



November 2, 2024

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RE: Comments on Proposed Comprehensive Amendments to Agricultural Labor Housing and Related Facilities

Dear Ms. Rew:

Thank you for the opportunity to comment on Oregon OSHA's (OR-OSHA) proposed comprehensive amendments to Agricultural Labor Housing (ALH) and related facilities. The following are our comments on this proposal to amend OAR 437-004-1120.

WAFLA's Background and Interest

The Worker and Farmer Labor Association (WAFLA) is a non-profit 501(c)(6) membership association comprised of nearly 800 agricultural and seasonal employers. WAFLA was formed to make labor stability a reality for all agricultural employers and for farmers and farmworkers to be treated with dignity and respect. We offer ways for our members to access several federal visa programs and receive assistance complying with state and federal labor standards.

Participation in the H-2A visa program has grown over the past two decades as farmers nationwide have found it increasingly challenging to fill agricultural jobs. Their only option under current law to find additional workers and remedy this labor shortage is the H-2A program. Without this program, farmers of labor-intensive commodities would be unable to grow those crops, which are vital components in our national food security system and state economies.

In 2023, WAFLA filed H-2A applications for approximately 250 member employers who collectively were certified for more than 17,000 H-2A positions. We operate primarily in the Pacific Northwest, and we offer human resource training and advice to farmers and assist them with meeting the housing needs of their workers. Currently, WAFLA supports 70 H-2A farm contracts that bring about 5,000 H-2A farmworkers into Oregon to help meet the peak seasonal labor demands since not enough domestic workers are available.

WAFLA operates a licensed Agricultural Labor Housing (ALH) facility in Mt. Angel, Oregon, to assist area farmers with lodging for their workers, many of whom come to the U.S. on H-2A visas to work during the growing season. This arrangement helps workers, local farmers, and the local community. WAFLA members may also provide housing for farm workers (both domestic workers and guest workers) on or near their farms. As such, WAFLA and our members will be affected by regulatory changes pertaining to ALH. If these proposed rules are adopted, housing and beds for many farmworkers will be lost.

Regulatory Overview and Comments

The topic of farmworker housing is certainly not new to the federal government, Oregon, or agricultural employers. Federal regulations have provided standards for farmworker housing for decades.

- **ETA Rules:** The U.S. Department of Labor Employment and Training Administration (ETA) adopted rules governing housing that can be found at 20 CFR 654.404 through 417 and are still in effect. The ETA rules cover housing standards that include water supply, waste disposal, building and construction standards, heating, lighting, toilets, bathing, laundry, cooking, and safety. [According to DOL](#), these ETA standards “are applicable to housing that was completed or under construction prior to April 3, 1980, or was under a signed contract for construction prior to March 4, 1980.”
- **OSHA Rules:** The federal Occupational Health and Safety Administration (OSHA) oversees the current regulations, which are found at 29 CFR 1910.142(a) through (l) and which thoroughly cover housing construction standards and living conditions. [According to DOL](#), these standards apply “to housing for which construction started on or after April 3, 1980.”
- **MSPA and H-2A:** The federal Migrant and Seasonal Agricultural Worker Protection Act (MSPA section 203(a)) and the H-2A program (20 CFR.135(e)) require housing to comply with all applicable federal, state, and local standards.

We mention these existing federal regulations for the following four reasons:

- We understand that states with OSHA state plans must ensure that their rules are at least as effective as federal OSHA standards. As such, any changes to align state standards with federal standards are expected.
- The existing federal regulations provide robust standards for constructing safe agricultural worker housing. When stakeholders point out issues with housing, they often point to the need for more stringent standards. However, we have observed that the standards are not usually the problem. The issue is inadequate enforcement of existing standards. Closely aligning state standards with these federal standards provides uniformity, allowing for proper review, implementation, and enforcement of those known and time-honored standards.

