

Agriculture Labor Housing Rules Advisory Committee Meeting Minutes

June 29, 2007

<u>Attendees Names:</u>	<u>Affiliation:</u>	<u>Attendees Names:</u>	<u>Affiliation:</u>
Michael Wood	OSHA Administrator	Shelly Latin	LASO
Marilyn Schuster	Policy Manager	Michael Kent	LASO
Peggy Munsell	Technical Manager	Bruce Chapin	
Ron Preece	Technical Specialist	Austin Chapin	
Trena Vandehey	Technical Specialist	Lisa Rogers	CASA
Kathleen Fenton	OSHA Admin Asst.	Nargess Shadbeh	OLC
Ken Bailey	Orchardview Farms	Stuart Olson	Olson Farms
John McCulley	Tree Fruit Industry	Kristina McNitt	KLM Consulting
Kirk Lloyd	Risk Mgt for Ag	Karen Polehn	Polehn Farms Inc
Kathleen Coleman	Coleman Ind.	Akenden Efimoff	
Marsha McBaine	Naumes Inc	Karyn Bustos-Heater	Risk Mtg. Resources
Jim Ubbink	Holiday Tree Farm	Andrea Simon	Governor's Office
Jack Davis	D & P Orchard	Don Schellenberg	Farm Bureau
Roy Malensky	Oregon Harvest Inc	Peter Hainley	CASA of Oregon
Brent Searle	ODA	Pam Zielingski	

Ron Preece started it off with introductions.

Michael gave an explanation of what brought us to this point. Since 1999 there has been a clear sense of friction/disagreement with Federal OSHA on requirements. Two years ago when we received final state plan certification from Federal OSHA, Temporary Worker Housing was excluded because Federal OSHA could not accept the state requirements as being "at least as effective as" the federal rules (as required by both state and federal law). In October of 2006, a complaint was filed with Federal OSHA alleging our rules failed to be as effective as Federal OSHA rules and left workers unprotected.

There were 3 basic issues raised by federal OSHA in its findings in response to the formal Complaint About State Program Administration (CASPA):

- OR-OSHA's rule is not at least as effective as the federal rule .
- Concern about classification of violations by Oregon OSHA (failure to classify serious violations as serious)
- Technical Funding issue – Federally funded consultants were conducting preoccupancy inspections

Federal OSHA wanted this completed by the end of September. Michael Wood, Oregon OSHA Administrator, indicated that the necessary revisions to the rule could not be completed that quickly, but that they would be adopted by March 31, 2008. Federal OSHA accepted that date, but encouraged the state to act as quickly as possible.

DOL has concurrent jurisdiction due to the authority under MSWPA and H2A certifications. The federal temporary labor housing rules are used when DOL does inspections in Oregon under these laws.

It's unlikely we'll be able to grandfather issues in but may be able to phase some issues in.

Oregon OSHA will come up with a proposal but it's likely that not all will agree. Late summer/early fall Oregon OSHA would like to have another meeting like the one today. Late in the year Oregon OSHA will file a formal proposal. Oregon OSHA will travel the state to get the word out and conduct public hearings. Oregon OSHA expects to adopt the revised rule, based on the proposal, ahead of the March 2008 date. Oregon OSHA would like consumers/stakeholders/associations to invite Oregon OSHA representatives to some of their meetings to discuss the issues informally.

Ken B. stated growers probably would not be able to agree with all Federal OSHA rules. Most likely we will need to phase in. We need to narrow down the issues to take to Federal OSHA for further discussion.

The remainder of the meeting addressed each of the individual rule differences that federal OSHA had presented to Oregon OSHA as less effective than their standard.

1) §0142(2) & §1120(2) – Exceptions Employee owned or provided vehicles, tents, etc. are not subject to the Oregon rules. This exception would allow employees to sleep in pup tents, cars or in the back of pickup trucks. The Federal standard requires all sleeping facilities to comply with the minimum area and ceiling height requirements.

Discussion:

Michael W - stated Federal OSHA was very clear. Even if it is employee owned vehicle/tent and the employer allows on their property it needs to comply with federal standards for all aspects of the housing.

