



INTEROFFICE MEMORANDUM

Oregon Occupational Safety & Health Division

Original: June 26, 2008
Revised: September 7, 2010

TO: ALL OSHA

FROM: Marilyn Schuster, Policy Manager

SUBJECT: Ag Labor Housing

HEATERS

1. Will it be acceptable to have portable heaters available in the office to be checked out for use in a living and/or sleeping space?

The rule is silent on where the heaters must be but they must be easily available or it defeats the purpose of the rule. So if an occupant wakes up cold at 3am they shouldn't have to trek through the orchard to your office or house and pound on the door to wake you up and get a heater. If you have them in an accessible storage closet at the end of a row of cabins that would be OK. (16)(c)

2. Are heat lamp units, such as those used in hotel bathrooms, an acceptable source of heat?

The rule requires a source of heat capable of keeping the entire living area at 68 degrees. It is unlikely that a heat lamp could be effective for an entire living area but they might work for a small part like a bathroom. (8)(d) & (16)(c)

3. There was mention of a recall notice from a few years back regarding portable heaters...can it be distributed again? What if the manufacturer of the portable electric heater doesn't allow it to be used in bathrooms or near bathing facilities?

OAR 437-004-2810(15) is the applicable rule. "Follow manufacturer's instructions or recommendations when installing listed or labeled equipment."

We have found the recall on the web. Feel free to distribute it.
<http://www.cpsc.gov/cpsc/pub/prerel/prhtml02/02531.html>

LAUNDRY

4. Do laundry tubs and lines need to be in a building or can they be out of doors?

The rules do not require laundry facilities to be in a building. However, if you opt for washers, they would have to be under cover to prevent rain from causing electrical problems. Drying facilities must be effective. This means clothes lines that are not under cover could be a problem in areas where there is frequent rain or where use is year-round. (11)

5. An ALH location is utilizing coin operated equipment. Does this fall under OAR 437-004-1120(3) about not charging for required service?

The owner/operator needs to provide laundry trays, tubs, or machines for the establishment's occupancy (1 for each 30 occupants). If they meet the occupancy requirement and provide more than what is required, coin operated machines are acceptable. In the case of coin operated dryers, if they provide clothes lines, they could install coin operated machines.

OAR 437-004-1120(11) Laundry facilities.

(a) Provide laundry trays, tubs, or machines with plumbed hot and cold water in the combined ratio of 1 for each 30 occupants or each part of 30.

(b) Provide clothes lines or drying facilities to serve the needs of the occupants.

If the owner/operator is only using coin operated equipment, they would be violating (3).

OAR 437-004-1120(3) Charging occupants for required services. *Operators may not charge for services required by this rule (OAR 437-004-1120). This prohibits pay-per-use toilets, pay-per-use bathing facilities or any other method of paying for individual service requirements.*

SLEEPING ROOM

6. Can a refrigerator be in a sleeping room?

Yes, but there can be no food preparation devices, like stoves, in a sleeping room. If the occupants store or consume their own food, this is not a violation as long as the food is not cooked or prepared for cooking in the sleeping room.

7. Can a counter be in a sleeping room?

A sleeping room can have a counter.

8. Can there be any food storage (not food preparation) in a sleeping room?

The only food storage allowed in a sleeping room is what the occupant may provide. OR-OSHA will not cite the operator if the occupant keeps food in their footlocker or in

closets or other storage devices, like a refrigerator, that come with the room. See paragraph (1)(g) of the rule.

9. Can there be a table and chairs in a sleeping room?

Sleeping rooms can include a table and chairs.

10. What kind of barrier, if any, is required in a wall that partitions a sleeping room from the kitchen or living area? Example: Curtains, solid door, or other?

The rule is silent on whether rooms in a living area need doors or other barriers, however by common definition it takes a wall or solid partition of some kind to create a room. Merely hanging a curtain or tarp does not divide one room into two rooms. Short partitions like a three-foot high pony wall would not create a room. The partition must be ceiling height or about 8 feet and cover enough of the opening to give some privacy between areas.

WINDOWS (10% rule) – SCREEN DOORS – SCREENS - VENTILATION

11. Where the room is air conditioned does the 10% of floor space window rule apply for purposes of ventilation and are all exterior doors and windows required to be screened for ventilation?

