



Temporary rule addressing the COVID-19 emergency in employer- provided housing and in labor-intensive agricultural operations

Questions and Answers

The responses in this document represent Oregon OSHA's current position on issues involving the Temporary Rule addressing the COVID-19 emergency in employer-provided housing and in labor-intensive agricultural operations. This is a working document that will be updated to reflect additional questions and clarifications, as necessary.

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For more information, contact Gary Robertson
Email: gary.l.robertson@oregon.gov

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SCOPE & APPLICATION OF TEMPORARY LABOR- INTENSIVE HOUSING RULES [437-001-0749(1,2 & 3)]

1. When will this rule take effect? How long will it remain in effect?

Unless otherwise noted, the provisions of this rule take effect May 11, 2020, but Oregon OSHA has deferred any enforcement until after June 1. The rule will remain effect until repealed, but not later than October 24, 2020.

2. To whom does the temporary rule apply?

Section 1 of this rule applies to all labor-intensive agricultural operations (activities that normally fall under OAR 437, Division 4) when employees would otherwise perform their duties or routinely congregate within 6 feet of one another. Agricultural employers whose normal activities do not involve such close contact have no additional requirements under Section 1. While this rule remains in effect, its requirements supersede those found in OAR 437-004-1110 "Field Sanitation for Hand Labor Work" for all activities otherwise subject to that rule.

Except as otherwise noted, Section 2 of this rule applies to all temporary worker housing or other employer-provided housing, whether such housing is otherwise currently covered by OAR 437-004-1120 "Agricultural Labor Housing and Related Facilities" or by CFR 1910.142 and OAR 437-002-0142 "Labor Camps."

Section 3 of this rule applies to all employer-provided transportation within labor-intensive agricultural operations. It does not apply to employer-provided transportation when such transportation supports activities that fall outside the scope of Section 1 of this rule.

3. How does Oregon OSHA define "Labor-Intensive Agriculture?"

In the context of this rule, labor-intensive agriculture refers to the need for a large number of workers, not simply the act of working hard. A worker who is physically working hard does not trigger this rule.

GENERAL QUESTIONS ABOUT LABOR HOUSING RULES

4. Will OSHA conduct inspections at multiple farms within a day or week when the farm has a healthy workforce?

Oregon OSHA will take measures to protect its staff, and that of the employer to prevent the spread of COVID-19. OSHA's staff will adhere to social distancing guidance. If the operator denies access to the farm, the first step would be an attempt to resolve the issue through discussion. If access is further denied, and it is determined an inspection is necessary, Oregon OSHA would pursue a warrant. Ultimately, if Oregon OSHA concludes an inspection is appropriate, Oregon OSHA expects to conduct the inspection.

5. Will OSHA create a new Ag Labor Housing Checklist, and will they revise the Field Sanitation notice?

A [supplemental checklist](#) has been created to address these new issues pertaining to housing. The field sanitation notice has been revised and a printable copy can be found at <https://osha.oregon.gov/pubs/Pages/index.aspx?topic=field%20sanitation>.

6. Did Oregon OSHA create these new rules, or did the Oregon Law Center?

The Oregon Law Center was one of the petitioners asking Oregon OSHA to create rules addressing these issues. The rule itself was written and adopted by Oregon OSHA, taking into account feedback from a number of stakeholders. The rule does not fully reflect the request in a number of respects.

7. Are you aware Oregon is about to re-open?

The state is not on the verge of returning to "business as usual." Oregon OSHA is aware the state is about to begin a re-opening on a phased schedule designed to minimize the exposure between employee and public. Oregon OSHA believes the emergency rule falls in line with the phased scheduling for re-opening. Agriculture, unlike some other industries has not been shut down or significantly scaled back. These temporary requirements are largely consistent with the sort of expectations that will be imposed on other businesses as they begin to return to normal operation.

8. Will posters be in English and Spanish?

Yes, Oregon OSHA will ensure the required posters are printed and available online in both English and Spanish.

9. Who bears the burden of verifying the relationship of workers?

The operator does not need to verify the relationship status of workers. If the workers state they are related, the operator can rely upon the statement from the workers.

