



# Oregon

Kate Brown, Governor

Department of Consumer and Business Services  
Oregon Occupational Safety & Health Division (Oregon  
OSHA)

PO Box 14480

Salem, OR 97309-0405

Phone: 503-378-3272

Toll Free: 1-800-922-2689

Fax: 503-947-7461

[osha.oregon.gov](http://osha.oregon.gov)

March 25, 2020

---

## Request for Public Comment- Petition to Amend 437-004-1100 Relating to Field Sanitation and Related to Work and 437-004-1120 Relating to Agricultural Labor Housing and Related Facilities in response to the COVID-19 pandemic

---

Oregon OSHA is requesting public comment regarding a petition for rulemaking received March 20, 2020. This petition was submitted by Oregon Law Center, and Virginia Garcia Memorial Health Center regarding Field Sanitation and Agricultural Labor Housing in response to the COVID-19 pandemic, which requests that Oregon OSHA amend Oregon administrative rules (OARs) related to these subjects.

Oregon OSHA has attached the petition in question to this document. We encourage public commenters to review this document and the resources referenced there. The suggested petition highlights areas of rulemaking that could affect 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.

Over the last three years, Oregon OSHA has received two petitions for rulemaking. The first was related to removing an exempted industry from the recordkeeping standard and the petition was approved. The second was related to executing the hierarchy of controls in the traffic control industry, and that one was denied. This will be the third petition received, and Oregon OSHA takes seriously our responsibility to present each request and engage with both the industry and worker communities impacted by the petitions we receive. As such, your public comment on this petition is needed and encouraged.

Oregon OSHA has not yet decided whether to pursue such rulemaking. Per Oregon Revised Statute 183.390(2), Oregon OSHA is soliciting public comment as required by the statute regarding this petition. Specifically, Oregon OSHA is requesting public comment regarding the following:

- Whether there are options for achieving the substantive goals of the suggested rule amendments in a way that reduces the negative economic impact on businesses, and;
- Whether or not Oregon OSHA should initiate rulemaking to amend OAR 437-004-1110 and OAR 437-004-1120, or other related rules, based on this petition. For these purposes,

'initiating rulemaking' would mean in this case we would initiate temporary rulemaking due to the emergent nature of this request.

***For more information:*** Our web site – <https://osha.oregon.gov/rules/advisory/Pages/default.aspx>  
Or call 503-947-7449

***To comment:*** Department of Consumer and Business Services/Oregon OSHA  
P.O. Box 14480  
Salem OR 97309  
E-mail – [tech.web@oregon.gov](mailto:tech.web@oregon.gov)  
Fax – 503-947-7461

***Comment period closes:*** April 13, 2020

***Oregon OSHA contact:*** Heather Case, Central Office @ 503-947-7449  
or email at: [Heather.Case@oregon.gov](mailto:Heather.Case@oregon.gov)

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



March 20, 2020

**Via Email**

Patrick Allen, Director Oregon Health Authority  
Dawn Jagger, OHA Gov. Health Policy advisor

RE: Requesting Improved Safety Measures for Farmworkers Working and Living Conditions in Oregon and COVID-19

Dear Mr. Allen and Ms. Jagger:

We are writing this letter in response to a request from those working on the frontlines at the Oregon Health Authority (OHA) with a focus on vulnerable populations and particularly farmworkers in Oregon. I am the Director of the Farmworker Program at the Oregon Law Center (OLC) and am responsible for our organization's legal services, outreach, and training to eligible farmworkers statewide. Julie Samples is one of the managing attorneys in the Farmworker Program and together, along with other colleagues, we have been representing farmworkers, providing outreach, and training to farmworkers and others for well over thirty years. Dr. Galvez is a family physician who has provided care to Oregon farm worker families for over ten years and as the daughter of seasonal farmworkers, brings with her a deep understanding of issues farmworker families face. We hope that this letter will be helpful to you and your colleagues' efforts as you coordinate emergency and other responses on behalf of the OHA to vulnerable populations.