The requirement for windows and screens has multiple purposes. Air conditioning might mean the screens were unnecessary for ventilation but they would still be needed as a fly and mosquito barrier during those times when occupants would rather have the doors or windows open instead of using the A/C. The rule about windows is for ventilation and lighting. Air conditioning would not satisfy the lighting issue nor would screens. (16)(p)

12. Window to floor space, on the 10% rule, is it the actual floor space, or is it required space per number of occupants?

When calculating needed window area you begin with the required floor space as determined by the number of occupants. (16)(p)

13. May window materials other than glass be used? (i.e. fiberglass, Plexiglas, or other synthetic materials) May glass or non-glass window materials be opaque or defused for privacy?

The rules are silent on what type of glazing can be in windows. It must allow light to enter the room. Privacy material is acceptable just as in private homes. (16)(p)

14. May sliding glass doors be used as part of the 10% window requirements?

Sliding glass doors (like patio doors) are acceptable toward the 10% window requirement but must meet all other applicable rules like the one requiring screens. (16)(e) & (p)

15. Will the required square footage for windows be calculated for the entire cabin or for each room?

This calculation is for the entire cabin.

16. (New) In paragraph (16)(p) what is “adequate mechanical ventilation” and does it require air circulated directly from the outside?

Adequate mechanical ventilation will depend on the circumstances of each cabin. The cabin configuration and activities of the occupants will be significant factors. It is unlikely that a small bathroom-type fan would be adequate for a 400 square foot cabin. Air conditioning units qualify as adequate ventilation, otherwise the ventilation method must include the input of fresh air.

17. Does an openable screened window in a door qualify as a screened door?

An openable window in a door is acceptable toward the 10% window requirement and, if screened, there is no need for an additional screen door. (16)(p) & (e)

18. What is a screen door? Is it a screen door when a hole is cut out of a solid door? If so, how big of a hole must it be (e.g. 50% of door)?

We cannot provide a finite amount of the door that must have screening. When converting doors, the door’s structure can dictate how much space is available for a window/screen insert. Use professional judgment. Contact technical if you encounter a situation that has no obvious solution. (16)(e)

19. If a living or sleeping area has two doors must they both have screens?

Any doors used for routine entry and/or exit must have screens. Doors used only as fire exits do not need screens. (16)(e)

GARBAGE

20. Are we required to provide a 30 gallon garbage can if the employees carry their own small sacks to the dumpster that is dumped twice a week.

No. The rules says you must provide 30 gallon cans OR a larger container per 15 occupants. When choosing an option be sure to note other rules about how often containers must be emptied and the need to have a lid that closes fully. (15)(b)

21. For garbage pickup, are the 30-60 gallon garbage containers acceptable if we pick the garbage up in the camp on a daily basis? How far away from a living area would they have to be?

For garbage handling, you may have a large bin or dumpster. The rule requires individual containers, like cabin cans and containers in common use areas, be emptied when full or

twice weekly. The dumpsters must be emptied weekly or when full. The rule is silent on where to locate the dumpster. (15)

SQUARE FOOTAGE CALCULATION & OTHER MEASUREMENTS

22. In a one room cabin that has a kitchen area and bathroom, is the square footage of the kitchen and bathroom part of the 100 sq. ft. per person requirement?

Yes, the entire interior measurements (including the bathroom) of the cabin determines compliance, 100 sq. ft. per occupant. (16)(i), (j) and (l)

23. In a cabin that has been divided for the purpose of having a sleeping room and another room for living, cooking, and sleeping, how is that cabin measured?

Calculate the required square footage for sleeping rooms separate from other areas. If all occupants of a cabin sleep in a sleeping room(s) then calculate the needed square footage for that room. If nobody sleeps in the other area, it is not a sleeping, living and cooking area and there is no requirement for that area. However, if some people sleep in the sleeping room (50 sq. ft. per person) and some sleep in the living, cooking, and sleeping area (100 sq. ft. per person) you calculate the square footage for each separately. (16)(i), (j) & (l)

24. How do you measure a sleeping room that has a combination of bunk beds and non bunk beds?

If the non-bunk bed is a twin size bed, just count as if you would for a bunk. So a room with two sets of bunks and one twin bed would need 40 square feet times the number of occupants. This method is only valid if there is one twin bed in the room with the bunks. If there is more than one twin bed, the calculation for those reverts to 50 square feet and 40 for the bunks. If the room had two sets of bunks and any other size bed, they would need 40 square feet time the number of bunk occupants plus 50 square feet for each occupant of the larger bed.

