



Oregon

Kate Brown, Governor

Department of Consumer and Business Services
Oregon Occupational Safety & Health Division (Oregon OSHA)
350 Winter Street NE PO Box 14480 Salem, OR 97309-0405
Phone: 503-378-3272; Toll Free: 1-800-922-2689; Fax: 503-947-7461
osha.oregon.gov

February 26, 2021

Proposed Rule Text

Rules Addressing the COVID-19 Workplace Requirements for Employer-Provided Labor Housing

Due to the COVID-19 pandemic and in line with Oregon Health Authority guidelines, the hearings will be held virtually. Oregon OSHA offices remain closed to the public.

Virtual Public Hearings Scheduled for:

<u>Date</u>	<u>Time</u>
March 25, 2021	5:00 pm

Please register for Rules Addressing the COVID-19 Workplace Requirements for Employer-Provided Labor Housing on March 25, 2021 5:00 PM PST at:
<https://attendee.gotowebinar.com/register/761313259425928718>

March 26, 2021	10:00 am
-----------------------	-----------------

Please register for Rules Addressing the COVID-19 Workplace Requirements for Employer-Provided Labor Housing on March 26, 2021 10:00 AM PST at:
<https://attendee.gotowebinar.com/register/3243755428247551760>

March 30, 2021	5:00 pm
-----------------------	----------------

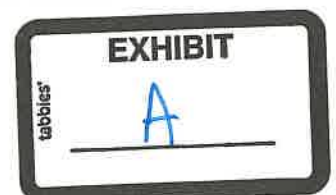
***** This hearing will be conducted primarily in Spanish.*****

Please register for Rules Addressing the COVID-19 Workplace Requirements for Employer-Provided Labor Housing - Spanish on March 30, 2021 5:00 PM PST at:
<https://attendee.gotowebinar.com/register/2197223768256108816>

After registering for a webinar, you will receive a confirmation email containing information about joining the webinar. In order to ensure as many people as possible are able to testify, Oregon OSHA reserves the right to restrict testimony to no more than 5 minutes.

Rule Summary:

These rules are needed to protect vulnerable workers in employer-provided labor housing from the unique health risks created by the current COVID-19 public health



emergency, especially those who spend both their working and their off-work hours at the employer's location. Oregon OSHA's temporary rule: COVID-19 Public Health Emergency in Labor Housing and Agricultural Employment (OAR 437-001-0749) expired on October 24, 2020. On October 23, 2020, Governor Brown issued an Executive Order (20-58) extending employer-provided housing requirements (Section 2) of OAR 437-001-0749. As the Governor's Executive Order is set to expire, the public health emergency remains a substantial concern in Oregon. As a result, it is necessary to extend the provisions from the Executive Order with a permanent rule. The unique exposures created in the labor housing environment, particularly in working situations requiring large numbers of workers, make these rules necessary to reduce risk to individual workers. Many workers face unique challenges in situations where housing is provided as part of the employment relationship. In consultation with stakeholders, Oregon OSHA modified some requirements from the temporary rule in the proposed rule given more information concerning COVID-19 transmission. It is expected that this rule will be repealed once it is no longer necessary to address the COVID-19 pandemic as it relates to employer-provided labor housing.

Please visit our web site osha.oregon.gov Click 'Rules and laws' in the Common resources column and view our proposed rules, or select other rule activity from this page.

When does this happen: Adoption tentatively will be in May 2021.

To get a copy: Our web site – osha.oregon.gov Rules and laws, then,
Proposed rules
Or call 503-947-7449

To comment: Department of Consumer and Business Services/Oregon
OSHA
PO BOX 14480
Salem OR 97309-0405
E-mail – tech.web@oregon.gov
Fax – 503-947-7461

Comment period closes: April 16, 2021

**Oregon OSHA contact: Gary Robertson, Central Office @ 971-283-1615
or email at Gary.L.Robertson@oregon.gov**

State of Oregon
Department of Consumer and
Business Services
Oregon OSHA
350 Winter St. NE
Salem, OR 97301-3882

Note: In compliance with the Americans with Disabilities Act (ADA), this publication is available in alternative formats by calling 503-378-3272.

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*
A Statement of Need and Fiscal Impact accompanies this form.

Department of Consumer and Business Services/Oregon OSHA
Agency and Division

OAR 437
Administrative Rules Chapter Number

Lisa Appel
Rules Coordinator

350 Winter Street NE Salem OR 97301-3882
Address

503-947-7449
Telephone

RULE CAPTION

Rules Addressing the COVID-19 Workplace Requirements for Employer-Provided Labor Housing

Virtual Public Hearings Scheduled for:

Hearing Date	Time	Location	Hearings Officer
March 25, 2021	5:00 pm	Oregon OSHA, Salem	Lisa Appel
Please register for Rules Addressing the COVID-19 Workplace Requirements for Employer-Provided Labor Housing on March 25, 2021 5:00 PM PST at: https://attendee.gotowebinar.com/register/761313259425928718			
March 26, 2021	10:00 am	Oregon OSHA, Salem	Lisa Appel
Please register for Rules Addressing the COVID-19 Workplace Requirements for Employer-Provided Labor Housing on March 26, 2021 10:00 AM PST at: https://attendee.gotowebinar.com/register/3243755428247551760			
March 30, 2021	5:00 pm	Oregon OSHA, Salem	Lisa Appel
*** This hearing will be conducted primarily in Spanish.*** Please register for Rules Addressing the COVID-19 Workplace Requirements for Employer-Provided Labor Housing - Spanish on March 30, 2021 5:00 PM PST at: https://attendee.gotowebinar.com/register/2197223768256108816			

Auxiliary aids for persons with disabilities are available upon advance request.