10. Many farmers use labor contractors. In this case, who is the employer?

They would both be the employer. The labor contract is called out specifically in both the temporary and the pre-existing rule as being an employer, and the farmer would be the employer to the extent they were exercising direction and control of the work.

11. What if an employee refuses to be quarantined?

The employer will need work with the local public health officials, and the Oregon Health Authority.

12. Are there any expectations of Oregon OSHA staff to follow up with ALH operators who have received consultative services recently?

A consultative follow up will be depend the employer and consultant. If an employer wishes to have a follow up call, they should either call the consultant, or

email them directly. A follow up consultation can be discussed.

13. Can workers engage in extracurricular activities such as soccer or volleyball after work?

Such extracurricular activities should be prevented to ensure the spread of COVID-19.

14. I have already registered my housing prior to the emergency rule taking affect. Do I need to follow the emergency rules with respect to occupants per room?

Yes, all housing, whether already registered as agricultural labor housing for 2020 or not, must comply with the requirements of this temporary rule.

15. Were comments accepted on the new rule?

Comments were accepted on the petition received by Oregon OSHA over a two-week period. The rule has been adopted. Oregon OSHA is, however, answering questions and advising growers and others about the new temporary rules. Questions can be sent to: gary.l.robertson@oregon.gov

16. Does field sanitation apply to packinghouses?

No, OAR 437-004-1110 Field Sanitation applies to employees that do hand-labor operations in the field.

17. How does the number of toilets in a store, or public building differ from that of those in Agriculture?

Oregon OSHA enforces the ratio requirements in stores as it relates to employees. For the public, those regulations are a public health concern, and their presence in the store (if they are present at all, in the current situation) are of shorter duration. In our current climate, the Governor's executive order mandates not just public offices, but all offices telecommute to the maximum degree possible. The requirements of this rule reflect both the current public health emergency and the relatively unique nature of agricultural work.

18. Are employers required to break shelter in place guidance to purchase food and supplies for employees and their families which might increase exposure and community spread of COVID-19, particularly for farmers and employers in the "high risk" category?

The purchase of food and supplies is a task that must be done by someone – whether the worker goes, or another person goes on behalf of an isolated worker, the overall impact would be the same. If a person were in a high-risk category, certainly a better choice would be to have someone in a lower risk category complete the task. The rule does not require any particular individual to conduct shopping trips, but merely asks the housing operator to ensure that workers in isolation are not left to go hungry.

19. Are EPA registered disinfectants required to be purchased because of COVID-19?

The rule refers to sanitization but does not include the language requiring sanitization with chemicals specifically approved by the EPA for COVID-19.

SECTION 1 LABOR-INTENSIVE AGRICULTURAL OPERATIONS

20. What financial assistance will be provided to employers who lose their workforce because they cannot provide enough housing?

Although not addressed as a part of this rule, the state recognizes that responding to the impacts of COVID-19 in agriculture will have a negative impact on the industry (as is the case for a number of industries). The state (through ODA and other agencies) is determining what additional resources can be made available, if any, and when that information is available, Oregon OSHA will include it in these documents.

21. Where can growers access funds to meet the various requirements under the new rule pay for additional staffing, toilets, hotel/motel, or sanitizing personnel?

The rule does not identify sources of funds; discussion is happening between several agencies relating to what might be available or be able to be made available. When such decisions have been made, Oregon OSHA will include references to it in this material. In the context of the rule, the cost of compliance is the employer's obligation.

22. What is the rationale behind doubling chemical toilets?

Reduces exposure in a

- *single location,*
- *decreases the number of users,*
- *infection control: e.g. one person uses one toilet would be ideal, but not realistic*

23. Why is there a higher standard for portable toilets for hand-labor operation? Is the chemical toilet rationale being applied to other Oregon industries?

Oregon OSHA has existing ratios in other standards. This rule this rule is specific to field sanitation in agriculture. The same rationale would not apply in all other situations, because the factors involved differ in different industries. In the specific context of the pandemic, for example, many workplaces have significantly reduced both the number of workers and/or the public present in the workplace, which in turn reduces pressure on existing handwashing and toilet facilities

24. Can a handwashing station be placed with unharvested crops (without a toilet)?

Technically, yes, supplemental handwashing stations can be placed in the unharvested crops (even if they are to be harvested at a future time).