25. In a cabin that has been divided to have a sleeping room and another room for their living and cooking area, how is that cabin measured since it does have a sleeping portion?

The cabin is divided with a separate sleeping room requiring 50 sq. ft. per person. If occupants do not sleep in the living and cooking area, there are no square footage requirements for that area. See the answer to question #23.

26. Calculating square footage in living area v. sleeping rooms. Do we calculate the entire living area even if partitions/walls are built forming sleeping rooms? There was much discussion of how this was allowed in the past to gain capacity.

In contrast to what was said at the training, calculate the required square footage for sleeping rooms separate from other areas. If all occupants of a cabin sleep in a sleeping room(s) then calculate the needed square footage for that room. Since nobody sleeps in

the other area, it is not a sleeping, living and cooking area and thus there is no requirement for that area. If some people sleep in the sleeping room (50sqft/ea) and some sleep in the living area (100sqft/ea) you calculate the square footage for each separately. The area cannot be a sleeping room if the operator provides a food preparation surface, or other devices related to preparation of food. See questions 5, 6 and 7 for more info. The counter is OK as long as it is not provided for food preparation.

27. When measuring between upper and lower bunks, is the 27” clearance from the top of the lower bunk mattress to the bottom of the upper bunk?

The ETA required distance between bunks is measured from the top of the mattress on the lower bunk to the lowest part of the upper bunk.

28. If you are partitioning a room to include a kitchen and/or living area as well as the sleeping area, how high does the partitioning wall need to be? Example: In a room with peaked ceilings greater than 7 feet, does that partitioning wall need to extend to the ceiling peak? If not, what is the minimum height requirement for the partitioning wall?

Our rules are silent on the specifications for partition walls in living areas. The major impact of partitioning would be in the calculation of square footage. If you partition a sleeping area out of a living area, the sleeping area must have the square footage required by the rule. Paragraph (16)(o) requires that partitions provide privacy when the area is occupied by unrelated persons of different genders and for each family unit.

29. Are lofts acceptable in cabins where the roof peaks are at least 14 feet high?

Lofts are acceptable in cabins as long as all room space requirements are met. The most likely issue would be to assure a 7-foot ceiling height and safe means of entry and exit from the loft.

30. We need further guidance or interpretation about the 12” above ground/wooden floor requirement [(6)(q)]. How to measure? Where to take the measurement? What should be considered the “lowest point” (e.g. joists)? What about dirt being pushed up against structure?

The measurement should be from the dirt to the bottom of the floor joists. Wooden support posts and other support or trim items are not the target of this rule. There once was a note that said that this rule does not prohibit “banking.” In some applications it is necessary to place dirt banks near the structure. There is no rule to prevent dirt against the structure. However, if the dirt causes the usual problems, there are other rules to cite. If a point appears to be questionable, simply reaching in to measure is acceptable. This can also be determined visually from the crawl space access point.

HYGIENE/HOUSEKEEPING

31. Are we required to “police” the personal living habits of our employees? (i.e. leaving food on the stove in pots while out to work, not refrigerating eggs, pulling mattress off a bunk frame to sleep on the floor?)

Operators of ALH are not responsible for the personal housekeeping practices of the occupants. See paragraph (1)(g) of the rule. We expect operators to use reasonable diligence in checking cabin interiors while respecting the privacy rights of occupants.

32. Is carpeting an acceptable floor covering especially in a home for full time employees?

The rule requires floors to have a smooth and cleanable surface. Carpeting could meet the intent of that rule if used in appropriate locations. Carpeting in the kitchen, bathroom or laundry room would not meet the intent of the rule. Carpeting in sleeping areas and family rooms would meet the intent of the rule. Low pile carpeting would be a smooth surface, shag would not. (16)(b)

33. What is an adequate supply of hot water [(8)(a)]? How long is too long for a water heater to regenerate enough hot water?