- The agricultural industry is no longer merely local. Farmers face regional, national, and international competition. Due to the nature of commodity markets, growers have minimal ability to set their prices and pass on cost increases to their customers. Any rules, including ALH rules, that set a higher standard than current federal standards place local farmers at a distinct competitive disadvantage. While raising state and local standards to a higher level may appear admirable, such actions push agriculture further to the brink of economic collapse, which endangers the livelihoods of farmers, the occupations of farm workers, and the sustainability of the rural economy. Our farmer members want to offer housing to workers, but increasing costs without a direct nexus to safety will result in higher housing costs for fewer workers. This is not a recipe for keeping labor-intensive agriculture viable in Oregon. For these reasons, we suggest that OR-OSHA adopt only changes to the ALH rule necessary to comply with federal standards.
- OR-OSHA should also respect and adopt the 1980 timeline found in federal rules. Imposing one set of contemporary standards onto housing built under previous standards is costly and inefficient. Generally, building codes do not force current buildings to be updated to new standards unless extensive remodeling is performed. OR-OSHA should show this same respect to legacy ALH. Some of these proposed rules, if adopted, would force ALH owners to make costly retrofits to existing structures to come into compliance with new standards even though the ALH was built to the standards of its day. If OR-OSHA adopts more stringent standards than federal standards, those new standards should apply prospectively to new housing, not retroactively to legacy housing.

General Concerns from the H-2A Perspective

- **H-2A Contract Dates vs. Rule Implementation Dates:** Under federal H-2A rules, farmers must provide free housing to H-2A workers, and the housing must comply with federal, state, and local construction and inspection standards. Loss of beds due to a farmer's inability to update housing to newer, more stringent standards will reduce the H-2A and domestic labor force they depend upon. This will mean that farmworkers who have come to work in the U.S. under the highly regulated H-2A program may not have the ability to earn 5-13 times what they can in their home countries, impacting these workers and the families they support back home.

H-2A contracts are typically planned several months to a year in advance. Contracts are filed about 75 days before a contract starts, and housing must be secured and licensed to keep the timeline on track. Some contracts in Oregon will begin in December 2024 and go into 2025. As the rules are currently written, farmers will be forced to make mid-season changes to their housing so that it remains certified. This can negatively impact their ability to maintain the H-2A contract, potentially causing them to send workers home if they cannot make the necessary changes. This would be devastating for that farm and the workers. Implementation of any housing changes

mandated by these rules would need to take place either before or after an H-2A contract, not in the middle of it, and we ask OR-OSHA to allow for this remedy in the final rules.

- Inability to Modify Housing Due to Local Land Use Limitations: Some WAFLA members are concerned about the obstacles they will likely face with local building jurisdictions, land use challenges, and the lack of resources in rural communities to handle a potential influx of permitting requests for all of the proposed construction changes these rules require. Even if farmers could afford these proposed ALH changes, they could run into roadblocks with local building codes and land use planning restrictions prohibiting them from making some changes.
- Different Styles of Housing: During stakeholder discussions, questions arose regarding the implementation of various rule proposals for certain housing. Growers provide a mix of different types of ALH, such as single-family residences, apartments, and dormitories. Some offer fixed-site housing, while others may use mobile housing. These rules need to be written with those different housing types in mind. A rule that may seem to work for one type of housing may not work for a different type. Examples include standards and ratios around sinks, toilets, storage, showers, laundry, etc. We ask that OR-OSHA keep this point in mind as it reviews comments and makes final rule determinations.
- Implementation Dates: We appreciate that OR-OSHA has written this proposal with staggered implementation dates. Mandating that growers or other owner/operators of ALH make capital changes immediately is impractical and cost-prohibitive. However, we believe many of the implementation dates need to be pushed out even farther into the future – to July 1, 2025, at the earliest and much later for many of the proposed rules. Some modifications require major construction or remodeling, which involves hiring contractors, obtaining permits, and passing inspections, all of which take time and capital. Phasing in significant structural changes over 10 years would provide ALH providers with meaningful time to make the mandated modifications.

Specific Comments

(6) Site Requirements

(b) and (e): Cutting brush back 30 feet from buildings. We are pleased that previous proposals to set this distance at 100 feet have been reduced to 30 feet, which is much more reasonable.

