

# Oregon OSHA

## Ag Labor Housing Rules Advisory Committee

Monday, May 17, 2021

10:00 am to Noon

Virtual via GoTo Meeting

---

### Attendees:

- Matt Borman
- Samantha Bayer
- Mike Omeg
- Ann Villette
- Jon Laraway
- Mark Butterfield
- Nilda Martinez
- Carlos Fernandes
- Matt Borman
- Jorge Aldaz
- Nicole Mann
- Mike Doke
- Candy Carnes
- Jeff Stone
- Nargess Shadbeh
- Stacey Cooper
- Kate Suisman
- Laurie Hofer
- Kathy Morales
- Lisa Rogers
- Rosie Andalon
- Jenny Dresler

### Oregon OSHA Staff:

- Lisa Appel, Rules Coordinator
  - Jeff Carlson, Technical Specialist
  - Julie Love, Deputy Director
  - Dave McLaughlin, Standards and Appeals Manager
  - Tricia Patel-Burch, Policy Analyst
  - Gary Robertson, Technical Specialist
  - Renee Stapleton, Policy Manager
- 

### Call to order and self-introductions

The meeting was called to order by Jeff Carlson at 10:05 am.

Jeff Carlson welcomed the group and stated the meeting is meant to re-initiate the general Ag Labor housing rulemaking, which had been set aside while the agency focused on COVID-19 rulemaking over the past year. Now that the [OAR 437-004-1115 Rules Addressing the COVID-](#)

[19 Workplace Requirements for Employer-Provided Labor Housing](#) rulemaking is complete, the general Ag Labor housing rulemaking is picking back up. This is the first advisory committee meeting of the re-invigoration. Past meeting minutes can be found on OSHA's website(links below):

- [May 23, 2019](#)
- [April 29, 2019](#)
- [November 30, 2018](#)

Jeff Carlson stated the main purpose of the rulemaking is to address gaps in the rules that can have a negative impact on the health and safety of ALH inhabitants and to modernize the rules. The modernization effort is important for several reasons. The first is that the International Building Code (IBC) has changed significantly in the years since the last ALH rulemaking. The second reason is that many of the ALH rules were adopted in their original form and did not address conveniences, such as air conditioners, that were not as common as they now are. This may create paradoxical situations in which the rules are both more restrictive than they should be, while also being less protective than they could be.

Self-introductions were made by meeting participants.

### **Rulemaking Update Wildfire Smoke/Extreme Heat, Info About OHA Very Small Water Systems Rulemaking.**

Jeff shared three ongoing initiatives that will inform the Ag Labor Housing rulemaking process:

1. Oregon OSHA is currently undergoing rulemaking for Wildfire Smoke and Extreme Heat, agricultural labor housing was intentionally left out of the scope of that rulemaking. It is likely that it will be addressed in the Agricultural Labor Housing rulemaking.
2. The Oregon Health Authority (OHA) has begun a rulemaking related to small water systems that will have provisions for testing and treating water for contaminants like Arsenic. It is likely that the most effective way to address this would be to reference their rule. Oregon OSHA can cite for unhealthy water, but employers could simply provide bottled water and label the water from the system to be "non-potable". The Oregon Health Authority has the regulatory authority to compel more substantial remedial actions to the water system so that the water is actually safe to drink. Oregon OSHA needs to go through their draft rule to see their regulatory structure, what's required, and determine opportunities to improve compliance.
3. Oregon Department of Agriculture (ODA) is looking at rules to put in setbacks for structures and people related to pesticide application.

### **Review of Current Draft Rule Language**

Jeff Carlson reviewed a draft rule with the group, specifically referencing meeting attachments:

- "ALH Rough Draft RS" provides a draft rule revision made by OSHA to facilitate discussion.
- "ALHMeetingIssues" organizes and presents past topics from stakeholder meetings, providing context and scope through a meeting issues compendium.

Jeff reviewed changes in the draft rule with the group, as follows.

Definitions have changed significantly, there is a need to update definitions and add new ones to add clarity to the rules. In the draft rule, the following definitions were added:

- Air Conditioning
- Committed Relationship
- Privacy - the definition of privacy is from Black's Law dictionary
- Season
- Seasonal
- Shared

Removed the definition of vehicles.

- Added language about providing a space for recreation; for example a picnic table or some kind of area for people to relax and unwind without a hard definition. Given variability of sites, this proposed language keeps it performance based.
- Prevent breeding mosquitoes between 600-feet of housing, on your own facility - *this does not apply to someone else's property.*
- Faucets have to have at least 15 psi, if you can't have 15 psi then you have to have a backflow prevention device.
- There is an Arsenic testing requirement for private well water. As mentioned, OHA is starting regulatory process that will address these small water systems; if this proceeds, the change may not be necessary. It remains in the draft for now.
- Increase bathing facility ratio for one shower for every 8 occupants.
- Increase laundry tray ratio to 1 to 25 occupants to align with federal standards.
- Increase toilet ratio to meet Oregon Specialty Code requirements.
- Flexibility in door standards if room is served by an air conditioning system.
- Full size mattress for couples in a committed relationship.
- Adds language requiring adequate ventilation or an air conditioning system.
- Facility must comply with most recent edition of FDA Food Code.
- Extensive updated language on disease reporting.

### **Feedback Session Specific to Draft Rules**

The group discussed the availability of past meeting minutes and scoping document. Jeff Carlson shared that meeting minutes can be found on the website and to review attachments sent with the meeting invite for a "scoping" document.

The group discussed that the draft rule presented at this meeting comes from OSHA, not from farmworker advocates nor farmers.

