

# Oregon OSHA Proposes Changes in Division 1, General Administrative Rules Repeal of rules no longer administered by Oregon OSHA June 2006

## ~~Farm Worker Housing Tax Credits~~

### ~~437-001-0905 Purpose and Objectives.~~

~~The rules of OAR 437-001-0905 through 437-001-0940 are established to define and carry out the provisions of ORS 315.164 through .167 as amended by 1995 Legislation (the Act), as they pertain to the Department of Consumer and Business Services ("Department"). The purpose of the program is to encourage the rehabilitation of existing housing and the construction or placement of additional seasonal or permanent housing for farm workers. The Department's objectives are to specify the beginning date for the filing of applications, how to acquire the form(s) for filing, define the information that is required, and to specify how the Department will consider, evaluate, and approve applications for farm worker housing projects that are ready to proceed in the current calendar year.~~

~~Individuals, as identified in ORS 316, or a corporation, as identified in ORS 317, who file applications and receive approval will be issued letters of credit approval to allow the individuals or corporations to claim a tax credit against Oregon taxes as provided in the Act. The letter of credit approval also certifies that approved projects fall within the annual cap on the total estimated eligible costs identified in ORS 315.167(4); and designates by its date of issuance the earliest tax year in which the tax credit may be claimed for a completed project.~~

~~The duty of administering the farm worker housing tax credit program and determining compliance with these rules and ORS 315.164-.167 is delegated from the Director of the Department to the Administrator of the Occupational Safety and Health Division (OR-OSHA) and his designees. The OR-OSHA Administrator may delegate any of these duties to the Deputy Administrator or other management staff.~~

~~Stat. Auth.: ORS 654.025 (2), 656.726 (3), and ORS 705.135.  
Stats. Implemented: ORS 315.164 through 315.167.  
Hist: OR-OSHA Admin. Order 1-1997, f. 1/31/97, ef. 2/1/97.  
OR-OSHA Admin. Order 10-1997, f. 12/31/97, ef. 12/31/97.~~

### ~~437-001-0910 Definitions.~~

~~All terms used in OAR 437-001-0905 through 437-001-0940 are as provided in the Act and as further specified in these rules:~~

~~(1) "Application" means application form(s) and the attached information, prescribed by the Department in OAR 437-001-0915, and as the Department may specify in an Annual Notice, which have been signed by an Owner requesting approval of a project in a given year.~~

~~(2) "Apply" means to complete an application and file it with the Department.~~

~~(3) "Approval" means the Department, having considered and evaluated the information provided in the application, has reached a decision the application is appropriate for approval, and has issued a letter of credit approval. Applications shall be approved in chronological order until the entire cap is awarded.~~

~~(4) "Cap" means the maximum amount of tax credits as set by the Legislature in ORS 315.167(4).~~

~~(5) "Chronological Order" means after the Department announces the initial date that applications may be filed, , all applications will be considered in the order filed. Because not all methods of filing can be fairly or equitably given a specific time of arrival on a given day, all applications filed on single day will be considered filed at the same time. Multiple applications filed on a given day will be considered and further evaluated to establish an order for processing based on the chronological order of the projected date of completion. Should this fail to establish a specific order, the remaining order will be based on the estimated eligible cost, with the lower request going first. Applications submitted before the initial application date will not be considered and will be returned.~~

~~(6) "Condition of Habitability" means a condition that is in compliance with:~~

~~(a) The applicable provisions of the state building code under ORS chapter 455 and the rules adopted thereunder; or~~

~~(b) If determined on or before December 31, 1995, section 12 and 13, chapter 964, Oregon Laws 1989.~~

~~(7) "Considered" means the application packages filed with the Department pursuant to ORS 315.167(2), these administrative rules shall be considered in chronological order. Non-compliant applications shall not be considered until and unless cured.~~

~~(8) "Department" means the Department of Consumer and Business Services, State of Oregon.~~

