



August 31, 2020

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

VIA EMAIL: tech.web@oregon.gov

Thank you for the opportunity to provide comment on OR-OSHA's Draft COVID-19 Temporary Standard and control measures. Collectively, our organizations represent farmers, ranchers, orchards, nurseries, wine growers, dairies, food processors, agri-business, agricultural water suppliers, commercial timber operators, loggers, and natural resource businesses 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. This is why we have consistently engaged with OR-OSHA, the Oregon Health Authority, the Oregon Department of Agriculture, the Office of the Governor, and local governments to provide thoughtful feedback on not only the operational impacts of certain guidance or COVID-19 rules, but the efficacy of those rules in reducing the transmission of COVID-19 in our workplaces. We are deeply invested in protecting agricultural and timber employees, and adamantly believe there is a way to provide safe workplaces without causing unnecessary economic harm to Oregon's businesses, who are struggling to stay afloat in

the pandemic. **Unfortunately, these draft rules completely fail to strike this balance, and need significant changes to be workable for agricultural and timber businesses in Oregon.**

From a process standpoint, these draft rules are incredibly disheartening to our membership and organizations. Administrator Wood and agency staff received strong and early feedback from agricultural stakeholders explaining that the requirement to clean each toilet and handwashing facility 3x a day, and all high-touch surfaces 2x a day, and every vehicle after each trip was cost prohibitive, unnecessary to prevent the spread of COVID-19, and not a sustainable long-term workplace requirement. Administrator Wood then received a formal letter from a number of agricultural organizations (attached) that contained results of an industry-wide survey explaining that the greatest economic and operational burden from agriculture's temporary COVID-19 rules was the sanitation requirements, especially since surface contact is no longer considered a major transmitter of COVID-19.¹ As discussed in more detail below, despite this feedback, the draft rules actually "double-down" on the cleaning requirements in a way that will increase the current costs of sanitization by tenfold with no significant benefit to the safety of employees.

It appears that irrespective of robust written comments, open dialogue between OR-OSHA leadership and stakeholders, scientific findings of no significant health benefit, and data proving economic harm, OR-OSHA is uninterested in conducting rulemakings in a way that genuinely takes into consideration the need for their rules or their impact on Oregon's businesses. Despite contrary belief, Oregon's businesses are not capable of absorbing unending layers of regulatory costs. For example, only 8% of farms in Oregon make over \$250,000 in annual sales.² This leaves 61% of farms making less than \$10,000 in sales a year. Between normal operating expenses, payroll expenses, fluctuations in market prices, increased taxes, and heavy regulatory costs, farmers and ranchers are already operating on the slimmest of margins. Adding in the collapse of key markets, and the cancelation of long-standing contracts and direct-sales opportunities because of COVID-19, Oregon agriculture is at a breaking point. There is simply no room left for economic damages from reckless drafting of these rules.

We strongly urge OR-OSHA to thoughtfully consider and take into account the economic consequences of these control measures, and to make the following changes:

- 1. Social Distancing:** The social distancing control measures must be rewritten to make clear that employers can meet social distancing requirements if they either (1) require employees to wear cloth face coverings; or (2) are separated by impermeable barriers. While impermeable barriers will work for certain businesses, a majority of agricultural and timber operations take place in outdoor settings that make the use of impermeable barriers impossible.
- 2. Social Distancing in Employer-Provided Transportation:** This proposed rule is substantially similar to the distancing requirement of OR-OSHA's temporary rules for Agriculture in COVID-19. While we recognize the need for control measures while

¹ <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#Spread>;
<https://web.archive.org/web/20200328203140/https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>.

² <https://oregonfb.org/wp-content/uploads/2020/03/Oregon-Ag-Facts-Background-Brief-Agriculture-2018.pdf>

transporting employees, this requirement has proven to be immensely expensive for agriculture. As evidenced by our industry-wide survey, agricultural employers have had to spend upwards of \$10,000 to obtain new vehicles to be able to meet these requirements. OR-OSHA should reconsider the implementation of this rule, as the expense to businesses around the state will be tremendous and the benefit to workers' safety is not well documented. In the alternative, OR-OSHA should consider extending the "household" exemption to those employees who work in the same shift or cohort, or find other methods to reduce the economic impact of this rule. At any rate, there should be no effort by the agency to make the transportation distancing requirements permanent.