The group discussed the need for OSHA to communicate rulemaking timelines so stakeholders can plan ahead. Action Item: Oregon OSHA will provide a timeline for moving ahead.

The group discussed that building codes have been updated for toilet and showering facilities which should be incorporated into the rule update. Action Item: Clarify definition of a slop sink, it is also in federal language, Oregon OSHA will research this.

The group noted that there are rules about air conditioning related to ASHRAE standards to keep people safe and cool with HVAC systems. Updates also include window and skylight areas, mechanical ventilation, etc.

As the group began to share new ideas, Jeff Carlson reminded them that federal OSHA expects OR OSHA to have equal or more effective rules to maintain its State Plan. If the Department of Labor (DOL) created rules; we have to convince federal OSHA and DOL that the changes we want to make are appropriate. He also noted that in some cases the, the changes in the draft rule are housekeeping, where other OARs referenced have changed and they need to be updated to match what Oregon OSHA currently has in rules.

### **Discussion About Outdoors Cooking and Meaning of “Shelter” in Rules.**

The group discussed that cooking facilities also need to be updated. Jeff shared that the FDA has particular code language on Dining Halls that must be followed. The language on outdoor cooking and the meaning of shelter associated with it could be improved. Noting it would be good to get farmworkers out of uncovered and unprotected porches and into a safer place.

Action item: Add definition of shelter related to cooking rules.

The group discussed that there may need to be a larger discussion about the provision of kitchen facilities. In some cases, employers provide fantastic kitchens. For the most part, they are central kitchens that people are sharing – some are nice, some are not. The issue of cooking outside had to do with added square footage with past rule revisions. Kitchen, safety and food preparation could all be addressed. Kitchen facilities do not always offer safety for the workers. In some cases when there is cooking outside the rooms, there is not access to a sink. No sink access is not very sanitary when preparing chicken, meat, or salad, without ready access to water. Is there an opportunity to look at food preparation and kitchen as a block instead of taking it in segments?

The group also discussed that there are safety issues with propane, pesticides, heat and smoke, and lastly with height provision. All of these variables affect safety. Action item: Oregon OSHA to evaluate cooking facility rules, especially noting that propane stoves can be challenging related to safety.

### **Roundtable Time for Group to Bring up New ALH Rulemaking Topics**

The group also discussed the provision of hotels and motels. OHA inspects and certifies those places and they have their own rules. Anything Oregon OSHA adopts will not affect that fact. Some stated that they perceive an absence of enforcement for OHA, and noted that growers are increasingly using them, especially for workers working in Hemp.

The group discussed that the draft presented doesn't make any changes to the density and square footage of facilities. Ceiling height, cooking, square footage are all a priority for worker advocates.

The group discussed the need to change rules or have a greater focus on enforcement. It was discussed that both of these things are a priority as there are sub-standard housing where we don't know about them. Enforcement should be discussed for non-compliance, its old housing that has not been updated.

The group discussed how housing is expensive, and if growers can afford the upgrades being discussed? Shouldn't there be a greater focus on enforcement before changing goalposts? If there are non-compliant employers, more rules won't make people start following the original rules. There needs to be more referrals to enforcement staff.

The group discussed the need to discuss major issues and barriers, and then discuss what funding is available to make upgrades. There is an opportunity to create a vision of what could be housing for farmworkers in the state; there could be a ten-year hiatus to give people time to come into compliance. There was also discussion on the need to be realistic, if too much is asked for it will actually halt the construction of housing. There needs to be balance of availability, affordable housing options, and safety. If housing on farms becomes too expensive, people go into housing off-farm that isn't regulated.

The group discussed the need for a structured approach to the rule revisions for the RAC. It was noted that "Band-aids" and enforcement are both problems. In general, workers have said they want water pressure, laundry, and space, noting they are here to be working and have limited time. It was suggested for future meetings to block out 2 hours of time for a structured conversation around certain sections; and in the future, there will also be greater understanding of the heat and smoke rule.

The group discussed timing. Some expressed concern that meetings could occur during growing and harvest seasons when growers won't have the bandwidth to participate. There is also confusion on how this rule relates to what is happening with heat and smoke. Some expressed concern that labor housing would not be included in current heat and smoke rulemaking that is on a faster timeline than agricultural labor housing. Action item: Oregon OSHA will clarify the timeline of this rulemaking, including as it relates to heat and smoke rulemaking that is currently underway.

The group discussed community-based housing that supports quality of life for farmworkers. Some expressed that community-based housing could be a way to help growers to meet the housing needs for certain areas. Others expressed that there is a constant tension between what is possible and what is not possible, and that community-based housing is not regulated by OSHA. Another shared that while it is not regulated, housing units are generally held to a higher standard. Others pointed out that they are not subject to inspections or required to follow COVID-19 rules. Others pointed out that community-based housing is not appropriate in this rulemaking context – as growers are not commercial developers nor property managers, they also don't take donations for housing.

Renee Stapleton noted that not one housing situation is the same and each region is also different; Agricultural Labor Housing rules must apply to all.

Action Item Summary:

- Clarify definition of a slop sink.
- Add definition of shelter related to cooking rules.
- Oregon OSHA to evaluate cooking facility rules, including related to the use of propane stoves.
- Oregon OSHA will clarify the timeline of this rulemaking, including as it relates to heat and smoke rulemaking.

### **Solicitation for Timeframe for Next Virtual Meeting and Closing**

Jeff Carlson shared that the next meeting would likely be in July 2021 and thanked all for their participation. The meeting date and time will be determined by a Doodle Poll.

**The meeting concluded at 11:57 am.**