(h): Proximity to livestock. OR-OSHA proposes that ALH cannot be located within 500 feet of livestock operations regardless of what employees in the housing are employed for or their assigned work duties. We object to this change. Workers who tend livestock often need to live in general proximity to the livestock for the safety of the animals. Also, adopting this change could force growers to abandon or destroy current ALH, build new ALH, and/or change animal husbandry practices at a significant cost. If occupational disease control and prevention is the

goal of the new language, that type of control and prevention can be done through other less-costly, less drastic means. We object to the new wording in (6)(h) for these reasons. If OR-OSHA insists on this language, these stipulations must only be applied to new ALH constructed after a future date. Existing housing should not need to be changed to comply with such a requirement.

(j): At least one wall-type electrical receptacle must be provided in each room that is used for sleeping every two occupants. If this rule is adopted, it should apply to new or substantially remodeled housing. Existing housing should be grandfathered in under the current rule based on square footage. Requiring remodeling and rewiring in existing housing would be costly and not feasible.

(9) Bathing Facilities

(b), (d), and (e): Shower privacy. We are pleased to see that OR-OSHA kept the ratio of showers to people the same as under current rules. We support the concept of privacy, but the changes contemplated under the proposed regulations could require construction, retrofitting, and even replumbing of some facilities. The private dressing area in (d) is not well defined. Can that area be an extension of a locking shower stall? Must it be separate? ALH owner/operators will likely need more time than what OR-OSHA has proposed to implement these rules. Also, current structures should be allowed to remain as they are. This standard should apply only to new construction of ALH.

(10) Hand Washing Facilities

(a): Sink ratio for handwashing. We are pleased that OR-OSHA kept the ratio the same as under current rules. However, we object to the new language stipulating that “this handwashing ratio requirement does not count towards the requirement in section (18), Cooking and eating facilities and equipment.” This new language requires ALH owner/operators to increase the number of sinks they provide to occupants. ALH is not necessarily a commercial kitchen facility, and separate sinks for washing hands versus dishes are unnecessary. Including this new language would result in planning, permitting, and construction costs for ALH owner/operators. We suggest OR-OSHA remove this new language. If the agency moves forward with the language, the new requirement should apply only to new construction and not existing ALH. At the very least, the implementation timeline should be pushed out 10 years.

(b): In common use facilities, provide paper towels. We believe adding the option of hand dryers in addition to paper towels would give ALH owners, operators, and occupants another viable option for drying hands. We ask for hand dryers to be included in this rule language.

(11) Laundry Facilities

(a): Laundry machines or tubs. We appreciate the allowance of laundry tubs and trays to continue to satisfy this requirement.

(12) Toilet Facilities

(d): Provide at least one toilet for every 10 occupants or fraction thereof for each gender in the labor housing. We strongly oppose changing the toilet ratio from 15 to 10 due to costs associated with remodeling and replumbing. We believe the ratio should remain at 15:1. Oregon should follow federal standards on toilet facilities.

(16) Living Areas

(i): Provide suitable storage facilities, such as wall cabinets or shelves, for each occupant or family unit that total at least 21 cubic feet. Provide lockable storage for each occupant. We oppose the requirement of 21 cubic feet for storage. This large amount of storage space would be hard to achieve in most existing housing and would add costs to new construction. We recognize the need for storage of personal items, but it needs to be a reasonable amount of space that can be realistically achieved. Lockable storage is necessary in communal spaces, but not if the ALH occupant lives alone in a secured, non-communal area.

(j): Square footage in living areas where workers cook, live, and sleep. Eliminating the pre-August 1975 language allowing for 60 square feet is problematic for ALH providers whose housing dates from that era and was built to those standards. Any change in legacy standards for square footage is highly problematic and costly. Changes to square footage involve capital construction costs and have the potential to reduce the availability of housing for farmworkers significantly. We suggest OR-OSHA adjust this language to conform the square footage requirements to the federal ETA and OSHA standards and the corresponding effective dates of those federal rules (pre-1980 vs. 1980 to present). See our comments in the background and general comments sections above. Recognizing and respecting federal dates and standards is appropriate and fair. If OR-OSHA insists on imposing a more stringent square footage requirement on ALH than the one found in federal regulations, the new state standards need to apply only to new construction in the future.

