



Comments to Department of Consumer and Business Services/Oregon OSHA Relating to Oregon OSHA's Draft COVID-19 Temporary Standard

By Jeff Stone, Executive Director
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Thank you for the opportunity to provide comment on OR-OSHA's Draft COVID-19 Temporary Standard and control measures. The Oregon Association of Nurseries (OAN) echoes the comments of the agriculture industry, submitted by Samantha Bayer of the Farm Bureau, and the comments of Oregon Business and Industry. The COVID-19 pandemic has presented unique challenges – both in the unprecedented nature of the public health emergency, and in the unique ways it has impacted each industry and each workplace. OAN urges OSHA to take those various circumstances and challenges into account in these rules.

The Economic Footprint of the Nursery and Greenhouse Industry

The nursery and greenhouse industry are the state's largest agricultural sector, and the industry ranks third in the nation, with over \$996 million in sales annually to customers in Oregon, the rest of the United States, and abroad. In fact, nearly 75% of the nursery stock grown in our state leaves our borders – with over half reaching markets east of the Mississippi River. Oregon's elite growers send ecologically friendly green products out of the state and bring traded sector dollars back to Oregon.

Nursery association members represent wholesale plant growers, Christmas tree growers, retailers, and greenhouse operators. Our members are located throughout the state, with our largest nursery growing operations found in Clackamas, Marion, Washington, Yamhill and Multnomah Counties.

OAN's Suggestions for the COVID-19 Temporary Standard

First and foremost, the health and safety of employees and their families are of the utmost importance to OAN and its 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 nursery and greenhouse employees, and adamantly believe there is a way to provide safe workplaces without causing further economic harm to Oregon's businesses, who are already 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 Oregon's nursery and greenhouse operators.**

Oregon's economy is diverse, and thus Oregon's workplaces are diverse. OSHA's COVID-19 Temporary Standard does not recognize the variety of circumstances in which an employee could work, and OSHA's one-size-fits all approach will only exacerbate the confusion, conflict and cost of keeping workers safe from COVID-19 transmission.

OAN strongly urges 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 transporting employees, this requirement has proven to be immensely expensive for agriculture thus far. 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 strongly reconsider the implementation of this rule, as the expense to businesses around the state will be tremendous and the benefit to workers 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. **Sanitation:** 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 after contact with 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 for specific hazards that cause material harm, such as lead poisoning, which are completely different than COVID-19. 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 taking multiple weeks or months away from work, even though the necessary quarantine time period of COVID-19 is only two weeks.

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 consistently changing. That is why federal OSHA rejected the creation of an infectious disease standard a few months ago. Specifically, federal OSHA determined that AFLCIO’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.

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 knowingly 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 during that it issued for agriculture in March. 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.

Thank you for your time and consideration.