We, like you, are concerned about the current gaps in addressing the protection of farmworkers. There are approximately 160,000 farmworkers and their families in Oregon, and they work and reside in practically every county in the state. Farmworkers are no longer just concentrated in the Willamette Valley, but are recruited and employed from Umatilla to Klamath Falls and from Astoria to Ontario. Additionally, as you are aware, providing training and information only in Spanish will jeopardize the health and well-being of a significant number of farmworkers whose primary languages include *Mixteco*, *Zapoteco*, *Mam*, and *Kanjobal*, as just some of the main languages that we have identified in our work. Additionally, each year there is an increasing number of agricultural guest workers that some agricultural employers bring into Oregon.

Oregon must address immediately at least three different arenas to reduce the possibility of exacerbation of COVID-19 among agricultural workers in our communities. These three arenas are: 1) emergency measures and support in the workplace, 2) increased protection in the living spaces, and 3) expansion of benefits to allow workers to both obtain medical care and stay in a safe location to recover or care

for dependents without complete or significant loss of income. We note that items #1 and #2 will require OR OSHA to mandate the rapid adoption of the proposed measures.<sup>1</sup>

**1) Support in the Workplace:**

**Field Sanitation**<sup>2</sup>:

Oregon's food crops agricultural employers rely heavily on hand harvest labor through much of the year but particularly from May through September. Nursery workers are planting, pruning, applying pesticides, and harvesting for at least ten (10) months of the year; many agricultural establishments are currently in their most work intensive periods or soon will be. Agricultural workers work both indoors (greenhouses or in covered areas for plants such as blueberries) and outdoors. Harvesters often work in crews or groups in orchards and in rows of crops.

Employers and/or farm labor contractors take workers to various sites to perform their work in vans or mini school buses with up to twelve (12) or fifteen (15) passengers. They might transport workers in these vehicles several times a day. The transportation requires close proximity and little opportunity for social distancing of even one foot between people.

At the worksite, there is little opportunity for outdoor workers to wash their hands with soap and water after sneezing or coughing as their access to such facilities is at least ¼ of a mile away under the OR OSHA field sanitation provision. The toilets are often portable toilets with or without sinks and most employers do not have hot (or even warm) water next to the toilets. There are no requirements for cleaning these surfaces several times a day. Workers often complain of lack potable water in enough quantities immediately available in the areas in which they work.

Breaks are provided in agricultural work, but the workers do not have designated shaded or covered areas to protect them from the sun or rain with sufficient square footage to keep them from close interaction with each other.

Considering these realities, we urge the following emergency measures to help protect farmworkers and consumers:

- Require toilets and particularly handwashing sinks for the workers at the entrance to their worksites and as they leave the workplace in the fields. The current regulations applicable to hand labor require only one handwashing facility (which includes potable water, soap and single-use towels) per twenty (20) workers. The ratio needs to be changed to one handwashing facility per five (5) workers.
- Increase the number of portable handwashing sinks and toilets to distances of no more than 360 feet (a length of a football field) from where the work is taking

---

<sup>1</sup>The third area was already discussed in an earlier letter from the Oregon Law Center to you.

<sup>2</sup>OAR 437-004-1110

place. This can easily be achieved by obtaining additional chemical toilets with additional sinks with hot and cold water, soap, and towels. The current regulations applicable to hand labor require only one toilet for every twenty (20) workers; like the handwashing facilities, the ratio must be changed to one toilet per five (5) workers. There should also be adequate amount of potable water available to allow workers to thoroughly wash their hands for twenty (20) seconds.

- Identify designated shaded areas for break periods with adequate space to maintain at least three feet between workers. The break areas must have ready access to toilets and sinks. In California, they have resolved this dilemma in the fields by using mobile trailers that are parked close to each other with a canopy and portable toilets and sinks.
- Assure that these facilities are cleaned 3 times per day.
- In the field, assign tasks in which the workers can maintain a distance of at least six (6) feet apart.
- If providing or causing transportation, assure that the workers can sit at least three feet apart and maintain clean and sanitary seats and handles on a daily basis.