~~(9) "Eligible Costs" includes finance costs, construction costs, excavation costs, installation costs and permit costs but excludes land costs.~~

~~(10) "Estimated Eligible Costs" are a forecast of the actual eligible costs, or a lesser amount the owner/taxpayer is requesting for approval for a specific project. A voluntary ceiling for the estimated eligible costs requested for large projects may be announced in the Annual Notice.~~

~~(11) "Evaluate" means the Department may either directly or through agreements with others examine, judge, appraise or estimate the specific information provided in an application to reasonably assure the project is appropriate for approval, under the cap, for a given year. In the evaluation process the Department may determine the qualifying status of the taxpayer, the proposed project and the costs included in the estimates of eligible costs; applications must also include and will be evaluated on the readiness of the project to proceed, and the anticipated occupancy date.~~

~~(12) "Filed with the Department" means applications sent by mail are filed on the date of the USPS postmark; applications sent electronically by facsimile (FAX) will be considered filed on the date printed out on Department devices on which they arrive; and, hand delivered applications are filed on the date they are stamped in at any OR-OSHA office of the Department. Applications submitted before the initial date applications may be filed will not be considered and will be returned.~~

~~(13) "Firm Commitment of Financing" means an agreement to make funds available to a specific owner on a specific property and which will contain all of the terms and conditions that the Owner has to satisfy. Payment of a commitment fee by the Owner to the lending institution may be required as a condition precedent to issuance of such an agreement.~~

~~(14) "Owner" is an individual, corporation, a nonprofit corporation, state or local government entity including but not limited to a housing authority, which may be a controlling general partner in a limited partnership, who holds legal title to the project and will develop and manage the project in accordance with the OAR, statutes, federal regulations and any other requirements as set forth by the Department.~~

~~(15) "Project" means one or more units of housing which will be occupied or rented by farm workers and their immediate families.~~

~~(16) "Rehabilitation" means to restore and reinstate a building to a Condition of Habitability.~~

~~(17) "Relative" means a brother or sister (whether by the whole or by half blood), spouse, ancestor (whether by law or by blood), or lineal descendant of an individual.~~

~~(18) "Seasonal farm worker" means any person who, for an agreed remuneration or rate of pay, performs temporary labor for another in the production of farm products or in the planting, cultivating or harvesting of seasonal agricultural crops or in the forestation or reforestation of lands, including but not limited to planting, transplanting, tubing, pre-commercial thinning and thinning of trees and seedlings, the clearing, piling and disposal of brush and slash and other related activities.~~

~~(19) "Seasonal farm worker housing" means housing limited to occupancy by seasonal farm workers and their immediate families which is occupied no more than nine months of the year.~~

~~(20) "Seasonal farm worker housing project" means construction, installation or rehabilitation of seasonal farm worker housing.~~

~~(21) "Tenant" is a person or a renter (including any family members) who occupies or will occupy a unit in a Project.~~

~~(22) "Year-round farm worker housing" means housing:~~

~~(a) Limited to occupancy by farm workers and their immediate families;~~

~~(b) No dwelling unit of which is occupied by a relative of the owner or operator of the farm worker housing; and~~

~~(c) Consisting, if located in an exclusive farm use zone, of housing that is in compliance with any applicable local zoning ordinance and that is:~~

~~(A) A manufactured dwelling, as that term is defined in ORS 446.003; or~~

~~(B) Any other dwelling unit, if the project for which credit under this section is being claimed consists of the rehabilitation of existing farm worker housing.~~

~~(23) "Year-round farm worker housing project" means construction, installation or rehabilitation of farm worker housing.~~

Stat. Auth.: ORS 654.025 (2), 656.726 (3), and ORS 705.135.

Stats. Implemented: ORS 315.164 through 315.167.

Hist: OR-OSHA Admin. Order 1-1997, f. 1/31/97, ef. 2/1/97.

OR-OSHA Admin. Order 10-1997, f. 12/31/97, ef. 12/31/97.