RULEMAKING ACTION

Adopt: OAR 437-004-1115

ORS 654.025(2) and 656.726(4)
Stat. Auth.

Other Authority

ORS 654.001 through 654.295
Stats. implemented

RULEMAKING SUMMARY

INDIVIDUAL RULE SUMMARY (By rule number)

Provide a brief summary of the rule (if new adoption), or a brief summary of changes made to the rule (if amending)

OAR 437-004-1115

These rules are needed to protect vulnerable workers in employer-provided labor housing from the unique health risks created by the current COVID-19 public health emergency, especially those who spend both their working and their off-work hours at the employer's location. Oregon OSHA's temporary rule: COVID-19 Public Health Emergency in Labor Housing and Agricultural Employment (OAR 437-001-0749) expired on October 24, 2020. On October 23, 2020, Governor Brown issued an Executive Order (20-58) extending employer-provided housing requirements (Section 2) of OAR 437-001-0749. As the Governor's Executive Order is set to expire, the public health emergency remains a substantial concern in Oregon. As a result, it is necessary to extend the provisions from the Executive Order with a permanent rule. The unique exposures created in the labor housing environment, particularly in working situations requiring large numbers of workers, make these rules necessary to reduce risk to individual workers. Many workers face unique challenges in situations where housing is provided as part of the employment relationship. In consultation with stakeholders, Oregon OSHA modified some requirements from the temporary rule in the proposed rule given more information concerning COVID-19 transmission. It is expected that this rule will be repealed once it is no longer necessary to address the COVID-19 pandemic as it relates to employer-provided labor housing.

Please visit our web site osha.oregon.gov. Click 'Rule changes' in the Topics, rules, guidelines column and view our proposed rules; or, select other rule activity from the left vertical column on the Proposed Rules page.

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

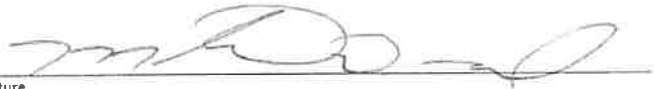
April 16, 2021

Last Day for Public Comment

Last day to submit written comments to the Rules Coordinator

Signature

Printed name


Michael O. Wood 2/26/2021

Date

*The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00pm on the preceding workday. ARC 920-2005

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Department of Consumer and Business Services/Oregon OSHA
Agency and Division

OAR 437
Administrative Rules Chapter Number

In the Matter of:

Adopting: OAR 437-004-1115

Amending:

Repealing:

Rule Caption: Rules Addressing the COVID-19 Workplace Requirements for Employer-Provided Labor Housing

Statutory Authority: ORS 654.025(2) and 656.726(4)

Stats. Implemented: ORS 654.001 through 654.295; 654.412 through 654.423; 654.760 through 654.780

Need for the Rule(s):

These rules are needed to protect vulnerable workers in employer-provided labor housing from the unique health risks created by the current COVID-19 public health emergency, especially those who spend both their working and their off-work hours at the employer's location. Oregon OSHA's temporary rule: COVID-19 Public Health Emergency in Labor Housing and Agricultural Employment (OAR 437-001-0749) expired on October 24, 2020. On October 23, 2020, Governor Brown issued an Executive Order (20-58) extending employer-provided housing requirements (Section 2) of OAR 437-001-0749. As the Governor's Executive Order is set to expire, the public health emergency remains a substantial concern in Oregon. As a result, it is necessary to extend the provisions from the Executive Order with a permanent rule. The unique exposures created in the labor housing environment, particularly in working situations requiring large numbers of workers, make these rules necessary to reduce risk to individual workers. Many workers face unique challenges in situations where housing is provided as part of the employment relationship. In consultation with stakeholders, Oregon OSHA modified some requirements from the temporary rule in the proposed rule given more information concerning COVID-19 transmission. It is expected that this rule will be repealed once it is no longer necessary to address the COVID-19 pandemic as it relates to employer-provided labor housing.

Documents Relied Upon, and where they are available:

Oregon Health Authority Guidance documents and outbreak tracking related to COVID-19 public health emergency, available from the Oregon Health Authority and at <https://govstatus.egov.com/or-covid-19/>.

Centers for Disease Control and Prevention COVID-19 recommendations for various industry sectors, available from the CDC and at <https://www.cdc.gov/coronavirus/2019-ncov/index.html>

37 comments received on the Petition to Amend 437-004-1120 Agricultural Labor Housing and Related Facilities in response to the COVID-19 temporary rule 437-001-0749 extended by Executive Order 20-58. Copies of correspondence are available upon request from Oregon OSHA.

Fiscal and Economic Impact:

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

All state agencies and local government units are affected by the rules in the sense that they are employers under the Oregon Safe Employment Act (OSEAct).

This rule affects the agricultural community, as well all other labor housing that is not related to agriculture based on OAR 437-002-0142 Temporary Labor Camps. This rule out of Division 2 applies to General Industry, Construction, and Forest Activities and it requires employers to follow the Division 4 requirements (with a few specific exceptions) as they relate to labor camps.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

As of 2020, there are approximately 385 registered operators of employer-provided housing with Oregon OSHA.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

The projected reporting, recordkeeping and other administrative activities for the cost of compliance are identified in the fiscal impact statement below.

c. Equipment, supplies, labor and increased administration required for compliance:

The projected equipment, supplies, labor and increased administration for the cost of compliance are identified in the fiscal impact statement below.