Attention needs to be given to the grey water, which must be collected and the disposable hand drying towels need to be properly disposed of (i.e. in a trash can, with a lid) since these stations can

become sources of contamination themselves if not handled appropriately.

It is recommended that you consult the Food Safety Modernization Act (FSMA) regulations, your third party auditor or the [Oregon Department of Agriculture Produce Safety Program](#) if you have questions about your operation.

25. If supplier of chemical portable toilets are out of stock, how will Oregon OSHA determine the demonstrated diligence by the operator to secure extra portable toilets?

Oregon OSHA expects the operator to show that they have tried to secure extra chemical portable toilets (or handwashing facilities). To demonstrate diligence would mean contacting more than just their current supplier. If an operator has made three good-faith contacts with different suppliers and could not secure additional chemical portable toilets by the June 1 deadline, this would demonstrate diligence.

26. What if my contracted service provider of my portable toilets will not allow me to sanitize beyond the basic cleaning, how is this going to be addressed?

Employers should contact their service providers and ascertain if the language of the contract actually prohibits additional sanitizing to prevent the spread of COVID-19. In the unlikely event that the service provider refuses to allow such sanitizing, then it would become a feasibility question. If it becomes impossible to sanitize due to the service provider, the employer should consider another service provider. The employer should document the circumstance,

contact their local Oregon OSHA field office, and relay the information.

27. Is using hand sanitizer out in the fields going to be allowed?

Hand sanitizer will generally be encouraged whenever it is available and be used appropriately. Although it is useful in many contexts (and particularly in relation to activities in and around housing), hand sanitizer is not particularly useful as a supplementary cleaning material in the fields because it really does not work effectively until hands have been cleaned of any dirt and soil. For that reason, neither Oregon OSHA nor the Oregon Department of Agriculture recommend its use in the fields away from the handwashing facilities. And hand sanitizer cannot be used as a replacement for hand washing stations when they are available.

28. When do I have to comply with the new provision for handwashing stations and toilets?

Effective June 1, 2020, employers will need to provide one (1) toilet facility and one (1) handwashing facility for each 10 employees or fraction thereof.

If the employer can demonstrate that market availability prevents immediate compliance with this provision, the employer must provide as many toilet facilities and handwashing facilities as possible until the ratio has been satisfied.

29. Can an employee wear a KN95 mask in lieu of a cloth face covering?

The KN95 masks being distributed by the state would be an acceptable substitute for the cloth face covering (they cannot be used as respirators). The rule specifies the cloth face covering only because under normal circumstance it is the most economic reusable face covering. During particularly warm weather, the use of the K95 masks should be minimized and even continuous use of cloth face coverings should be avoided if possible.

SECTION 2 LABOR HOUSING AND RELATED FACILITIES

30. Does the social distancing officer have to be onsite, or within close proximity anytime, workers are in the field, or at the housing locations?

The rule does not include a proximity requirement for the social distancing officer. The rule requires the social distancing officer be identified, and available. The question is whether the social distancing officer is able to effectively perform the role.

31. Social distancing, can it be a community volunteer or a foreman?

The expectation is the social distancing officer would be an employee, as it would need to be someone the employer can direct, rather than a volunteer who would be someone outside of the employer's control. A foreman can play the role, as could the employer himself or herself.

32. How do operators use H2A workers to enforce social distancing, if their contract does not provide for that work assignment?

The Employment Department has clarified this issue with USDOL and work as a social distancing officer would be permitted as an ancillary duty under H2A contracts..

33. Does the individual who is designated, as the social distancing officer need to be bilingual in Spanish and English?

The rule does not require the social distancing officer to be bilingual in Spanish and English. It is certainly a good idea to have at least one person present who is able to communicate in the native language(s) of the workers (which in some cases may not be Spanish).

34. If a room is set up to accommodate 4 occupants using two bunk beds, can one pair of relatives sleep in one bunk, and another pair of relatives unrelated to the first pair, sleep in the other bunk?

