

## **SUMMARY OF COMMENTS AND AGENCY DECISIONS**

**Title: OAD 437-004-1120 - Agriculture Labor Housing (ALH)**

**Administrative Order Number: AO 4-2008**

**Adopted Date: March 24, 2008**

**Effective Date: May 1, 2008**

### **Background:**

Oregon OSHA began this process in an effort to make our rules on Agriculture Labor Housing as effective as those of OSHA. Because the OSHA rules on labor housing apply to general industry employers, as well as agriculture employers, we are changing the Oregon OSHA rules in Division 2, General Industry and Division 4, Agriculture. We extended the scope of the process to cover rules that needed updating, were mentioned by the stakeholders group or because of public comments we received. Rule numbers listed below are from the proposed language.

Numbers in parenthesis after each subject heading refer to contributors on the commenter list.

### **Summary of Changes, Comments and Decisions:**

#### **EXTENDED EFFECTIVE DATES (1, 2, 3, 4, 6, 7, 8, 12, 25, 26, 27, 28, 29)**

We heard comments about the need to delay effective dates for all changes that require building permits. Most counties have a long and expensive permit process and growers expressed the fear that they would not be able to meet the deadlines. One commenter suggested that extended effective dates should be uniform. Oregon OSHA made a uniform effective date of April 1, 2009 for requirements related to the ratios of shower heads, hand washing facilities, and laundry tubs, trays or machines. Requirements related to square footage and ceiling height will take effect on January 1, 2018.

Advocates argued that the extended time is too long for the 7' ceiling height requirement. They suggested 3 years but offered no supporting arguments.

We also had comments from local building officials indicating that operators may not be able to get through the permitting process in time to meet the new rules.

In recognition of the fact that individual circumstances will play a large role in the operators' ability to comply before occupancy this season, Oregon OSHA is offering temporary variances to those who meet the criteria.

#### OAR 437-004-1120(1) Application

Oregon OSHA determined that references to tents be removed throughout the standard. The references caused confusion and gave the impression that tents could be used as labor housing without meeting the same requirements as other structures. The intent of the change is to make tents acceptable only if they meet all the requirements applicable to other structures. The language in sub-paragraph (d) was changed to include employee owned housing. This was done to bring Oregon OSHA into harmony with federal application of this rule. There was also some minor adjustment of the application sub-paragraphs for clarity.

#### OAR 437-004-1120(2) Exemptions

The reference that exempted employee owned housing was removed in part to comply with OSHA application of this standard. The reference also conflicted with paragraph (1)(d) as amended during this process.

#### OAR 437-004-1120(3) Pay Services (18)

The scope was removed. This paragraph will now prohibit housing operators from using pay toilets, pay laundry or other means of charging for required services. This was in response to comments received during public hearings.

#### OAR 437-004-1120(4) Definitions

Oregon OSHA added definitions for several terms in order to clarify the application and intent of some rules. For clarity, the definition for Labor Housing and related facilities was deleted and the language added to the application. The definition for single isolated dwelling was removed because of all the confusion it caused. Registration language in (5)(a) was changed to match the statute, making the definition unnecessary. A commenter said the definition of "common use" needed clarification. He cited a living unit with bedrooms and/or living areas on each end and a common kitchen in the middle to be shared by two occupants. He asked for recognition of the difference between this type arrangement and the large cooking area for use of many occupants. In recognition of this, we added definitions for "common use cooking and eating facility" and "dining hall" and reworded the definition of "common use."

#### OAR 437-004-1120(5)(a) Registration

Language was changed to match the statute and make the intent clear.

#### OAR 437-004-1120(6)(h)&(i) Livestock (1, 9, 11, 20, 26, 29)

Oregon OSHA relied on a rule about vector control to address this issue. The standard had no rule specific to livestock within a distance of ALH.