Estimate of Fiscal Impact: OAR 437-004-1115 (COVID-19 Workplace Requirements for Employer-Provided Labor Housing))

Results:

Sections (1) and (2), which represent the scope and application, as well as rule definitions, do not introduce monetary considerations.

(3) Ventilation

Housing Operators with dedicated HVAC systems, and air purifiers:

- For fixed HVAC systems, yearly preventive maintenance based on a Spring and Fall preventative maintenance schedule for provided housing with fixed HVAC systems. For housing operators who do not have a dedicated employee to service HVAC system.
 - Annual preventive maintenance: \$129.00 - \$240.00
 - \$69.00/hr for diagnostics plus parts & materials
- Air purifier with HEPA filter: \$118.00 - \$379.00 per unit with HEPA filter. ([Amazon.com 2021](#))
 - The average annual cost to operate an air purifier is \$36.00 per unit for 12 hours per day, and \$60.00 per unit for 24 hours a day. ([Oregon Electricity Rates & Consumption](#))
 - HEPA filter replacements: \$24.00 - \$75.00 dependent upon the type of filter purchased. Frequency of filter change is dependent upon the unit and manufacture recommendation. ([Amazon.com, 2021](#))
- The average daily cost for bathroom exhaust fans put into continuous use:

- Based on a 100-watt exhaust fan, being operated 24-hours a day at an Oregon average \$0.10 kWh = \$0.24 per day. The average running cost per year is \$88.00. (pureventilation.com)

(4) Masks, Face Coverings, and Face Shields

- Estimated unit costs for cloth face coverings, surgical face masks, and face shields when provided to the public or visitors:
 - Cloth face covering: \$2.00/unit (Amazon.com, 2021)
 - Surgical face mask: \$0.51/unit (Amazon.com, 2021)
 - Face shield: \$1.19/unit (Amazon.com, 2021)
- To account for double masking, if selected by employees, the costs above will be doubled on individual basis to the extent that such duplicative masking occurs.
- Using first-line supervisor of farming, fishing, and forestry workers (farm supervisor) wage: \$15.52/hr (10th percentile); \$25.13/hr (50th percentile); \$36.04/hr (90th percentile).
 - Using 50th percentile of farm supervisor wage: \$25.13/hr x 135% (soft cost estimate) = \$33.93/hr (complete wage at 50th percentile)
- Using farmworkers and laborers, crop, nursery, and greenhouse (farmworker) wage: \$12.04/hr (10th percentile); \$13.25/hr (50th percentile); \$17.28/hr (90th percentile).
 - Using 50th percentile of farmworker wage: \$13.25/hr x 135% (soft cost estimate) = \$17.89/hr (complete wage at 50th percentile)
- Labor provided a suggestion to use heavy and tractor-trailer truck drivers as another wage variable: \$17.21/hr (10th percentile); \$23.41/hr (50th percentile); \$31.62/hr (90th percentile).
 - Using 50th percentile of heavy and tractor-trailer truck driver wage:
 - \$23.41/hr x 135% (soft cost estimate) = \$31.60/hr (complete wage at 50th percentile)
 - \$31.60/hr x 4hr = \$126.40/daily physical distancing monitor costs
 - \$31.60/hr x 0.25-0.5hr = \$7.90-\$15.80/transportation information discussion

(5) Physical distancing monitor

- Estimate 4 hours of daily time for worker to perform physical distancing monitor function. Estimate 15-30 minutes of administrative time for each worker to participate in discussion regarding transportation requirements.
 - Using 50th percentile of farmworker wage: \$13.25/hr x 135% (soft cost estimate) = \$17.89/hr (complete wage at 50th percentile)
 - \$17.89/hr x 4hr = \$71.56/daily physical distancing monitor costs [however, this assumes that the distancing monitor is not performing any other work, which is not the intent of this provision].
 - \$17.89/hr x 0.25-0.5hr = \$4.47-\$8.95/transportation information discussion per worker
- Labor provided a suggestion to use heavy and tractor-trailer truck drivers as another wage variable: \$17.21/hr (10th percentile); \$23.41/hr (50th percentile); \$31.62/hr (90th percentile).
 - Using 50th percentile of heavy and tractor-trailer truck driver wage: \$23.41/hr x 135% (soft cost estimate) = \$31.60/hr (complete wage at 50th percentile)
 - \$31.60/hr x 4hr = \$126.40/daily physical distancing monitor costs
 - \$31.60/hr x 0.25-0.5hr = \$7.90-\$15.80/transportation information discussion

(6) Physical Distancing Measures

- Estimate between 30 minutes (0.5 hr) to 2 hours of administrative time to reconfigure each labor housing unit noting that the displacement of workers via physical distancing requirements is not known and is expected to vary location by location. Estimate 15-30 minutes (0.25-0.5hr) of administrative time for each farm supervisor to participate in discussion regarding transportation requirements.
 - Using 50th percentile of farm supervisor wage: \$25.13/hr x 135% (soft cost estimate) = \$33.93/hr (complete wage at 50th percentile)
 - \$33.93/hr x 0.5-2hr = \$16.97-\$67.86/housing unit to reconfigure
 - \$33.93/hr x 8-16hr = \$271.44-\$542.88/initial response plan development
 - \$33.93/hr x 0.25-0.5hr = \$8.48-\$16.97/transportation information discussion

- The decreased capacity may result in decreased employment.