Kirk – What if they went to a forest camp, not employer provided. Could be a transient problem, no place to live may improvise on requirements.

There will be additional discussions with federal OSHA on this issue.

2) §0142(5)(i) & §1120(6)(i) The Oregon standard prohibits livestock in housing area during occupancy but does not contain a requirement to keep livestock a minimum distance away from food preparation and sleeping areas. The Federal standard at §1910.142(a)(2) requires that livestock be kept at least 500 feet from principal camp areas where food is prepared or served and where sleeping quarters are located.

Issue:

- What type of animals are livestock? Legitimate difference between 2 cows and a feedlot, feeding operations -vs.- cows in a pasture.

- What is the rule intent? Is it addressing feed lots and livestock operations or does it also include chickens of the occupants, goats for maintenance, or the neighbors llamas?
- Problems or observations:
 - A trailer 50ft from a barn. Have seen goats where the fence goes right to labor camp.
 - Smell and hygiene issues -Housing conditions in a suburban area not the same as ALH. Air condition vs. sitting outside to get cool.
 - Labor camps on the corner of the lot next to someone else's property.
 - Neighbors getting too many animals. Similar issues outside of the operator's control.
 - Building residential housing around a dairy.

Question: What about the possibility of decreasing the distance from 500 ft. to something more reasonable.

Discussion: We'd have to come up with a good argument why 200 ft. is the same as 500 feet. Feasibility is always an issue that we would evaluate.

Action: Oregon OSHA will look at interpretive documents. Also Oregon OSHA will talk more with Federal OSHA.

3) §0142(6) & §1120(7) The Oregon standard does not contain a system pressure requirement with the exception of the requirement for adequate pressure for drinking fountains (§0142(6)(f) & § 11~20(7)(f)). The Federal standard at §1910.142(c)(3) requires that the system be capable of supplying water at normal operating pressures to all fixtures for simultaneous operation.

Issue: Where to go with this one. We don't have it in our standard.

Discussion: General consensus is to adopt federal rule.

Action: Use federal language on system pressure.

4) §0142(6)(c) & §1120(7)(c) The Oregon standard does not contain a minimum rate requirement for potable water. The Federal standard at §1910.142(c)(2) requires that the water system be capable of delivering 2 1/2 times the average hourly demand.

Issue: What is an average hourly demand? What is enough water? Does anyone think they could not follow through with requirement?

Discussion: There is no problem with the rule unless someone is running out of water all the time. We should adopt the Federal rule.

Action: Plumbing code dictates what you have to have. OR-OSHA will go with what Federal OSHA has.

5) **§01 42(6)(f) & §1120(7)(f)** The Oregon standard does not contain a requirement for a minimum number of drinking fountains, The OSHA standard at §1910.142(c)(4) requires that where water under pressure is available, one drinking fountain be provided for each 100 occupants or fraction thereof.

Discussion: Issue number 5 and 6 were combined and discussed together.

6) **§0142(6)(f) & §1120(7)(f)** The Oregon standard requires that drinking fountains must be of the angle-jot type but does not require them to meet ANSI minimum requirements. The Federal standard at §1910.142(c)(4) requires drinking fountains to comply with ANSI Z4.2-1942.

Discussion: Issue number 5 and 6 were combined and discussed together.

Issue: It's an issue of drinking fountains –vs.- availability of drinking water. Kitchen facilities don't have any drinking fountains, only faucets. If you have a faucet with cups does that meet the requirements? Some of the housing facilities are set up like houses and it doesn't make sense to have a drinking fountain installed.

Discussion: About half of the facilities have drinking fountains. One could hook a drinking fountain to a hose.

Action: OR-OSHA will evaluate having options in the standard and discuss possible options with federal OSHA.

7) **Both the Oregon and Federal standards require that toilet facilities be kept in sanitary condition. The Federal standard requires at §1910.142(d)(10) that privies and toilet rooms be cleaned daily. The Oregon standard does not contain this requirement.**

Issue: Communal - vs.- private housing . There are issues with applying this requirement to private housing. Does a fixed cleaning schedule serve the interest of the workers or the operator? Should we mandate the sanitary condition of the facility instead of the frequency of the cleaning?