Yes, they can utilize the bunks in the fashion described. The bunks will still need to be separated by six (6) feet or a non-permeable barrier. The head to toe requirements would apply to the sets of bunks rather than the sets of beds.

35. How many people can sleep on single bed in 200 square feet?

To determine how many single beds will fit in a 200-sqft room, will be determined on layout. Question #34 outlines the criteria an operator must use when placing bed. As in the old rule, each sleeping room without double bunk beds must have at least **50** square feet of floor space per employee. Where there are, double bunk beds for related individuals provide **40** square feet per occupant. Do not use triple bunks, and do not allow the use of double bunk beds by unrelated individuals.

36. How is “bed length” defined? What if the configuration of the beds are head in or head to head, or total enclosed or only on the joined side?

The non-permeable barrier needs to be “bed length” regardless of the orientation of the bed. So if the beds are “head to head” the barrier would still need to extend the roughly six feet required by a parallel configuration.

37. How is the six (6) foot sleeping distance rule measured?

If employers are relying upon the six-foot separation to comply with the requirements, the six-foot distance is measured between the bed frames.

38. Can we provide tents to accommodate extra space?

The rule does not address the use of tents to accommodate extra space. If tents are used, they will need to comply with the requirements of the rule if they are set up by growers for their employers.

Anything that is set up as part of a larger community response under the jurisdiction of the Oregon Health Authority and the local public health officials would fall within the exception of the rule that indicates such emergency housing would not be covered by the rule.

39. Does the barrier need to go floor to ceiling, and can visqueen or similar product be used? How thick does the visqueen need to be?

The bed length barrier does not need to go from floor to ceiling. The barrier needs to extend from the floor to **near** the ceiling (or to at least 7 feet, if the ceiling is higher than 8 feet). The temporary non-permeable barrier (for example, using Plexiglas, heavy plastic, lightweight wood sheeting, etc.) placed perpendicular to wall such that a 28-inch minimum aisle remains available to the occupant of each bed. Example how to achieve from floor to near ceiling, the operator can place eye bolts in the ceiling run wire, or rope through eyelets to support a 1x2 and affix heavy plastic (visqueen) down to floor. The heavy plastic (visqueen) can be weighted down, or secured to floor. The non-permeable barrier should be opaque to clear.

The heavy plastic (visqueen) should be thick enough to withstand everyday use.

Note: Oregon OSHA expects a barrier that extends to within 6” of the ceiling or at least eight (8) feet up from the floor, whichever is lower.

40. Does the alteration of sleeping room such as compartmentalization affect the 10% window sizing?

No.

41. Does the person who is positive only need to be 6 feet away from others or do they need to be in a separate room?

Confirmed COVID-19 cases 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. 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.

42. If a housing operator determines individuals are sick and onsite, what is the guidance from the Oregon Health Authority?

The guidance will depend upon how sick the individuals are. The operator should seek guidance and help from the local public health authority. The operator will need to ensure the sick individuals are not isolated and forgotten about.

43. Seasonal allergies symptoms are like COVID-19. How should we determine who may be sick, or who is experiencing allergies?

The rule does not require an employer to identify or screen people to determine if the person is a suspected COVID-19 case, or if they are a confirmed COVID-

19 case. If you encounter a suspected or confirmed case of COVID-19, the rule includes obligations about reporting the case, as well as rules related to housing. The rule does not include provision regarding screening in relation to either housing or field sanitation.

44. If hotels and motels are not available to house employees who are positive for COVID-19, will employers need variances under existing OHA or OSHA rules to supply RV's or other temporary shelter options?

A variance would not necessarily be required, if the housing fell within the existing guidance of the rules relating to the use of such vehicles. If the use were outside of the normal parameters, then the employer would need to request a variance.

45. Have we considered what the Social Distancing Officer will look like in an ALH setting?

The expectation is that the housing operator will identify one or more individuals who will be responsible for the social distancing. This individual should be an employee, as it would need to be someone the employer can direct, rather than a volunteer who would be someone outside of the employer's control.

46. Are cooking, eating and other common use facilities covered by social distancing rule?

Yes, the general social distancing rule requires agricultural employers plan and implement work activities so that workers will not need to be within 6 feet of each other as they perform their duties, during breaks, or during meal periods.