#### Training:

The number one complaint from farmworkers based on our experiences is the fear of retaliation should they report health and safety violations or an injury. Often this fear is not unfounded. More important than any other training currently, we need to all help to create a situation where the workers are more comfortable bringing up their need for medical attention without the fear of losing their jobs and livelihood.

To help address this issue, there must be additional training for employers and their agents so they can in turn train employees that it is desired to speak up about the need for medical attention and prevention. At a minimum, this training should include 1) ways to stay safe, 2) no retaliation; and 3) their health and safety complaints will be taken seriously. These trainings can be provided by video, in areas where employees can be spaced apart per guidelines. The Occupational Health Information Center at OHSU's Oregon Institute of Occupational Health Sciences is one such organization that could be tapped to help along with PNASH.<sup>3</sup>

Growers and their associations are looking to the OHA to provide the necessary training materials and in the appropriate languages so that they can easily deliver it to their workers. There should be an immediate formation of an agricultural worker advisory group to help adapt the messages already produced or provide information as to what can be produced quickly to address the concerns in a manner that is most helpful to

---

<sup>3</sup> Dede Montgomery, MS, CIH  
Senior Research Associate, Outreach and Education  
Oregon Institute of Occupational Health Sciences, OHSU  
Oregon Healthy Workforce Center

the workers both culturally and linguistically including the best methods for providing in the information.<sup>4</sup>

There are several trainings that employers usually provide at the beginning of each season and employers could emphasize the information in safety committee meetings (and notes). Generally, these trainings focus on basic field sanitation and the Worker Protection Standards (WPS). These trainings could easily include additional information provided by video or audio for Spanish speakers and indigenous language speakers aside from handouts and flyers about COVID-19 and the basic of how to protect oneself. For example,

- Video training in Spanish and indigenous languages for workers covering the information on how to protect themselves –use existing government information.
- Training for the immediate supervisors about the actions that must be taken and the importance of these measures as it affects them and ultimately the consumers.
- Encourage reporting and emphasis on no retaliation or demotion and instead rewarded for compliance.

## **2) Increased Protection in Living Spaces**

### Labor housing<sup>5</sup>

There is over 300 labor housing camps in Oregon registered with the OR-OSHA. The stated capacity for the housing according to the registration records is near 10,000. Typically, this housing has one (1) sink for every six (6) people, one (1) washtub or a single washing machine for thirty (30) people, and one (1) shower for every ten (10) people. There is generally no requirement for indoor plumbing for kitchens or sinks in the cabins or housing. Portable toilets are common. The required square footage for the housing without kitchens is 1:50 square feet on average.<sup>6</sup>

It is important to understand that most of the labor housing registered as it stands is not like multi-family apartment complexes generally found in the community. Workers and their families share many of the basic facilities that would be unheard of in a multifamily apartment complex. Some of these labor housing sites could present a massive challenge in observing social distancing and adequate sanitation in response to COVID-19 no matter how many flyers and handouts are distributed to the workers/occupants.

Improvements to labor housing conditions given the current situation are critical and concrete steps should be taken *ahead* of occupancy starting in May 2020. There is a requirement for yearly registration of the housing with OR-OSHA by April of each year. The housing operators should provide information as to the steps that they are taking in

---

<sup>4</sup> We are aware of some handouts and trainings available through OHA currently. The idea here is to supplement that effort.

<sup>5</sup> OAR 437-004-1120

<sup>6</sup> <https://osha.oregon.gov/OSHAPubs/misc/table-of-ag-labor-housing-requirements.pdf>

reducing the chances of COVID-19 among the labor housing occupants as a supplement to their registration. We are recommending the following improvements:

- A coordinated decongestion plan should be in place prior to occupancy of the labor housing and the record maintained for review prior to opening of the labor housing.<sup>7</sup>
- Do not assign unrelated individuals to the same cabin or unit in numbers larger than two (2) per cabin with or without a kitchen available in the unit.
- Assign families into the same unit(s) without addition of unrelated individuals.
- Provide and designate outdoor toilets or indoor toilets for those who are more vulnerable to COVID-19.
- Increase the numbers of portable or indoor toilets and sinks to accommodate workers in clusters at the labor housing so the ratio is one (1) toilet per five (5) people.
- Provide handwashing sinks next to food preparation areas.
- Require at least two times daily cleaning of surfaces in the bathroom, handwashing and common kitchen facilities with products addressing the spread of COVID-19. The cost of such maintenance and work should not be shifted to the workers.
- Assure that each labor housing has at least one washing machine and dryer for each group of twelve (12) individuals. Designate separate washing machine and dryers for work clothes only to separate from families.
- Eliminate the use of pads and assign mattresses with washable covers for incoming residents.
- Provide handwashing, surface and floor cleaning and vacuums to the residents to clean and sanitize their own spaces daily. The cost of such supply should not be the workers' responsibility.
- Designate a point person or persons to allow workers to call and report any symptoms of COVID-19 along with transportation to the medical facilities; this point person or persons should always be available.
- Assure a working landline readily available to the occupants as cellular phones do not always operate at the labor housing (this is part of the current regulation)
- Coordinate routine visits from area health care providers to the labor camps through mobile clinics to allow check in for the workers experiencing any health concerns and to identify those needing medical attention, aside from providing information as to the nearest health center.
- Designate cabins that are unoccupied for use for those who may temporarily need to isolate themselves if they are working (or their family members) and are waiting testing for COVID-19. There should be mechanisms in place to ensure that residents in isolation are able to continue receiving essential services available on site. In addition, we ask that there be a moratorium in place so that labor housing providers may not evict an employee or his or her family members

---

<sup>7</sup> SCALING-UP COVID-19 OUTBREAK READINESS AND RESPONSE OPERATIONS IN HUMANITARIAN SITUATIONS Including Camps and Camp-Like Settings Version 1.1 March 2020 IFRC, IOM, UNHCR, WHO

because that person has missed work due to child care issues and/or school closures or is sick from COVID-19 or is caring for a family member who resides in the housing with the person who is sick from COVID-19..

- Identify alternative housing sites for farmworkers in areas where the occupancies suggested is not possible. For example, coordinate with colleges or universities in the area so farmworkers could reside at the empty dorm facilities. (Perhaps governmental agencies and emergency teams can help with this coordination)
- Increase availability of air conditioning systems in the room for adequate in room occupancy and ventilation. This would allow workers to rest in their rooms safely.
- Growers should report the need for migrant summer program and CDC programs for migrant children at the labor housing ahead of time to these programs to have ample space for the children traveling with their parents to the labor housing during their stay in Oregon.

### **3) Health Care Access and Benefits**

#### Testing and treatment

Many farmworkers, if they are without status do not qualify for healthcare services with the limited exception of CAWEM. The services under this program for a narrow group of individuals could temporarily be expanded to cover all those farmworkers who would not have access to testing or follow up treatment otherwise. More broadly, Cover All Kids could be expanded to reduce the pressures on the emergency room facilities and allow all adults regardless of status for the narrow purpose of testing and treatment of the virus to obtain medical care. Without support for this vulnerable population of workers, many carriers of the virus could go without detection.

#### Benefits:

As to other benefits ideas, include the expansion of UI, expansion of Sick Leave, and expansion of OFLA. We understand there is a special committee on Economics Advisory reviewing these items currently.

Sincerely,

Nargess Shadbeh, JD  
Director of Farmworker Program  
Oregon Law Center

Julie Samples, JD  
Managing Attorney  
Oregon Law Center

Eva Galvez, MD  
Virginia Garcia Memorial  
Health Center

Cc: Michael Wood, OR-OSHA, Administrator

Reyna Lopez, PCUN President

Dede Montgomery, OHSU-Oregon Healthy Workforce Center

Leann R. Johnson, OHA, Director, Office of Equity and Inclusion Division

Kristen Darmody, OHA, Health Equity Liaison

Jonathan Fernow, ODE, Title IC, Migrant Specialist