in half, which will result in the immediate displacement of up to 5,000 employees statewide. A summary of this data can be found [here](#).

We have asked the Oregon Department of Agriculture, and the Office of the Governor for immediate financial assistance, utilizing the federal COVID-19 funds and/or Emergency Board Funds, to help our growers cover the steep costs of these rules. But in order to comply with these new rules, we also need Oregon OSHA to partner with us as we all seek full compliance with the temporary emergency rules in the following ways:

1. Grant agricultural employers a "grace period" in which penalties and fines are not assessed, and during which OSHA can provide technical assistance to ensure compliance. We would ask that period last for 60 days or until funding is available to provide compliance with the rules, whichever is later.

- Outline a progressive enforcement approach for OSHA's Enforcement Guidance, which should allow for warnings, consultation, and educational opportunities for the first two complaints.

We would propose the following process: (1) a grace period for the first 60 days; (2) upon first complaint, a Letter of Education is issued to the employer; (3) upon the second complaint, a first official warning is issued with agency consultation; (4) upon the third complaint, or after the 60 day grace period, a fine is issued.

While financial assistance is essential for producers to be able to comply with these rules, we need this grace period and progressive enforcement to keep our industry afloat without completely shutting down all access and utilization of farmworker housing. Growers also need to reach out to vendors and others to bring all sites into compliance. This will take time, and much more than the 15-days provided for with the immediate posting/effective date of these rules. Growers should not face steep financial penalties on May 12th when employers have made it clear that there are significant barriers to compliance. Additionally, as these are substantial changes to existing rules, we need the opportunity for education and technical assistance, because the science and best practices for COVID-19 are constantly evolving.

Therefore, we are formally requesting the OSHA grant the above-mentioned enforcement provisions as soon as possible.

Thank you,





Temporary Rule Enforcement Memorandum Oregon Occupational Safety & Health Division

May 8, 2020

TO: Oregon OSHA Enforcement & Consultation Staff
FROM: Michael Wood, Administrator
SUBJECT: Interim Guidance Related to Temporary Rules Adopted in Response to the COVID-19 Emergency

On April 28th, 2020, Oregon OSHA adopted temporary emergency rules in response to the COVID-19 Emergency. These rules affect three different but related aspects of Oregon's industry -- Field Sanitation for Hand Labor, Temporary Labor Housing, and Agriculture Employer Provided Transport – and are designed to at least mitigate the spread of COVID-19 among the agricultural workforce in particular.

Employer representatives have asked for additional time to comply with the requirements of the rule. In addition, Oregon OSHA has not fully completed the educational efforts we had planned to complete by today. Employers have also asked that certain provisions of the existing rules be relaxed during this emergency or other clarifications provided. In response to these concerns, we are providing the following guidance (to supplement that already provided in the Q&A document – which will be updated to reflect this information):

- 1) All enforcement of the rule (including the provisions that technically take effect May 11) will be delayed until June 1, 2020.
- 2) Individual growers seeking a further enforcement delay (beyond the demonstrated inability to comply with certain provisions already acknowledged in the rule) will need to seek a temporary variance based on their particular circumstances. Oregon OSHA will expedite handling of at least an initial response to such variance requests to the degree possible.
- 3) In the context of this emergency, Oregon OSHA will not be enforcing the ceiling height requirements that took effect January 1, 2018 but instead will allow growers to once again (and temporarily) count space with a ceiling height between 5 and 7 feet toward as much as 50 percent of the required square footage.

- 4) In the context of this emergency, Oregon OSHA will allow placement of beds in what would otherwise be commons rooms *provided* that exit routes are not obstructed and the beds are not placed in close proximity to cooking facilities. The other requirements of the temporary rule in relation to bed placement will still need to be maintained, but we will relax enforcement of the 100 square foot requirement *if* the reason for the bed placement is to remove them from sleeping areas in the same facility.
- 5) As explicitly noted in the rule, the rule will not apply to hotel or motel space that is offered in the same condition it would be to the general public if the facility were operating – the Employment Department has already confirmed with the USDOL that such use will be permitted for H2A workers with a contract waiver that Employment can process (and in a number of cases already has processed such waivers).
- 6) As explicitly noted in the rule, the rule will not apply to housing provided by someone other than the employer specifically to respond to a public health emergency (even if is provided as a condition of employment and would otherwise be subject to the rule).
- 7) In addition to the explicit provisions in the rules related to manufactured housing, we will allow the use of Recreational Vehicles and travel trailers on the housing operator's site, provided that the vehicles are used to house related individuals and that they are not used to house individuals beyond the sleeping capacity indicated by the vehicle manufacturer.

Please direct any questions to Technical, to Renee Stapleton, or to me.