3. **Face Coverings:** This entire rule section should be rewritten to ensure consistency with the state's current mask requirements. As written, this section runs counter to existing mask requirements that contain exceptions for customers in certain circumstances. Oregon's businesses have already made substantial changes to comply with existing mask mandates. Any proposed rules should be as consistent with existing mandates to make adoption of these control measures as seamless as possible. Additionally, subsections (A) and (B) are duplicative, and subsection (E) should be removed. There is no contemplated definition of "forceful exertion" and likely any activity involving manual labor or physical action could be considered forceful exertion.
4. **Sanitization:** The requirement that any high-touch surface or shared equipment be cleaned prior to use by another individual is completely unreasonable. As mentioned earlier, the cleaning and sanitation requirements of OR-OSHA's existing rules for agriculture during COVID-19 are incredibly burdensome and expensive. Currently, our members have indicated that they are spending roughly \$500 a week in just cleaning supplies to keep up with the rules. Additionally, our members have needed to assign or hire entire staff just to do janitorial work to comply. Neither of these costs is covered by OWEB's Food Security & Farmworker Safety (FSFS) program. The proposed rule language will increase the cost of sanitation by tenfold. OR-OSHA should remove this language and allow businesses to conduct janitorial services in a way that makes sense for their individual operations, especially since contact with surfaces is no longer considered a major transmitter of COVID-19 and workers have ample opportunity to sanitize their hands immediately after contact with these surfaces.
5. **Medical Removal:** A medical removal program for airborne infectious diseases is completely inappropriate and should not be a part of the Infectious Disease Standard. Medical removal is only appropriate where workplace exposures have caused documented employee injury such as lead poisoning. COVID-19 is a global pandemic and as acknowledged by the Oregon Health Authority, not incubating in the workplace. Rather, social events taking place outside of the workplace are the major cause of spread in our communities. No employer should be responsible for paying an employee who is being isolated as the result of a non-workplace exposure. Additionally, any changes to medical removal should be within existing administrative rule and should include consideration of existing paid-leave programs already available to employees. Specifically, any medical removal protection benefits should be a one-

time benefit available to employees, and any removal benefit should be reduced by benefits already being provided to the employee through other state, federal, or employer-funded compensation programs. As written, these proposed rules are ripe for abuse and there are no side boards in place that would prevent an employee from intentionally or recklessly exposing themselves in order to receive pay for multiple weeks or months away from work.

Outside of these technical comments, we are aware that OR-OSHA has convened a permanent rulemaking subcommittee despite there being no requirement for these rules to be made permanent. We strongly urge OR-OSHA to not move forward with a permanent rulemaking at this time. On principle, the science and our knowledge of COVID-19 is constantly changing. That is why federal OSHA rejected the creation of an infectious disease standard a few months ago. Specifically, federal OSHA determined that AFL-CIO's request for adoption of an infectious disease standard was "inappropriate" and harmful to state response to COVID-19. Similarly, OR-OSHA should absolutely not move forward with any permanent standards related to or motivated by COVID-19 at this time. COVID-19 requirements should end when Oregon's state of emergency ends, and we have more time for a balanced discussion of the science and need related to such a proposed standard.

Moreover, we strongly encourage OR-OSHA and relevant agencies to open a conversation about providing employers with more tools to help enforce existing COVID-19 requirements in the workplace. Employers can only mitigate the spread of COVID-19 while employees are at work and it is outside of an employer's control if an employee does not follow public health guidance in their off-hours. Employers need more tools to be able to help enforce the Governor's executive orders and hold employees accountable when they are not maintaining social distancing during off hours. Specifically, employers should be able take disciplinary actions against employees who are not following public health guidelines in their free time, or taking actions that endanger other employees. If the metric for success in Oregon is going to be based on the reduction or elimination of COVID-19 in the workplace, employers need every tool at their disposal to protect their employees and customers.