(7) Cleaning and Sanitation

- Disinfectant wipes (Clorox): \$4.21/75-count canister ([Homedepot.com, 2021](#))
- Disinfectant spray/liquid: \$3.87/32 fluid ounce bottle ([Homedepot.com, 2021](#))
- Using janitors and cleaners wage (except maids and housekeeping cleaners) wage: \$12.08/hr (10th percentile); \$14.66/hr (50th percentile); \$20.69/hr (90th percentile)
 - Using 50th percentile of janitors and cleaners wage: \$14.66/hr x 135% (soft cost estimate) = \$19.79/hr (complete wage at 50th percentile)
- Estimated 2 janitor worker for 8 hours to fulfill housing cleaning and field sanitation requirements
- \$19.79/hr x 8hrs x 2 janitors= \$316.64/day of operation to fulfill sanitation requirements.

(8) COVID-19 Response Plan

- Estimate 8-16 hours of administrative time to develop COVID-19 response plan.
 - Using 50th percentile of farm supervisor wage: \$25.13/hr x 135% (soft cost estimate) = \$33.93/hr (complete wage at 50th percentile)
 - \$33.93/hr x 8-16hr = \$271.44-\$542.88/initial response plan development
 - Labor provided a suggestion to use heavy and tractor-trailer truck drivers as another wage variable: \$17.21/hr (10th percentile); \$23.41/hr (50th percentile); \$31.62/hr (90th percentile).
 - Using 50th percentile of heavy and tractor-trailer truck driver wage: \$23.41/hr x 135% (soft cost estimate) = \$31.60/hr (complete wage at 50th percentile)
 - \$31.60/hr x 8-16hr = \$252.96-\$505.60/initial response plan development
- State of Oregon travel per-diem for food and lodging, ranges using Department of Administration Services for lodging \$96.00 -\$182.00 per night. Food ranges from breakfast and lunch the range is \$13.75 to 17.75 and dinner is \$27.50 - \$35.50 per day. ([DAS Per Diem Rates, 2021](#)).

(9) Non-Employer-provided transportation for labor housing

- Estimate between 15-30 minutes of administrative time to talk with employee about disease prevention measures when commuting.
 - Using first-line supervisor of farming, fishing, and forestry workers (farm supervisor) wage: \$15.52/hr (10th percentile); \$25.13/hr (50th percentile); \$36.04/hr (90th percentile).
 - Using 50th percentile of farm supervisor wage: \$25.13/hr x 135% (soft cost estimate) = \$33.93/hr (complete wage at 50th percentile)
- Labor provided a suggestion to use heavy and tractor-trailer truck drivers as another wage variable: \$17.21/hr (10th percentile); \$23.41/hr (50th percentile); \$31.62/hr (90th percentile).
 - Using 50th percentile of heavy and tractor-trailer truck driver wage: \$23.41/hr x 135% (soft cost estimate) = \$31.60/hr (complete wage at 50th percentile)
 - \$31.60/hr x 4hr = \$126.40/daily physical distancing monitor costs
 - \$31.60/hr x 0.25-0.5hr = \$7.90-\$15.80/transportation information discussion

Employer provided information and data indicates:

- 65% of Oregon Farm Bureau survey responders indicated that they were not able to house the typical (non-pandemic) number of employees on the farm due to COVID-19 restrictions.
- Limiting bunk beds and incorporating distancing reduces the bed capacity by 10 "spaces," on average. Housing providers indicated that they would lose between 40-50% of this housing capacity if full use of bunk beds is not allowed during COVID-19 pandemic.
- H-2A program participants indicated via Oregon Farm Bureau Survey that bed restrictions will prevent them from hiring employees thus impacting their ability to successfully harvest. The amount of impact on employee hiring varied by establishment size.
- Farmers are concerned about it being "very expensive for them to purchase PPE for every occupant of their housing..." and indicated it would cost between \$500-\$1000 to provide a single mask to each

- occupant, while five Farm Bureau Survey respondents indicated that the cost would be between \$1000-\$2000, and four respondents indicated that it would cost over \$2000.
- According to Farm Bureau Survey "sanitation costs" are the biggest concern. Eight survey respondents indicated it would cost between \$500-\$1000/week to implement cleaning requirements as currently drafted, eight farmers answered that it would cost more than \$1000/week.
 - General statements from Farm Bureau Survey:
 - \$45,000 to for additional cleaning, vehicle usage, and employee labor
 - \$30,000 was spent by one employer to add additional hand wash stations, portable bathrooms, and implement all-day cleaning. Free food was also provided to reduce crowding and encourage distancing which cost between \$10,000-\$20,000. ***This information was collected from the Farm Bureau Survey relating to the cost of the temporary rule. The costs provided are an aggerate of several requirements that are no longer in the proposal. This information is provided as refence but should be recognized that it does not represent the requirement of the current proposal.
 - Estimated \$400/week for 8 weeks of harvest is a total of \$3200 in additional costs for paying employees for sanitizing duty.
 - Housing unit remodel costs estimated between \$30,000 to \$35,000 to implement cleaning of camps and field porta-potties or roughly \$1000/week.
 - Employer provided data indicates that it will cost \$45,000 to account for additional cleaning, vehicle usage, and employee labor. ***This information was collected from the Farm Bureau Survey relating to the cost of the temporary rule. The costs provided are an aggerate of several requirements that are no longer in the proposal. This information is provided as refence but should be recognized that it does not represent the requirement of the current proposal.
 - Employer provided data indicates that it will cost Estimated \$400/week for 8 weeks of harvest is a total of \$3200 in additional costs for paying employees for sanitizing duty. ***This information was collected from the Farm Bureau Survey relating to the cost of the temporary rule. The costs provided are an aggerate of several requirements that are no longer in the proposal. This information is provided as refence but should be recognized that it does not represent the requirement of the current proposal.
 - Employer provided data indicates that it will cost \$45,000 to account for additional cleaning, vehicle usage, and employee labor. ***This information was collected from the Farm Bureau Survey relating to the cost of the temporary rule. The costs provided are an aggerate of several requirements that are no longer in the proposal. This information is provided as refence but should be recognized that it does not represent the requirement of the current proposal.