#### ~~437-001-0915 Program Description and Application Requirements.~~

~~(1) The Department may approve applications for the Farm Worker Housing Tax Credit Program, solely for projects that provide housing for the exclusive use of farm workers and their families, subject to availability of Eligible Costs in any one year of the program. Relatives of the owner or operator may not occupy any dwelling unit. Applicants are encouraged to read ORS 315.164-.167, the Annual Notice, and the General Information regarding this program. This information will be provided along with application forms, upon request to:~~

~~Farm Worker Housing Tax Credit Program  
OR-OSHA, DCBS  
350 Winter Street N.E., Rm 430  
Salem, Oregon 97310~~

~~(2) The Department reserves the right to establish the initial date on which applications may be filed in any year, the application form(s) and supporting documentation, and to establish evaluation criteria. The Department also reserves the right to request additional information and to request applicants with large projects to follow a voluntary ceiling on the estimated eligible costs included in their applications.~~

~~(3) At the time an application may be filed, the Owner shall submit a written application for approval in the manner prescribed by the Department. The Application shall provide information, including, but not limited to:~~

~~(a) Name, address, taxpayer identification number, and telephone number of the Owner;~~

~~(b) Location of the proposed farm worker housing;~~

~~(c) A description of the Project, including:~~

~~(A) the type of housing (seasonal farm worker housing project, or year-around~~

~~farm worker housing project);~~

~~(B) number and type of housing units to be provided and the projected occupancy and square footage per unit;~~

~~(d) An estimate of the eligible costs of the project, broken down by cost type, (note the Annual Notice may request that large projects voluntarily limit the amount of these costs requested in the application); and~~

~~(e) Any other information as the Department may require, including but not limited to,~~

~~(A) information on the current zoning of the proposed site, including at a minimum, an accompanying letter signed by the respective community development or planning agency indicating the current zoning designation and that the proposed project complies with the allowable uses for the zone designation, to confirm both the eligibility of the project proposed and its ability to proceed;~~

~~(B) information on the source of funds, including at a minimum an accompanying letter or form specifying the sources of funds, and for funds not from sources in the owners name, a firm commitment of financing for all outside sources of funds;~~

~~(C) information on the readiness of the project to proceed to construction in the current year:~~

~~(i) projected date on-site construction activity will begin or permits will be secured, and~~

~~(ii) the projected construction time;~~

~~(D) information on the projected occupancy date;~~

~~(E) information on the projected life of the project for farm worker housing purposes;~~

~~(F) a letter or forms committing to the timely completion of the project, including at a minimum a commitment, by signing of the application form, that the project will be completed and ready for occupancy in the calendar year of the approval; or a specific letter of commitment stating the project will proceed to construction in the calendar year of approval and will be completed and ready for occupancy during the following calendar year; and~~

~~(G) any other information the Department may specify in an Annual Notice.~~

~~(4) Once an application has been filed, an Owner may begin construction and incur costs at their own risk. Projects that have started construction after an application has been filed and have not been awarded tax credits will not be eligible for future tax credits after December 31 of the year construction began.~~

~~437-001-0920 Filing, Consideration and Evaluation of Applications.~~

~~(1) Applications may be filed after 8:00 am, January 2 in a given year. The Department shall consider applications in chronological order. The Department shall evaluate, or cause an evaluation to be conducted of all applications and decline/approve/partially approve up to the cap or approve for standby, each application within 60 calendar days of filing.~~

~~(2) The Department's evaluation of applications for approval, may include, but is not limited to, the following criteria:~~

~~(a) Completeness, level of detail and accuracy of the information included in the application (see 437-001-0910 Definitions, and 437-001-0915 Application requirements);~~

~~(b) The Owner's readiness to proceed as evidenced by:~~

~~(A) Estimated time to complete the project following approval;~~

~~(B) Projected date the project will be completed and ready for occupancy;~~

~~(c) Financial feasibility as evidenced by the existence of funds for the project including:~~