Last, when OR-OSHA's temporary COVID-19 standard comes into effect, OR-OSHA must repeal the temporary COVID-19 rules for in-field sanitation and employer-provided housing that it issued for agriculture in May. These rules would be duplicative in some cases and conflicting with each other, and there is no need for agriculture to have specific rules when a general rulemaking exists covering the same subject. We support OR-OSHA's goal of creating clear and objective workplace rules that apply across all businesses in Oregon, and as such, the temporary rules for agriculture during COVID-19 must be phased out when these infectious disease control measures come into effect.

Thank you for the opportunity to comment. We sincerely hope you will address our concerns – Oregon's agricultural and natural resource employers cannot continue to protect and maintain our strong workforce if we are subject to costly new mandates that provide employers with few tools to meaningfully address the spread of COVID-19 within our communities.

To: Michael Wood

From: Oregon Farm Bureau, Oregon Association of Nurseries, Oregon Wine Council, Columbia Gorge Fruit Growers, Oregon Seed Association

Date: July 27, 2020

Re: OR-OSHA Rules Impact

Administrator Wood,

Thank you for the opportunity to provide feedback to you about the impact OR-OSHA's Temporary Rules have had on Oregon agriculture over the past few months. From our understanding, while the Temporary Rules will phase out in late October, they are going to serve as a template for OR-OSHA's Infectious Disease Standard and associated control measures. Additionally, the Infectious Disease Standard rulemaking will take place on an expedited timeline and will likely not undertake a formal small business impacts analysis.

As such, our organizations surveyed members to fully understand and quantify how the Temporary Rules have impacted farmers this season. This survey used substantially the same format as the survey we published in May¹ when the rules went into effect, and was open for the totality of last week. Unfortunately, because of the timing of this survey (middle of harvest season) our sample size for this survey is much smaller than the previous survey (66 employers in total).

We offer this summary document as an informational resource for OR-OSHA as the agency seeks to design and implement the Infectious Disease Standard and control measures, so that there is a shared understanding of how previous rules have severely affected agricultural businesses from both an economic and operational standpoint:

1. The rules have impacted small and family owned businesses:

It is important to note that a significant percentage of farms in Oregon would qualify as a small business under OSHA's standards.² Additionally, despite workforce size, 97% of farms in Oregon are family owned and operated. As such, any major financial impact that results from OR-OSHA's rules will impact Oregon's small and family owned farms, which must be kept in consideration as OR-OSHA moves forward with creating the Infectious Disease Standard. With this said, both surveys show that Oregon has a fairly even distribution of workforce size among agricultural employers:

- Survey 1 (323 employers answered) - Less than 10 (27%), 10-25 (20%), 26-50 (23%), 51-100 (15%), 100+ (15%)
- Survey 2 (66 employers answered) - Less than 10 (28%) , 10-25 (22%), 26-50 (23%), 51-100 (15%), 100+ (12%).

¹ <https://www.surveymonkey.com/results/SM-278DR3ZX7/> (May, 2020 results)

2. A majority of farmers had to acquire between 1-4 new toilet and handwashing facilities, which cost most employers between \$3,000 - \$5,000:

Consistent with the estimates of the previous survey, most farmers had to either rent or purchase between 1-4 new toilet and handwashing facilities to comply with the Temporary Rules. Our survey also indicated that most employers had to spend between \$3,000 - \$5,000 to acquire these units, while some farmers had to spend upwards of \$10,000. One business had to spend \$58,000 to purchase new toilet and handwashing facilities to comply with the new mandatory ratios.

Q4 How much did it cost you to acquire these units for the season?