Oregon OSHA inserted language on this subject in an effort to make our rules as effective as those of OSHA. We also heard concerns from worker advocates that allowing livestock closer to ALH would present health problems normally associated with manure and insects. Industry comments concerned the 500 foot buffer for livestock and poultry. There were concerns about the activities of their neighbors and the fate of their family animals. Some said their farms were not big enough for that distance, fearing that the rule could ban animals from the farm. Our intent was to meet the OSHA mandate while not interfering with the rights of occupants to own animals and not construct a rule so harsh that ALH operators could not have personal animals normally associated with farming. We do not find it persuasive that a few 4-H or FFA inspired animals within 500 feet of ALH presents a greater hazard to the occupants than they do to the farmer or their family. We also recognize both the right and the cultural tendency of ALH occupants to bring their own animals to the housing area. Another significant impact of the rule was the effect on the dairy industry and sheep herding where housing is traditionally very near the large concentrations of dairy animals. We also considered OSHA letters that recognized the need for a farmer to bring animals together for limited periods of time for such practices as sheering, inoculations and branding. Oregon OSHA believes that the final language of (6)(i) when applied with the language in (6)(h) addresses the issue of health hazards caused by the continued presence of significant numbers of animals near ALH. It also protects the cultural practices and rights of the ALH occupants and operators.

#### OAR 437-004-1120(6)(q) Ground Clearance

Oregon OSHA added language requiring buildings to be at least 12 inches above ground. This is to meet the "as effective" requirement of OSHA.

#### OAR 437-004-1120(7)(a) Water Pressure

The requirement for 15psi was added to be as effective as OSHA.

#### OAR 437-004-1120(7)(e) Drinking Fountain

A requirement for a drinking fountain for every 100 occupants or fraction thereof was added to be as effective as OSHA.

OAR 437-004-1120(7)(f) Non-potable Water Sign (1, 11, 13)

Previous language only required a posting that the water was not potable. Worker advocates told Oregon OSHA that there are increasing numbers of ALH occupants who speak indigenous languages or who cannot read even their own language. They suggested the rule require this posting to be in the language(s) spoken by ALH occupants. Oregon OSHA believes that translating into indigenous languages would be an undue burden on camp operators who may not be able to find translators for some of the languages. It could also require a new sign each season as the languages of the occupants change. Finally, it would do little to help those who cannot read any language. Oregon OSHA concluded that posting the universal sign is a better solution.

OAR 437-004-1120(8)(d) Heating Equipment in Service Buildings

Language was added requiring heating equipment sufficient to keep the facilities at a minimum of 68 degrees during use. This is to be as effective as OSHA.

OAR 437-004-1120(9) Shower Heads (1, 3, 4, 13, 29)

To be as effective as OSHA, Oregon OSHA is changing the ratio of required shower heads from 1 for every 15 occupants to 1 for every 10. Growers expressed concern that they could not meet this requirement this season, often because of the need to get permits. See the comment earlier on delayed effective dates.

Worker advocates argued for a ratio of 1 shower head for every 5 occupants and cited various studies about the health effects of pesticides. They also asked for a rule stating the distance required between shower heads. They cited this as an issue of dignity. They also asked that we redefine a shower room to include a private area for drying off and dressing.

OAR 437-004-1120(10) Sinks or Basins (1, 2, 3, 4, 10, 11, 13, 29, 30)

To be as effective as OSHA, Oregon OSHA is changing the ratio of required hand washing sinks or basins from 1 for every 15 occupants to 1 for every 6. Growers expressed concern that they could not meet this requirement this season, often because of the need to get permits. See the earlier comment on delayed effective dates.

Employee advocates asked that we delete the language allowing use of kitchen sinks for hand washing. They cited possible health issues caused by workers washing hands contaminated with pesticides in the same sink used to wash kitchen utensils and prepare food. They also note that the FDA document we reference for common use facilities refers to washing hands in a kitchen sink as "inappropriate."

Oregon OSHA concluded the best solution was to require the sinks be located close to the toilet or living areas thus making it unlikely that a user would go out of their way to wash their hands in the kitchen sink. This would allow users of the kitchen to wash their hands conveniently as they would do in their own cabins, before beginning to prepare food.

OAR 437-004-1120(11) Laundries (1, 2, 3, 4, 6, 11, 13, 18, 29)

To be as effective as OSHA, Oregon OSHA will eliminate the option of using commercial laundries. The new standard, effective in 2009, will reflect the OSHA requirement for laundry facilities at each housing site.

One grower stated that because of a water shortage they may not be able to comply with this requirement.