Discussion: .Port-a-potties should be cleaned (which is not the same as serviced) at least daily. Toilet facilities get plugged and may sometimes cause a larger sanitation issue than port-a-potty. Communal facilities should be cleaned at least on a daily basis. Occupants of apartments or houses should clean their own bathrooms, however, maintenance issues would be another matter. Is servicing port-a-potties once a week acceptable? Some people use cleaning services to maintain them. Clarification on “cleaned daily” and “sanitized” is necessary in the rule.

Action: Oregon OSHA will try to rewrite to clarify this rule while maintaining performance orientations.

8) The Federal standard at §1910.142(d)(2) requires that toilet rooms be located so as to be accessible without passing through a sleeping room. The Oregon standard does not contain this requirement.

Issue: Does this apply to sleeping rooms (such as in a normal single family dwelling) with restrooms in back for occupants? What defines a room?

Discussion: The rule is for easy access which is discouraged by people passing through a room. If the only people using the toilet are those in the sleeping room, there should not be an issue.

9) §0142(8)(b) & §1120(9)(b) The Oregon standard requires 1 shower head for every 15 occupants or fraction thereof of each sex. The Federal standard at §1910.142(f)(1)(ii) requires 1 shower head for every 10 persons.

Issue: Is there anyone who was not currently at the Federal standards, 1 for 10. Are children (occupants) counted in numbers.

Discussion: The reason Oregon OSHA is different from federal is because federal didn't distinguish between genders. The intent of the rule was to accommodate women and ensure privacy. We need to preserve gender distinctions as well as go with 10 showerheads some comments from the committee members was to just go with the 10. This would add more shower requirements. We should make sure we keep the gender requirement in, especially when we consider safety for women. Children are counted as occupants. There were concerns from the committee about dropping the ratio rate many camps are approaching the 15. Maybe keeping at 1 to 10 but looking at ways for ensuring privacy.

Action: Will continue discussion at future meetings.

10) The Federal standard at §1910.142(f)(2) requires floor drains be provided in shower rooms or laundry rooms to remove waste water and facilitate cleaning. The Oregon standard does not contain this requirement.

Issue: Does anyone have rooms that don't have floor drains? How are rooms to be cleaned if they do not have floor drains? Do laundry rooms need to have floor drains?

Discussion: Many rooms, because it addresses both laundry rooms and shower rooms do not have floor drains. Floors can be kept clean by mopping.

Action: The group suggested that the issue be addressed differently that they are currently.

11) §0142(9)(a) & § 1120(10)(a) The Oregon standard requires one hand washing basin for every 15 occupants or fraction thereof. The Federal standard at §1910.142(f)(1)(i) requires one hand wash basin per family shelter or per 6 persons in shared facilities.

Issue: Does anyone have objections to adopting the federal rules?

Discussion: In counting the number of available hand washbasins, can this include kitchen sinks in common use kitchens? Do sinks located outside also count.

Action: Issue will be discussed further with federal OSHA.

12) §0142(10) & §1120(11) The Federal standard at §1910.142(0)(1) requires laundry and clothes drying facilities be provided. The Oregon standard does not require these facilities if/when public facilities are available within five miles.

Issue: Should OR-OSHA adopt the federal OSHA or should we require more.

Discussion: Washer and dryer should be required. Some areas cannot dry their clothes on a clothesline because of weather. One solution would be to install a coin operated washer and dryer. Workers don't usually drive to laundromats, they walk. Does it matter how your camp is occupied. Short duration does not change what is required. People washing clothing that have been used in the application of pesticides with other clothes. They also use the same sink to wash clothing as well as dishes.

Action: Remove wording about a laundromat within 5 miles.

13) The Federal standard at §1910.142(f)(4) requires all service buildings be provided with equipment capable of maintaining a temperature of 70° F during cold weather. The Oregon standard does not contain this requirement.