How were small businesses involved in the development of this rule?

Small businesses and others were involved in the development of this rule insofar as their representatives were represented on the COVID-19 Employer Provided Labor Housing Rulemaking Committee and other Oregon OSHA stakeholder groups. Additionally, Oregon OSHA received comments on the "Petition to Amend 437-004-1120 Agricultural Labor Housing and Related Facilities in response to the COVID-19 temporary rule 437-001-0749 extended by Executive Order 20-58" through February 24, 2021; comments received by Oregon OSHA included feedback from small businesses on this subject matter.

Administrative Rule Advisory Committee consulted?

Yes, Oregon OSHA hosted a COVID-19 Employer Provided Labor Housing Rulemaking committee on this topic and discussed the rule and fiscal impact by means of three meetings in February 2021. Oregon OSHA presented a draft Fiscal Impact Statement that was voted upon by the committee and approved by the majority. In addition, previous to this engagement, the General Workplace RAC for Infectious Disease Rulemaking for "Rules Addressing the COVID-19 Public Health Emergency in All Oregon Workplaces" worked on this topic from November 2020 to January 2021 as a part of their general discussion. More specifically, this included engagement through a Labor Housing Sub-committee to enable discussion solely focused on this topic separate from the General Workplace.

If not, why?:



Michael D. Wood

2/21/2021

Signature

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310. ARC 925-2007

HOUSING COST IMPACT STATEMENT

FOR ESTIMATING THE EFFECT OF A PROPOSED RULE OR ORDINANCE ON THE COST OF DEVELOPING
A *TYPICAL 1,200 SQ FT DETACHED SINGLE FAMILY DWELLING ON A 6,000 SQ FT PARCEL OF LAND.
(ORS 183.534)
FOR ADMINISTRATIVE RULES

AGENCY NAME: DCBS/Oregon OSHA **PERMANENT:** XX **HEARING DATE:** 3/25, 3/26, 3/30 2021

ADDRESS: 350 Winter Street NE
CITY/STATE: Salem OR 97301-3882 **TEMPORARY:** **EFFECTIVE DATE:** May 2021
PHONE: 503-947-7449

BELOW PLEASE PROVIDE A DESCRIPTION OF THE ESTIMATED SAVINGS OR ADDITIONAL COSTS THAT WILL RESULT FROM THIS PROPOSED CHANGE.

PROVIDE A BRIEF EXPLANATION OF HOW THE COST OR SAVINGS ESTIMATE WAS DETERMINED.

IDENTIFY HOW CHANGE IMPACTS COSTS IN CATEGORIES SPECIFIED

Description of proposed change: (Please attach any draft or permanent rule or ordinance)
See attached Notice of Proposed Rulemaking Hearing.

Description of the need for, and objectives of the rule:
See attached Notice of Proposed Rulemaking Hearing.

List of rules adopted or amended:

ADOPT: OAR 437-004-1115

Materials and labor costs increase or savings:
None.

Estimated administrative construction or other costs increase or savings:
None.

Land costs increase or savings:
Oregon OSHA does not foresee any effect on land costs.

Other costs increase or savings:
Oregon OSHA does not foresee any additional costs.

*Typical-Single story 3 bedrooms, 1 1/2 bathrooms, attached garage (calculated separately) on land with good soil conditions with no unusual geological hazards.

PREPARERS NAME: Lisa Appel
EMAIL ADDRESS: Lisa.Appel@oregon.gov

Oregon OSHA – Proposed Rule Text

Rules Addressing the COVID-19 Workplace Requirements for Employer-Provided Labor Housing

Text removed is in [~~brackets with line through~~].

Text added is in **bold and underline**.

OAR 437-004-1115 – COVID-19 Workplace Requirements for Employer-Provided Labor Housing

(1) Scope and Application:

(a) This rule applies to all employer provided labor housing and other employer-provided housing, whether such housing is otherwise currently covered by OAR 437-004-1120 “Agricultural Labor Housing and Related Facilities” or by 29 CFR 1910.142 and OAR 437-002-0142, “Labor Camps.” To the degree an actual conflict exists between the two rules, this rule takes precedence. To the degree that this rule does not address an issue, or no actual conflict exists, the requirements of the preexisting rule also apply.

The requirements of this rule apply to all labor housing sites owned, operated, or allowed to operate on property under the jurisdiction of any state or municipal authority unless such housing is provided by someone other than the employer specifically to respond to a public health emergency.