(k) and (l): Each sleeping room must provide at least 100 square feet of floor space per occupant. We strongly oppose this change. Changing the required floor space per occupant will reduce our housing capacity by at least 50 percent. This change would result in significant construction costs for new and existing housing. Our rationale is the same as in Section (16)(j). We recommend that Oregon housing standards follow the standards and dates of the federal ETA and OSHA housing standards.

(18) Cooking and Eating Facilities and Equipment

(a)(B) and (b)(B): A minimum equivalent of two cooking burners for every 8 persons or part thereof, or 2 families, whichever requires the most burners. We oppose this rule change, like many of the others, because this change involves additional construction costs (capital improvements, wiring, installation, permits, etc.) and goes beyond federal standards. We believe OR-OSHA should keep the number of persons at 10, not reduce it to 8.

(a)(H) and (b)(I): Common use kitchen and dining areas must be separate from all sleeping quarters. There can be no direct opening between kitchen or dining areas and any living or

sleeping area. We are concerned that this language would forbid a room layout that includes cooking, living, and sleeping areas, which would remove options from affordable construction and could cause some existing housing to be remodeled.

(b)(F): Plumbed sinks with hot and cold water and an adequate number of faucets to service the occupants in food preparation areas or within a reasonable distance adjacent to such areas. Plumbed sinks in or adjacent to food preparation areas do not count toward the required ratio for handwashing facilities in section (10) of this rule. This change could result in costly retrofits for older housing. We suggest allowing existing plumbing to continue to be used in existing housing. We believe that plumbed sinks in food preparation areas should also be counted in the ratio for handwashing sinks. We ask OR-OSHA to allow this existing practice and ratio to continue.

(b)(L): Cooking facilities must be in buildings or shelters that are enclosed or screened. The layout of some existing ALH prevents screening in the way envisioned by this proposed rule. This proposal goes beyond what federal OSHA requires. We suggest that these rules follow the federal standards and go no further. If OR-OSHA insists on a more stringent standard than federal rules, the standard should apply prospectively only to new construction. These rules should not require retrofitting existing ALH to meet new standards.

(b)(J): If the operator becomes aware of or has reason to suspect that anybody preparing, cooking or serving food has a communicable disease as listed in Appendix A, the operator must bar them from the cooking facility until the disease is no longer communicable. This rule should apply only to dining halls and common-use cooking facilities. Including this restriction in single-unit kitchens and single-family housing does not make sense.

(20) Disease Reporting

We recognize that disease reporting relates to employee health and safety, which we do not want to jeopardize. However, this rule places an unreasonable burden on employers or other ALH owner/operators to make medical decisions for which they are not necessarily trained. Placing operators of ALH, which may include hotels or hotel-like housing operations, in the position of medical professionals performing triage does not seem fair to ALH operators or residents. Also, ALH operators can issue rules about communicable diseases but cannot necessarily control or make decisions for occupants. The language in this section and Appendix A should reflect that reality. ALH operators could provide information on where occupants can receive health care services and how to address specific symptoms related to serious and easily transmitted diseases, but these rules should recognize that the responsibility ultimately rests with the individual adults occupying the facility.

Concluding Remarks

Thank you for accepting our comments. WAFLA wants domestic food production that is fair for producers, workers, agencies, and consumers. Key to that goal is safe, affordable housing for farmworkers. We want housing to be safe and standards to be reasonable, but not at the

cost of huge retrofits and shrinking availability of farmworker beds. Our farmer members want to offer housing to workers, but increasing costs without a direct nexus to safety will result in higher housing costs for fewer workers. This is not a recipe for keeping labor-intensive agriculture viable in Oregon. Unfortunately, many of the rule proposals are still too stringent and costly. We encourage you to scale back this proposal so that growers can continue to offer housing to domestic farmworkers and foreign guest workers.

Sincerely,



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