Worker advocates claim the proposed rule is still not as effective as OSHA's because there is no requirement for a slop sink. Oregon OSHA has not been able to find an OSHA definition of slop sink. A check of the Web found pictures showing that slop sinks are essentially identical to the stationary tray, or laundry trays that are an option in the new rule. Providing an extra tray for the purposes purported by the advocates will not guarantee that occupants will use it for those purposes nor separately from other sinks. Without that guarantee, the extra sink is meaningless.

OAR 437-004-1120(13)(b) Privies (29)

To be as effective as OSHA, Oregon OSHA will require that privies be at least 100 feet from any living area or food preparation facility. In response to occupant desires, the old rule set the requirement between 50 and 200 feet.

OAR 437-004-1120(13)(d) Portable Toilet Servicing (1)

Worker advocates expressed concern about the wording in this rule. They fear it could be interpreted in a manner not intended.

Oregon OSHA is always aware of this possibility. It is our experience that it is seldom the case that we can devise language that cannot possibly be misinterpreted. A case in point is the suggested replacement language from the worker advocates. They suggest: "When in use, service portable toilets at least twice weekly, and more often if needed to keep them from becoming a health hazard or for odor control." It can be interpreted to require servicing of portable toilets every time somebody detects an odor they don't like, several times a day possibly. Odor control was never a prime safety or health intent of this rule.

The old rule was a performance standard targeting the results of an improperly maintained toilet. It did not have fixed time criteria.

OAR 437-004-1120(15)(c)&(d) Garbage (1, 5, 11, 12, 19)

Oregon OSHA heard many comments from both sides on the issue of handling garbage. Employee advocates wanted a strict mirror of the federal rule. They cited the known health problems created by the accumulation of garbage. Employer representatives stated that in many parts of the state service more frequent than once per week is not available. They also point out that most residential service, even for apartment complexes is weekly and they see no need for a different standard for ALH. During the discussions Oregon OSHA concluded that many were confusing garbage containers unique to each living unit or for common areas like bathrooms and laundries with the larger containers, like dumpsters, that are emptied by the service.

Oregon OSHA determined that occupant health would be best served by a rule for individual containers and another rule for dumpsters and bins. Requiring individual containers to be emptied twice a week or when full would address the health concerns most closely affecting the occupants. Requiring dumpsters and bins to be emptied weekly would recognize the service limitations in many areas while not presenting a significantly increased health risk to occupants. Also the advocates suggested that we require dumpsters or bins that are within 200 feet of living areas or services building be emptied at least twice each week. We believe the most likely consequence of such a rule would be for the operators to move the dumpsters farther away. This would make it less likely that cabin occupants would empty their individual garbage containers as often as needed and thus would transfer the alleged health hazard from the dumpster to the area occupied by the workers and their families.

OAR 437-004-1120(16)(c) Heat – Living Areas (3, 4, 6, 11, 21, 29)

To be as effective as OSHA, Oregon OSHA will require heat capability to 68 degrees all year. We heard many objections from employers and their advocates. Objections centered around three basic issues. First was their claim that some ALH only operates for two weeks each year during a time when it does not get cold. This is mostly for the cherry harvest. Second was the danger posed by portable heaters, a position supported by the Oregon Office of State Fire Marshall statistics. Third was the cost of compliance in older cabins that may need an entire new wiring system to support the extra current load caused by heaters.

One grower reported that they had installed air conditioning in their units because the workers requested it while they had never had a request for heat.

Oregon OSHA must require heat all year to be as effective as OSHA. We cannot adjust for short occupancy situations. To address concerns about safety, we will put restrictions on the types of portable heaters that are allowed. In those cases where cabins need new electric wiring thus requiring a building permit, we will work with individual growers to allow time for compliance and funding.

OAR 437-004-1120(16)(e) Screens (3, 4)

To be as effective as OSHA we will remove the fly and mosquito qualifier from this rule. The result is that screen will be mandatory on all openable windows and doors. If there is a window/screen assembly in the door, an additional screen door is not required.

OAR 437-004-1120(16)(f)(A)(iv) Sleeping Surfaces

To be as effective as OSHA, Oregon OSHA is changing the rule to read that the sleeping surface of the mattress or pad must be at least 12 inches off the floor. This allows operators to use the common bed frame while meeting the intent of keeping bedding off the floor.