~~(A) Sources of funds for the project;~~

~~(B) Firm commitments of financing for fund sources not in the owners name;~~

~~(d) Other criteria as may be established in the Application form(s) and announced in the Annual Notice.~~

~~(3) The Department may:~~

~~(a) Return applications determined in the evaluation process to not include specific or substantial information as not filed;~~

~~(b) Request the owner to provide within 15 calendar days any minor information deemed missing, and if such information is not timely returned, the application may be returned as not filed; and~~

~~(c) Upon determining applications have successfully met the evaluation criteria, the applications will be further processed for approval in the chronological order filed.~~

~~437-001-0925 Reserved.~~

~~437-001-0930 Standby Applications.~~

~~(1) Applications filed under 437-001-0905 through 437-001-0930 requesting approval for estimated eligible cost amounts in excess of the eligible cost cap must be declined unless the owner elects to reduce the estimated eligible cost to an amount that would not exceed the cap, or asks to be placed on a standby list.~~

~~(2) The Department will maintain applications on the standby list in the chronological order filed if they are otherwise determined in the evaluation process to be appropriate for approval.~~

~~(3) When for any reason estimated eligible costs amounts become available after the cap was initially reached in a given year, a standby application will be selected for approval of tax credits based on the earliest filing date, and the Department shall notify the applicant and allow a reasonable time for the applicant to update their Application to reflect current conditions.~~

~~(4) All unfunded standby Applications shall expire on December 31 of the current calendar year. If an application expires, a new application must be submitted for the next calendar year. If construction began in the calendar year the application was placed on standby, then the project will be unable to apply for credits in the next calendar year.~~

~~Stat. Auth.: ORS 654.025 (2), 656.726 (3), and ORS 705.135.  
Stats. Implemented: ORS 315.164 through 315.167.  
Hist: OR-OSHA Admin. Order 1-1997, f. 1/31/97, ef. 2/1/97.  
OR-OSHA Admin. Order 10-1997, f. 12/31/97, ef. 12/31/97.~~

~~437-001-0935 Approval of Eligible Projects.~~

~~(1) When the requirements of ORS 315.164 .167, OAR 437-001-0905 through 437-001-0930 and any requirement announced in an Annual Notice are met the Department shall provide a letter of tax credit approval to the Owner/taxpayer on the application. The letter of credit approval indicates:~~

~~(a) A tax credit may be claimed based on the estimated eligible costs specified in the letter, or actual costs, which ever are lower, following the completion of the project and a pre-occupancy inspection.~~

~~(b) That other criteria apply and must be met for the full term of the tax credit to assure continued eligibility for claiming the tax credit by the owner, taxpayer, or finance institution.~~

~~(c) The estimated eligible costs for all approved projects comply with the Cap.~~

~~Stat. Auth.: ORS 654.025 (2), 656.726 (3), and ORS 705.135.  
Stats. Implemented: ORS 315.164 through 315.167.  
Hist: OR-OSHA Admin. Order 1-1997, f. 1/31/97, ef. 2/1/97.~~

~~437-001-0940 Monitoring. If, after the Certification and during the term the tax credits are being used, the Owner or operator of a Project is found to be out of compliance with the requirements of the statute, ORS 315.164 through 315.167, these administrative rules, OAR 437-001-0905 through 437-001-0940, or the commitments contained in the Application, the Department shall promptly notify the Department of Revenue, who will notify the owner or taxpayer and take any appropriate action based on Department of Revenue laws, rules and procedures.~~

~~Stat. Auth.: ORS 654.025 (2), 656.726 (3), and ORS 705.135.~~

~~Stats. Implemented: ORS 315.164 through 315.167.~~

~~Hist: OR-OSHA Admin. Order 1-1997, f. 1/31/97, ef. 2/1/97.~~

~~OR-OSHA Admin. Order 10-1997, f. 12/31/97, ef. 12/31/97.~~