



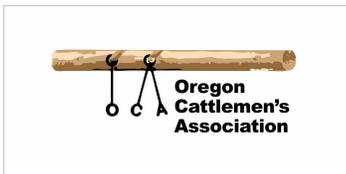
**Associated Oregon
Hazelnut Industries**



OREGON
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**OREGON AUTO DEALERS
ASSOCIATION**



**OREGON
WHEAT**



TO: Matt Kaiser
Oregon OSHA
Submitted via email: tech.web@oregon.gov and Matthew.C.Kaiser@oregon.gov

RE: Rules Addressing the COVID-19 Public Health Emergency in All Oregon Workplaces
Adopting OAR 437-001-0744

March 26, 2021

The above entities, associations and organizations submit the following concerns with the proposed permanent rules addressing the COVID-19 Public Health Emergency in All Oregon Workplaces. As active participants on this effort since last June, we appreciate OR-OSHA's willingness to engage in stakeholder conversations. However, there are key missing components discussed during the stakeholder engagement process from the proposed rules. In addition, we continue to believe that OR-OSHA should provide clear direction to Oregon

employers about what is NEWLY required of them, given their compliance with the temporary COVID-19 rules you adopted just four months ago.

Our specific concerns with the proposed permanent rules include:

- **Expiration Date tied to EO Ending:** The agency had indicated a willingness to have these new pandemic permanent rules expire upon the end of the COVID-19 pandemic, however the note in the proposed language is vague and not specific to the Governor's Executive Order. We suggest and raise the following concerns:

Unless otherwise indicated, the rule's provisions take effect May 4, 2021, and remain in effect until revised or repealed.

Note: Although the rule must be adopted as a permanent rule, its purpose is to address the COVID-19 pandemic. Oregon OSHA intends to repeal the rule when **the Governor's Executive Order related to COVID-19 and the current State of Emergency expires or is rescinded.** ~~it is no longer necessary to address that pandemic. Because it is not possible to assign a specific time for that decision, Oregon OSHA will consult with the Oregon OSHA Partnership Committee, the Oregon Health Authority, and other stakeholders as circumstances change to determine when all or part of the rule can be appropriately repealed.~~

- **Confirmation Employer Efforts Satisfy New Mandates:** Language confirming that Risk Assessments, Infection Control Plans and Worker Training completed under the Temporary COVID-19 OSHA Rules satisfy all new requirements in the permanent rules. While addressed in your comparison document, we did not see specific language confirming that intent and in fact see direction to complete a risk assessment and infection control plan with a note that OR OSHA will assist in completing this task. This task has already been completed under the temporary rules and should be reflected as acceptable in the permanent rules:

Note: Oregon OSHA will make a Risk Assessment template and sample Risk Assessments available to assist employers in completing this task. **If an employer has already completed the Risk Assessment and Infection Control Plan under the Temporary Rules these plans shall satisfy the requirements outlined in these sections.**

- **Clarification about the new Hazard Communication standard:** Buried in a "Note" on pg. 25 the OSHA rules attempt to link to a federal standard for the use of certain cleaning chemicals and disinfectants. If there are specific cleaning chemicals that trigger this requirement, OSHA should clearly post and delineate these rather than referencing very complicated federal rules.
- **Delete New Costly Ventilation Requirements:** We remain concerned that these ventilation requirements will add significant costs burdens. It can be quite costly to get service providers out annually, let alone quarterly. It is also unclear if previous maintenance under the Temporary Rules satisfy this new mandate. The proposed rules

also require an employer to attest in writing their HVAC systems are in compliance with this rule. Is this writing to be submitted to OR-OSHA? What are the clear requirements to satisfy compliance? We recommend deleting this new requirement:

~~(C) By June 1, 2021, all employers with more than 10 employees statewide and an existing HVAC system must certify in writing that they are operating that system in accordance with the rule.~~

~~(i) The certification must be dated and must include the name of the individual making the certification; and (ii) Such certification records must be maintained as long as this rule is in effect.~~

~~(D) On a quarterly basis beginning no later than June 1, 2021, all employers must ensure the following:~~

~~(i) All air filters are maintained and replaced as necessary to ensure the proper function of the ventilation system;~~

~~(ii) All intake ports that provide outside air to the HVAC system are cleaned, maintained, and cleared of any debris that may affect the function and performance of the ventilation system; and~~

~~(iii) Minimize air recirculation within indoor and enclosed areas to the greatest extent possible when the building is occupied.~~

- **Delete Burdensome 30-year Record Keeping Mandate:** The 30-year record keeping requirement for records notifying employees they may have been exposed to someone with COVID-19 are new and exceed any labor law recording keeping mandate currently placed on Oregon employers.

~~Note: Whenever an exposure notification as described by this rule occurs, the notification to exposed employees and the names of those notified are Employee Exposure records subject to the existing requirements of Oregon OSHA's Access to Employee Exposure and Medical Records standard (29 CFR 1910. 1020), which requires that such records be retained for 30 years.~~

- **Update Medical Removal to Reflect New Guidance:** This section should be updated to reflect the new OHA guidelines which do not require quarantine for fully vaccinated personnel (who have been fully immunized with COVID-19 vaccine according to the ACIP schedule and are at least 14 days beyond completion of the vaccine series) who come in close contacts of persons with confirmed or suspected COVID-19 are not required to quarantine. In addition, the new requirement that the employer provide the employee with notice of all over PTO, sick leave or benefits conflates the OR-OSHA realm of regulation with BOLI and we ask that this new mandate be stricken. Existing law already requires significant notification requirements. Additional notice mandates will require additional steps and provide the possibility for mistakes that the employer could then be liable for even if they have provided the information previously.

(B) Whenever an employee participates in quarantine or isolation, whether as a result of the requirements of this rule or because the employer chooses to take additional precautions, the affected worker(s) must be given written notification that they are entitled to return to their previous job duties if still available without any adverse action as a result of participation in COVID-19 quarantine or isolation activities ~~and should be provided any relevant information about the employer's paid time off, sick leave, or any other available benefits in accordance with local, state, or federal law.~~¶

- **Delete Confusing and Burdensome Vaccine Tracking:** (C) on pg. 29 seems to both remove employers ability to require vaccinations and simultaneously applies a new mandate on employers to document employees declination. Since employers are not managing nor administering the distribution of vaccines, OR-OSHA appears to propose requiring the employer to proactively seek this information from workers.

~~(C) Unless the local public health agency or Oregon Health Authority directs otherwise, employers need not require employees to accept the vaccination. If employees who are offered the vaccine decline to be vaccinated, the employer must document that declination.~~

Employers have significant concern with this new mandate, which was not discussed during any of the stakeholder conversations and strongly urge its removal. Since vaccines are not mandated by OR-OSHA, the documentation attesting vaccination or no-vaccination appear to serve only to violate the workers personal privacy and potentially expose the employer to liability with no clear workplace safety benefit.