Issue: What defines a service building? (laundry, kitchen, bathroom, pump house)

Discussion: Some felt the intent of the standard in general is to decrease the frequency of cold and flu outbreaks by keeping the temperatures at 70 degrees. The language needs to be more descriptive.

Action: Spell out the language to clarify which buildings are included.

14) §0142(12) & §1120(13) The Oregon standard prohibits privies from being located closer than 50 feet to any sleeping room, dining room, lunch area, or kitchen. The Federal standard at §1910.142(d)(3) prohibits privies from being closer than 100 feet to these facilities.

Issue: What is a privy? How close should it be. Workers were asked that question, the answer was the closer the better.

Discussion: General consensus is to adopt federal rule.

Action: Use federal language.

15) §0142(14)(d) & §1120(15)(d) The Oregon standard requires garbage and refuse containers be emptied at least once a week or when full. The Federal standard at §1910.142(h)(3) requires that garbage and refuse bins be emptied when full but not less than twice a week.

Issue: Some places only pickup garbage once a week.

Discussion: Clarification in the rule is needed to further define refuse bins, and if the rule addresses trash cans or dumpsters. Some committee members have occupants who store trash containers behind locked doors. Communal vs. private.

Action: Further discussion with Federal OSHA is necessary.

16) §0142(15)(c) & §1120(16)(c) The Oregon standard does not require heat in shelters during the months of June through September. The Federal rule at §1910.142(b)(11) requires heaters be provided during cold weather.

Issue: Federal OSHA did some research and received data from the weather bureau. There are parts of Oregon that are quite cold in the summer months also. Federal OSHA has an issue with the June through September exclusion.

Discussion: 68 degrees to 72 degrees temperatures indoors is the normal comfort zone. Livability vs. safety. Putting heaters in buildings could cause fires and other potential problems could occur, which could lead to deaths. Space heaters could create an electrical problem. Two hazards are created from the use of space heaters, the space heater itself and the electrical unit's capacity to support the heater. Unheated facilities create more of a risk because people will use space heaters, potentially ones that are not safe, which is a greater danger of fire. Some camps only have one outlet for the refrigerator. Can a definition of cold be developed? Outside temperatures does not equate to inside temperatures. Operators see a problems with the cost of having heaters on all the time and the electricity use. Cooking facilities alone are not adequate heating sources. Members suggested putting options in writing so they can look at them.

Action: List options for future discussion. Options include:

- Remove the language "June through September" and keep the rest of the language.
- Adopt the federal rule.
- Define cold weather based on external temperatures.

17) §0142(15)(g) & §1120(16)(g) The Oregon standard requires mattresses or pads on beds or bunks to be kept 6 inches off the ground. The Federal standard at §1910.142(b)(3) requires they be kept at least 12 inches off the floor.

Issue: OSHA's rule requires beds must be elevated to 12 inches from the floor, clarification on what 12 inches mean and if it is measured from the surface you sleep on.

Discussion: Fleas are able to jump 12 inches. Cots have no frame so it should be 12 inches from the cot surface. Every time we raise the bunk bed six inches that means you are also raising the top bunk 6 inches.

Action: Additional information and discussion with Federal OSHA is needed.

18) §0142(15)(j) & §1120(16)(j) The Oregon standard requires that at least one-half of the floor area must have a minimum ceiling height of seven feet. The Federal standard at §1910.142(b)(2) requires a seven-foot ceiling be provided.

Issue: Are there any issues with sloped ceilings, as in attic rooms.

Discussion: There are a few rooms that have sloping ceilings but there are not many. The committee felt there would be no significant problems with adopting the federal rule.

Action: The committee agreed to adopt the federal rule.

19) §0142(15)(j)(B) and (C) & §1120(16)(j)(B) and(C) The Oregon standard allows housing built before August 1, 1975, to have 60 square feet of floor space per occupant in rooms where workers cook, live and sleep. The Federal standard at §1910.142(b)(9) does not grandfather older shelters and requires 100 square feet per occupant for all such rooms.

Issue: OR-OSHA's rules allows grandfathering older shelters, the federal rule does not.