The requirements of this rule supersede those contained in section 3 of OAR 437-001-0744 (COVID-19 Requirements for All Workplaces), specifically as they relate to ventilation, facial coverings, physical distancing measures, and sanitation. All other applicable requirements of OAR 437-001-0744 remain in effect.

(b) These rules apply to any place, or area of land, where there are living areas, manufactured or prefabricated homes or dwellings, or other housing provided by a farmer, farm labor contractor, agricultural employer, or other person in connection with the recruitment of workers of an agricultural employer as defined in OAR 437-004-0001. These rules also apply to any such housing provided by an employer or other person in connection with the employment of workers in any non-agricultural business activity.

(c) These rules apply to any type of labor housing and related facilities together with the tract of land established or to be established, operated or maintained for housing workers with or without families, whether or not rent is paid or collected.

- (d) Manufactured dwellings and homes must comply with specifications for construction of sleeping places, unless they comply with ORS 446.155 to 446.185 and OAR 918-500-0020(2), which have the requirements and specifications for sanitation and safety design for manufactured dwellings.
- (e) These rules apply to housing given to, rented, leased to, or otherwise provided to employees for use while employed and provided or allowed either by the employer, a representative of the employer, or a housing operator.
- (f) These rules, unless otherwise stated, apply to all occupants of the labor housing and facilities.
- (g) These rules apply to all labor housing sites owned, operated, or allowed to operate on property under the jurisdiction of any state or municipal authority unless such housing is provided by someone other than the employer specifically to respond to a public health emergency.
- (h) Violations relating to the occupants' personal housekeeping practices in facilities that are not common use will not result in citations to the employer.
- (i) For the purposes of OAR 437-004-1120, labor contractors as defined in ORS 658.405 are employers.
- (j) Charging occupants for required services. Operators must not charge for services required by these rule (OAR 437-004-1120, OAR 437-001-0744, and OAR 437-004-1115). This prohibits pay-per-use toilets, pay-per-use bathing facilities, payment for use of air purifiers, or any other method of paying for individual service requirements.
- (k) This rule does not apply to:
- (A) Hotels or motels that provide similar housing commercially to the public on the same terms as they do to workers. This includes hotels or motels that have been temporarily closed due to the current COVID-19 public health emergency, but that restore their operations on a limited basis to allow employers to house workers in the facility, provided that the following conditions are met.
- (i) The hotel or motel facility must be licensed and meet the other requirements in OAR 333, Division 29, Travelers' Accommodation.
- (ii) The rooms provided must maintain the configuration typically offered to travelers (while this does not preclude changing the arrangement of beds, it does preclude the addition of bunk beds or other measures to increase the occupancy of the room).
- (iii) Room assignment must ensure privacy and separation for families and to unrelated occupants of different genders.
- (iv) The occupied rooms must continue to receive regular services for cleaning and for the laundry of linens used by guests.
- (v) The rooms must not be modified to include kitchen facilities not already part of the room as previously available to guests. Note: Because such

facilities are exempt from this rule, the presence of a pre-existing kitchenette or other food preparation facility does not trigger the square footage requirements of the rule.

(B) Accommodations subject to licensing as manufactured dwelling parks, organizational camps, traveler's accommodations or recreation vehicle parks and open to the general public on the same terms.

(C) Manufactured homes or dwellings being moved regularly from place to place because of the work when at parks or camps meant for parking mobile vehicles and open to the general public on the same terms.

(2) Definitions

(a) Air purifier – means a HEPA-filter equipped device that is designed for and capable of removing aerosols (including airborne droplets and solid particles) from the air through physical or chemical means and that is capable of improving the indoor air quality in areas where such purifiers are properly operated.

(b) High efficiency particulate air (HEPA) filter – means a filter that is at least 99.97 percent efficient in removing monodisperse particles of 0.3 micrometers (µm) in diameter.

(c) Common area – means building lobbies, reception areas, waiting rooms, restrooms, break rooms, eating areas, smoking areas, locker rooms, bathing areas, transit lounges, conference rooms, or other locations indoors or outdoors that multiple individuals may use or congregate that employers operate or control.

(d) High-touch surface – means equipment or surfaces that are handled frequently throughout the day by multiple individuals. High-touch surfaces can include, but are not limited to, countertops, tabletops, credit card terminals, doorknobs, door handles, digital kiosks, touch-screen enabled devices, light switches, handrails, elevator control panels, and steering wheels in work vehicles.

(e) Household – means a group of persons who lived in the same residence prior to arriving at the employer-provided housing. Households may have unrelated individuals or families living together or may be a family unit.

(f) Shared equipment – means devices or tools that are used by multiple employees or other individuals including, but not limited to, computers, phones, and work vehicles.

(3) Ventilation

Ensure that existing ventilation systems are optimized in accordance with subsection OAR 437-001-0744(3)(f). Additionally, employers must increase air circulation and ventilation by opening windows and doors in labor housing when doing so is safe for the occupants in regards to weather conditions (hot or cold), pesticide application, and other potential hazards. Fans should be used indoors only when windows or doors are open to the outdoors in order to circulate indoor and outdoor air. Do not open windows and doors if doing so poses a safety risk to employees.

Note: The use of portable ventilation units or air purifying devices equipped with HEPA filters is required when used in conjunction with "Air Purification Method" of Table 1, to provide additional air flow in housing.

(4) Masks, Face Coverings, and Face Shields.