OAR 437-004-1120(16)(k), (l) & (n) Square Footage (5, 6)

To be as effective as OSHA, Oregon OSHA will change the rules about required square footage per occupant. We heard comments from employers that this change would cause great expense and that they could not comply quickly. In many cases they will need to do extensive renovations and get the required building permits. This process often takes many months. In recognition of the impact on this rule change, Oregon OSHA will extend the effective date of the change to January 1, 2018.

OAR 437-004-1120(16)(o) Ceiling Height (1)

To be as effective as OSHA, Oregon OSHA will require a minimum ceiling height of 7 feet in all ALH. In recognition of the impact on this rule change, Oregon OSHA will extend the effective date of the change to January 1, 2018.

OAR 437-004-1120(16)(r) Windows for Light and Ventilation (2, 3, 4, 5, 12, 21, 22, 24, 28, 29, 32)

To be as effective as OSHA, Oregon OSHA will require that windows in ALH have a total square footage at least equal to ten percent of the total required flooring square footage. Because the goal of the rule is both ventilation and lighting, Oregon OSHA will allow skylights to account for half the required window area. Openable windows in doors will also count.

Oregon OSHA detected misunderstanding on this point. The proposal is to require windows to equal 10% of "required" floor space not total floor space.

Still there were many comments that this requirement is not based on any definable need. There were also many comments about the fact that some growers could not possibly comply because their units were concrete block or other masonry and the cost would be prohibitive.

There were suggestions to reword the proposal to take into account the light and ventilation afforded by the units' doors. We added language to allow for openable windows in doors.

OAR 437-004-1120(18)(a)(B) Cooking (1, 11, 13, 18)

OAR 437-004-1120(19)(a)(B)

OAR 437-004-1120(20)(a)(B)

To be as effective as OSHA, Oregon OSHA proposes changes to the rules about cooking and eating facilities. We heard comments that the language about the required number of burners for common use cooking facilities was not clear. Worker advocates argued that this requirement should apply to all cooking facilities. They also argued for a higher ratio of burners to occupants. The OSHA rule uses the word "stove" without a description.

Oregon OSHA determined to set the requirement by the number of burners rather than using the vague term "stove." We also determined that the requirement will apply to any cooking facility supplied by the operator. The ratio was inserted to match OSHA wording in that it requires a "stove" for every 10 people. Oregon OSHA will require two burners for every 10 people or part thereof, or 2 families.

Oregon OSHA believes that our rule is more effective than the OSHA rule because the OSHA rule requires one stove for every 10 workers or 2 families. Oregon OSHA requires two burners for every 10 workers or part thereof or two families. Thus with the OSHA rule you really only need one stove for 1 to 19 workers while the Oregon OSHA rule would require an increase in burners when the total reached 11 workers.

#### Commenter List

##### Written

- 1 Legal Aid Services of Oregon
- 2 Oregon Farm Bureau
- 3 Cooper Family Orchards
- 4 Riverview Orchards
- 5 D & S Orchards
- 6 Orchard View Farms
- 7 Wasco County Planning Department
- 8 Hood River County

9 Rosedale Fruit Farm

Oral

- 10 Scott Cully – Bear Creek Orchards
- 11 Shelley Latin – Legal Aid Services of Oregon
- 12 Kirk Lloyd – Risk Management Resources, Inc.
- 13 Nargess Shadbeh – Oregon Law Center
- 14 Rafael Lubado – Self
- 15 Angel Gaspar – Self
- 16 Lucia Valdo – Self
- 17 Palatine Sanchez – Oregon Law Center
- 18 Maria Cortez – La Salud
- 19 Carmen Gonzalez – Self
- 20 W. B. Reeves – Rosedale Fruit Farm
- 21 Dave Meyer – Self
- 22 Leonard Aubert – Self
- 23 Richard Kaylor – Self
- 24 Jon Laraway – Self
- 25 Bill Fashing – Hood River County
- 26 Jerry Dettwiler – Self
- 27 Heather Blaine – Self
- 28 Gorham Blaine - Self
- 29 Greg Johnson – Self
- 30 Kay Ericksen – Self
- 31 Larry Chance – Self
- 32 Dan Crouse - Self