Discussion: Need to determine the amount of housing that will be lost. It's a long process to replace housing it would be helpful if there was a time allotment. Going to 100 feet would reduce the allowable occupants per unit. Would the existing tax credits be adequate incentive to either remodel existing housing or construct new housing.

Action: OR-OSHA will look at existing registrations and survey camp operators to determine potential impacts.

20) The Federal standard at §1910.142(b)(5) requires that wooden floors be elevated not less than 1 foot above ground level to prevent dampness and permit free circulation of air beneath. The Oregon standard does not contain this requirement.

Issue: Would floors be elevated one foot above the ground level?

Discussion: Is everyone OK with this? There may be some facilities that may be impacted, but there was consensus to use the federal language.

Action: Use federal language.

21) §0142(15)(m) & §1120(16)(m) The Oregon standard requires a window, skylight or ventilation for each habitable room and escapable window in sleeping rooms built on or

after December 15, 1989. The Federal standard at §1910.142(b)(7) requires windows equaling 10 percent of floor area and that one half of each must open to the outside.

Issue: The federal standard is a specification standard requires the building to have windows equal to 10% of floor space with ½ openable to the outside. The OR-OSHA standard is performance based requiring ventilation and escape for each room as well as a grandfather clause for pre 1989 housing

Discussion: Many of the buildings are concrete which poses a problem, the cost would be high. Maybe this could be a phase-in process. It is unclear on what the intent of the federal rule is. Are doors included in the calculation? Is it because of ventilation issues? OR-OSHA's pre 1989 grandfathering also needs to be addressed.

Action: Need more discussion with federal OSHA.

22) §0142(17) & §1120(18) The Oregon standard requires a stove or hot plate big enough to serve the intended number of occupants. The Federal standard at §1910.142(b)(10) requires one stove be provided for every 10 persons or one stove per family.

Issue: What is a stove?

Discussion: What is the difference between a stove and burners. Is a microwave an option. A single burner is not sufficient for 10 people. A bank of single burners is different from a stove with a single burner.

Action: Further discussion with federal OSHA is needed.

23) The Federal standard at §1910.142(i)(1), (2) and (3) contains requirements for food handling facilities where central dining or multiple family feeding operations are permitted or provided. The Oregon standard does not contain these requirements. The requirements are as follows:

(i)(1) Food handling facilities must comply with the requirements of the "Food Service Sanitation Ordinance and Code," Part V of the "Food Service Sanitation Manual," U.S. Public Health Service, publication 934 (1965).

(i)(2) A properly constructed kitchen and dining hall adequate in size, separate from the sleeping quarters of any of the workers or their families, must be provided in connection with all food handling facilities. There can be no direct opening from living or sleeping quarters into a kitchen or dining hall,

(i)(3) No person with any communicable disease can be employed or permitted to work in the preparation, cooking, serving, or other handling of food, foodstuffs, or materials used therein, in any kitchen or dining room operated in connection with a camp or regularly used by persons living in a camp.

Issue: What is a properly constructed kitchen and dining hall? Is the size adequate for occupants? There can be no direct openings into sleeping quarters, kitchens or dining halls

Discussion: Operators had both central dining and eating facilities in apartment units. Define further what central dining is. Multiple families come together to cook and eat.

Action: Further discussion is needed with federal OSHA and a review Washington rules.

24) The Federal standard at §1910.142(l)(1) and (2) requires the camp superintendent to immediately report to the local health officer the name and address of any individual in the camp known to have or suspected of having a communicable disease. Also, to report immediately any case of suspected food poisoning or an unusual prevalence of any illness in which fever, diarrhea, sore throat, vomiting, or jaundice is a prominent symptom. The Oregon standard does not contain these requirements.

Issue: OR-OSHA does not have a reporting requirement in the rule.

Discussion: If you know or suspect someone has a communicable disease, you need to report it to the local or state health authority. You don't need to search out illnesses, but if you are aware of it, you need to report it. Camp superintendent language is outdated and needs to be replaced with new language.

Action: Include Oregon Health Department rules in OR-OSHA's rules.