To reduce the risk of COVID-19 transmission, all persons at the labor housing must use a mask, face covering, or face shield in accordance with the Oregon Health Authority's Statewide Mask, Face Covering, Face Shield Guidance. Facial coverings must be used in accordance with the provisions of this rule below. The following specific modifications apply within housing facilities regarding the use of facial coverings:

(a) All persons entering the housing facility, including all common areas, must wear a mask, face shield, or face covering in accordance with Oregon Health Authority Statewide Mask, Face Covering, Face Shield Guidance, except:

(A) During mealtimes when eating or drinking;

(B) When sleeping in their bed or cot;

(C) When engaged in an activity that makes the wearing of a mask, face covering, or face shield not feasible, such as during teeth brushing or bathing;

(D) In a housing unit or area occupied solely by members of the same family or household; or

(E) When the person is less than 5 years of age.

(b) Operators must ensure that all occupants of employer provided labor Housing have access to or are in possession of adequate masks, face shields, or face coverings – including enough such masks, face shields, or face coverings to allow employees to “double mask” -- without cost to the occupants.

Note: In accordance with Oregon Health Authority Statewide Mask, Face Covering, Face Shield Guidance and subsection (3)(b) of OAR 437-001-0744, it is strongly recommended but not required that individuals wear a mask or face covering as source control instead of a face shield alone.

Note: Although current OHA mask guidance currently exempts the wearing of facial coverings for occupants while in their own private home, such an exemption would not apply in labor housing unless housing unit or area occupied solely by members of the same family or household.

(5) Physical distancing monitor.

Operators must identify one or more individuals who will be responsible for identifying appropriate physical distancing and sanitation measures and ensuring that such measures are implemented. Affected employers must abide by the physical distancing rule in OAR 437-001-0744(3)(a).

(6) Physical Distancing Measures.

To ensure appropriate physical distancing, labor housing facilities must implement appropriate physical distancing measures as required by this rule for property under their control. Operators must ensure:

(a) Operators of employer provided labor housing must select either the “Air Purification Method”, or the “Additional Capacity Reduction Method” described below.

(A) Air Purification Method:

(i) Operators must ensure at least 6-foot distancing from center point of a single occupant bed.

(ii) Sleeping Rooms:

(I) Individuals in each sleeping room using double bunk beds where all occupants in the room are part of the same household must have at least 40 square feet per occupant; or

(II) Use of both beds in a double bunk bed must not be allowed for individuals not part of the same household. In each sleeping room where one or more persons are not part of the same household, all occupants must be provided at least 50 square feet per occupant.

(iii) Operators must provide air purifiers for each room where people sleep, whether in dedicated sleeping rooms or in rooms where occupants cook, sleep and live. Air Purifiers must meet the following requirements:

(I) Must have a CADR (Change Air Delivery Rate) sufficient enough to provide 4 ACH (Air Changes per Hour)

(II) Must not produce ozone either as a byproduct or as the primary method of cleaning the air.

(B) Additional Capacity Reduction Method:

(i) Beds and cots must be spaced at least six (6) feet apart between frames in all directions, and arranged so that occupants in the beds alternate head to toe.

(ii) Sleeping Rooms:

(I) Individuals in each sleeping room not using double bunk beds where all occupants in the room are members of the same household must be provided at least 50 square feet of floor space per occupant; or

(II) Individuals in each sleeping room using double bunk beds where all occupants in the room are members of the same household must be provided at least 40 square feet per occupant; or

(III) Use of both beds in a double bunk bed must not be allowed for individuals not part of the same household. If one or more individuals sleep in a room with others not part of the same household, all occupants must be provided at least 100 square feet per occupant.

(b) Arrange tables and chairs in dining areas, so at least six (6) feet of physical distance is maintained between persons. Restrict tables and chairs or equivalent seating to accommodate six (6) feet of physical distancing.

(c) Use appropriate physical distancing during mealtimes and encourage occupants to eat meals outside if it is safe to do so.

(d) Limit non-essential visitors in common use areas, except for authorized persons.

Table 1 – Summary of Distancing Requirements

<u>Air Purification Method</u>	<u>Additional Capacity Reduction Method</u>
<u>1. Operators must ensure at least 6-foot distancing from center point of single-occupant beds.</u>	<u>1. Operator must ensure at least 6-foot distancing between bed frames and alternate occupants head to toe.</u>

<u>2. Top bunks for individuals not part of the same household are not allowed.</u>	<u>2. Top bunks for individuals not part of the same household are not allowed.</u>
<u>3. Operators must provide air purifiers for each room where people sleep. Air Purifiers must have a CADR (Change Air Delivery Rate) sufficient enough to provide 4 ACH (Air Changes per Hour) and must not produce ozone either as a byproduct or as the primary method of cleaning the air.</u>	<u>3. Operators must provide at least 100 square feet per person in rooms where individuals not part of the same household are sleeping. Operators must provide at least 100 square feet per occupant in rooms where workers cook, sleep and live, even if they are members of the same household.</u>
<u>4. Use appropriate physical distancing during mealtimes and encourage occupants to eat meals outside if it is safe to do so.</u>	<u>4. Use appropriate physical distancing during mealtimes and encourage occupants to eat meals outside if it is safe to do so.</u>
<u>5. Limit non-essential visitors in common use areas, except for authorized persons.</u>	<u>5. Limit non-essential visitors in common use areas, except for authorized persons.</u>
<u>6. Arrange tables and chairs in dining areas, so at least six (6) feet of physical distance is maintained between persons. Restrict tables and chairs or equivalent seating to accommodate the (6) feet of physical distancing per table.</u>	<u>6. Arrange tables and chairs in dining areas, so at least six (6) feet of physical distance is maintained between persons. Restrict tables and chairs or equivalent seating to accommodate the (6) feet of physical distancing per table.</u>

(7) Cleaning and Sanitation.