3. Cleaning and sanitization requirements have proven to be the most costly, burdensome, and possibly the least effective in reducing transmission of COVID-19:

Question 5 of the survey asked employers how much they have spent thus far to maintain the cleaning requirements under the new rules. This question instructed the employer to consider both cleaning supplies and labor costs for janitorial work. Employers answered as follows:

- **N/A (answer was not numerical) (5%)**
- **Less than \$1,000 (41%)**
- **\$1,000 - \$4,999 (32%)**
- **\$5,000 - \$10,000 (20%)**
- **More than \$10,000 (2%)**

The most frequent answer on the eleventh and final question, which asked for general feedback on the rules, was that cleaning of each toilet and handwashing facility 3x per day is very burdensome. Most employers expressed the concern that since it appears that contact with surfaces is not a major source of COVID-19 infection, the 3x daily treatment of the toilet and hand-washing facilities is unnecessary and lacks efficacy in preventing spread of COVID-19. Additionally, there was considerable concern about the impact of this rule, because the FSFS Program does not cover costs of cleaning supplies or labor costs for maintaining the janitorial requirements.

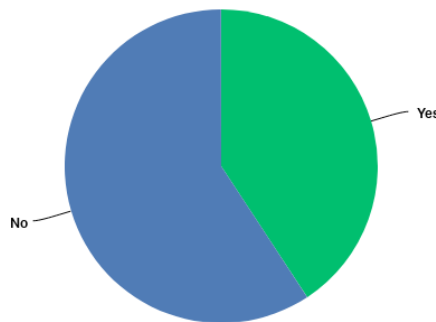
4. A minority of employers had to acquire new vehicles to comply with the rules, but those who did had to spend a significant amount:

79% of those who answered did not have to acquire new vehicles to meet the transportation requirements. However, of the 21% of those who did, most answered that it cost them between \$5,000 - \$10,000, while some answered that is cost between \$12,000 - \$35,000.

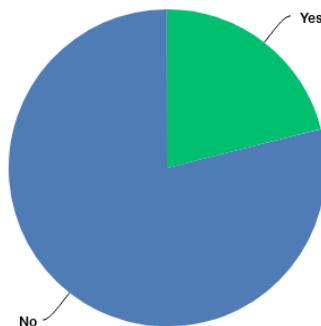
5. A majority were not able to house the normal number of employees on site this season, and were unable to secure alternative housing for those displaced employees:

Nearly 60% of those who answered stated that they were not able to house the normal number of employees on-site because of the bunk bed restriction and distancing requirements. Unfortunately, 79% were also unable to secure alternative housing for their employees. Anecdotally, we have heard from a number of employers who sadly had to reduce their workforce size because even with the FSFS program funds, they were unable to find housing off-site that actually worked for their employees and operation.

Q8 If you provide on-site housing, were you able to house the usual number of employees this season?



Q9 If no, were you able to secure alternative housing such as a hotel, motel, or other form of alternative housing for them?

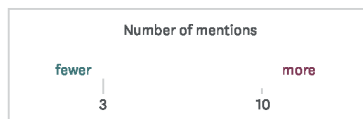


6. Cloth face coverings, social distancing, and notification requirements have been the easiest rules to implement:

Question 12 asked which requirements have been the easiest to implement and maintain. As evidenced by the word cloud below (light blue being the least reference; purple being the most referenced) the cloth face covering requirement appears to be the easiest of the requirements to implement, followed by the appointment of social distancing officers, social distancing in general, and the notification/training requirements.



A word cloud where the size of the text represents the number of mentions. The words are arranged in a roughly circular pattern. The most prominent words are 'Face coverings' (top right, large blue), 'social distancing officer' (center, large blue), 'masks' (center right, large purple), 'social distancing' (bottom right, large blue), 'Notifications' (center left, large blue), 'sanitation' (bottom center, large blue), 'requirements' (top left, medium blue), 'postings' (top center, medium blue), 'Face covering requirements' (center top, medium blue), 'cleaning' (center left, small blue), 'vehicles' (center, small blue), and 'face' (center right, small blue). The word 'masks' is the only one in purple.



Thank you for the opportunity to provide this information to you. If you have questions or comments about these findings, please do not hesitate to reach out.

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