If the employer determines and can demonstrate that it is impossible to structure work activities such as those required to prepare food for workers, and during this time avoid such contact, contact within 6 feet must be minimized and the employer must implement appropriate additional sanitation and protective measures (including the use of cloth face coverings by the affected employees).

47. Will the new rules require employers to construct new housing units?

No, employers are required to isolate the sick person if you can, if not, the employer is to follow the guidance provided by the Oregon Health Authority and local public health officials.

48. Can trailers (RV) be used to additional housing options?

Provisions in the existing rule addresses the use of RV's already. The same provisions will extend to the emergency rule. The trailer (RV) will have to meet the criteria set forth in the existing rule.

49. When do I have to comply with the new provision for handwashing stations and toilets?

Effective June 1, 2020, employers will need to provide one (1) toilet facility and one (1) handwashing facility for each 10 employees or fraction thereof.

If the employer can demonstrate that market availability prevents immediate compliance with this provision, the employer must provide as many toilet facilities and handwashing facilities as possible until the ratio has been satisfied.

50. Will the USDOL approve an H-2A application without an inspection ?

No. The requirement that housing provided by employers for workers under the H-2A program must meet applicable housing standards is a statutory requirement under the Federal Immigration and Nationality Act. The Department of Labor cannot waive that statutory requirement.

51. What does the USDOL need, in terms of paperwork to approve an H-2A application when an operator is using a motel/hotel?

For rental and public accommodation housing, the H-2A regulations require that the employer provide documentation or evidence demonstrating housing meets applicable standards. IF such housing is required by state law or regulation to be inspected by the SWA (State Workforce Agency) or another authorized State or local authority, CNPC will expect the employer to provide a copy of that State inspection certificate.

52. At what point can an employer increase or decrease the number of workers they need on an H2A contract?

Any time after the job order is initially filed with the SWA (State Workforce Agency) and up until the H-2A application is certified by the USDOL Regulatory provision. 20 CFR 655.145 Amendments to applications for temporary employment certification. Increases in number of workers. The Application for Temporary Employment Certification may be amended at any time before the CO's certification determination to

increase the number of workers requested in the initial Application for Temporary Employment Certification by not more than 20 percent (50 percent for employers requesting less than 10 workers) without requiring an additional recruitment period for U.S. workers. Requests for increases above the percent prescribed, without additional recruitment, may be approved by the CO only when the employer demonstrates that the need for additional workers could not have been foreseen, and the crops or commodities will be in jeopardy prior to the expiration of an additional recruitment period. All requests for increasing the number of workers must be made in writing.

53. If the employer relies upon motels or other lodging facilities, are they covered by the rule?

The rule allows such lodging facilities to be used if they are used in the same condition and manner that they are available to the public or that they **would** be available to the public if a temporarily closed lodging establishment were open to the public. That means that the rooms cannot be modified, that they cannot exceed their sleeping capacity (and that unrelated individuals or related individuals who would not normally share a bed cannot be expected to share a bed, regardless of the room's overall sleeping capacity). Otherwise, the requirements of the rule would apply.

SECTION 3 DISEASE PREVENTION IN EMPLOYER-PROVIDED TRANSPORTATION

54. Can more than one person be in the same vehicle?

Yes, the rule allows a passenger, so long as passengers are separated by at least three (3) feet during operation of the vehicle. If the seat configuration does not allow for such separation, they cannot be used regardless of the vehicle's normal capacity. Additionally, the vehicle operator, and any passengers must wear cloth facial coverings that cover their nose and mouth. All high-contact surfaces i.e. door handles, seatbelts buckets, armrest, steering wheels, etc., must be sanitized before each trip, or at least twice each day when in continuous use.

55. Can workers commute to and from a worksite with individuals outside their household?

Yes, the employer must advise employees and individuals of the risks presented by close contact and encourage them to follow the guidance listed in question #55.

56. For employer provided disposable masks for employees to ride in a company vehicle, can the employer provide one per week, or do they need to be provided daily?

Disposable masks should be disposed of daily, even if their use is relatively limited.