Labor housing facilities must regularly clean or sanitize all common areas, shared equipment, and high-touch surfaces as defined by this rule that are under its the operator's control and that are used by employees or the public. At least daily, the following facilities must be sanitized in the described manner when used other otherwise occupied.

- (a) Bathing facilities. All common use bathing, hand washing, and laundry facilities must be clean, sanitary and operating properly. Sanitize all high-contact surfaces in common-use facilities, including (but not limited to) door handles, controls and adjustable shower heads daily (if housing occupants are assigned this task, it must be treated as a work assignment rather than a voluntary action).
- (b) Hand washing facilities. In common use facilities, do not use a single common towel. If you provide paper towels, there must be a container for their disposal. Sanitize all high-contact surfaces in common-use facilities, including (but not limited to) door handles, controls and paper towel dispensers at daily (if housing occupants are assigned this task, it must be treated as a work assignment rather than a voluntary action).
- (c) Toilet facilities

- (A) Provide at least one toilet for every 15 occupants or fraction thereof for each gender in the labor housing. Toilets must assure privacy. When equipped, exhaust fans are to be left on continuously.
- (B) Clean and sanitize common use toilet facilities at least daily or more often when needed to maintain sanitation (if housing occupants are assigned this task, it must be treated as a work assignment rather than a voluntary action).
- (C) When in use, service portable and chemical toilets at least weekly or often enough to keep them from becoming a health hazard. Clean portable toilets, chemical toilets and privies at least daily. Sanitize such common use facilities at daily (if housing occupants are assigned this task, it must be treated as a work assignment rather than a voluntary action).
- (d) Mattresses or pads. Fumigate mattresses or pads, used uncovered, or treat with an effective insecticide before each season's occupancy and whenever the pad is assigned to a new user. If you provide covers, clean them before each season's occupancy and whenever the cover is assigned to a new user.
- (e) Clean the facilities and equipment before each occupancy. Ensure that high-touch areas in common use facilities are sanitized at least daily (if housing occupants are assigned this task, it must be treated as a work assignment rather than a voluntary action).
- (f) Nothing would prohibit workers from sanitizing these areas more frequently than would otherwise be required if the worker chooses to do so.
- (g) Cleaning supplies.
 - (A) Housing operators must provide adequate cleaning materials at no cost, allowing occupants to clean and sanitize their living areas regularly. Occupants should be encouraged to clean their personal living areas as much as possible, including bed or bunk frames, and storage facilities, such as wall cabinets or shelves.
 - (B) Operators should avoid entering occupant's rooms or living quarters unless it is necessary.

Note: Where there is an actual conflict, the requirements above take precedence over those contained in OAR 437-004-1120. When no actual conflict exists, the requirements in OAR 437-004-1120 remain in effect.

(8) COVID-19 response plan.

- (a) In order to identify individuals known or suspected to be infected with COVID-19, all housing providers covered by this rule must take the following steps:
 - (A) Suspect COVID-19 cases should be encouraged to seek advice by telephone or similar mobile devices from a healthcare provider to determine whether further in-person medical evaluation is needed;

(B) Suspect COVID-19 cases must be isolated with sleeping, eating, and bathroom accommodations that are separate from non-isolating occupants. COVID-19 infected individuals must be isolated from others, have adequate hygiene facilities, and be taken care of by only one person in the household. If such isolation is not possible, the employer must follow the Oregon Health Authority Isolation and Quarantine Guidance; and

(C) If able, occupants known or suspected to be infected with COVID-19 must clean and disinfect their own sleeping, eating, or bathroom accommodations after each use.

(b) Confirmed COVID-19 infected persons must be isolated and only housed with other confirmed cases and must have separate bathroom, cooking and eating facilities from people who have not been diagnosed with COVID-19. Sick people should be isolated from others, have adequate hygiene facilities, and be taken care of by only one person in the household. If such isolation is not possible, follow guidance provided by the Oregon Health Authority or the local public health authority to make appropriate arrangements.

(A) If able, occupants confirmed to have COVID-19 must clean and disinfect their own sleeping, eating, or bathroom accommodations after each use.

(B) The operator must ensure that food and water is provided and monitor the safety of occupants in isolation at the operator's facility or ensure that these services are provided if isolated at another facility.

(c) Occupants who are not suspected or confirmed to have COVID-19 should not use any bed, bathroom, or common area previously used by an individual suspected or confirmed to have COVID-19 until it is thoroughly cleaned following the Oregon Health Authority or Local Health Authority's guidance provided to the operator for cleaning and sanitation after a suspected or confirmed case.

(d) Instruct occupants that if they are sick or have COVID-19 symptoms, they must alert their housing operator as soon as possible.

(9) Non-Employer-provided transportation for labor housing

Employers must ensure that the following disease prevention measures are implemented, at a minimum, in accordance with, OAR 437-001-0744 subsection 3(b)(D), workers who commute to and from the worksite with individuals outside their household, the employer must advise them of the risks presented by close contact and encourage them to employ practices similar to those described in the transportation rule for all workplaces.