The interpretive letter dated December 12, 2000 is still valid except for the reference to part of the rule we deleted about the age of children. Both OSHA and Oregon OSHA have long considered the hot water rule to be a performance standard. The measure of adequate hot water is not based SOLELY on how long the occupants must wait. In a small camp with only two showers the occupants may have a long wait simply because the people ahead of them take forever. We quote the final part of the interpretation mentioned above:

Oregon OSHA believes that the best method to determine the adequacy of the hot water supply in labor housing is to evaluate information supplied by the occupants during interviews conducted by OR-OSHA personnel. Regardless of requirements set by our standards, the determining factor remains, is there enough hot water available for occupants to shower, launder clothes and for other uses. The determining factor of whether there is enough hot water should be based on the experiences of the occupants. This testimony would also be our best legal defense of any citations issued for an insufficient supply of hot water.

If during talks with occupants you discover a pattern or multiple incidents where water is not sufficient, a citation would be in order. Single or isolated incidents are not sufficient.

SINKS

34. Do double sinks count as one or two sinks?

Double sinks similar to those found in modern kitchens are sold as one sink and meant for use with one faucet. We consider them one sink for purposes of our rule. If the operator installed a faucet for each half we would say they are two sinks. Historical application by individual staff has not always reflected this position. Operators with

issues because of this interpretation should contact the technical section of OR-OSHA for assistance. (10)

35. Does a kitchen sink or laundry tray (plumbed) count as a handwashing sink?

Any sink counts as a handwashing sink as long as it meets all the rules about handwashing sinks. The rule says hand-washing sinks must have hot and cold water under pressure. Further, the common conception of a sink or basin is a device with faucets and a drain. This means they must be plumbed. Since you can't plumb a drain into a tub, tubs do not qualify. Any style plumbed sink or tray will do. Locate all hand washing facilities according to paragraph (10)(a).

COOKING – FOOD PREPARATION

36. When an ALH operator provides a cook for the camp with an institutional like kitchen, how does the “*minimum equivalent of two cooking burners for every 10 persons*” apply?

By our definition, a dining hall “*is an eating place with food furnished by and prepared under the direction of the operator for consumption, with or without charge, of the occupants.*” The number of available burners is not a reasonable issue or concern in most circumstances largely due to how the dining hall manages food service and the industrial types of equipment available e.g., large grills, stoves, and ovens. Including this provision in *Dining hall and equipment*, paragraph (19), was probably an oversight and would be considered a “minimal violation” under our rules.

37. About paragraphs (18), (19), and (20) of the ALH rules. Some camps have outside cooking/food prep areas only. Are these allowed?

The federal requirement is that common use food preparation areas be in an enclosed and screened facility. This is the controlling criteria. Having only the burners outside is allowed but having the food storage or preparation area outside is only allowed if they are in an enclosed, screened area. While we inadvertently omitted this requirement from our latest version of the ALH rules, it will be inserted soon.

38. Does an outdoor, covered cooking area have to be screened?

The federal requirement is that common use cooking facilities be in an enclosed and screened shelter. This is the controlling criteria. Common use cooking facilities as used in this context includes food preparation areas. While we inadvertently omitted this requirement from our first reversion of the ALH rules, it is now there. Outdoor, covered cooking areas that are not for common use have no requirement. Thus moving the burners for each cabin outside does not trigger any new requirements. In order to assert that the outside burners are not for use by any or all members of the housing, the operator would have to have burners outside all cabins. Only then would it be logical that occupants of one cabin would have no reason to use the burners for another cabin.

EXTINGUISHERS – SMOKE DETECTORS

39. In paragraph (17)(b) on smoke detectors, how do we address year-round camps?

The requirement is to have a working smoke detector at the time of initial occupancy. For units that are occupied continuously, we expect the operator to check the alarm at least annually or as often as the manufacturer's literature requires. Initial occupancy refers to a change of occupants not a change of season. When all occupants of a cabin move out and new move in, that is initial occupancy.

40. In paragraph (17)(c) on fire extinguishers, must the ALH operator comply with all the requirements of subdivision L?

Certain requirements in subdivision 4/L would not apply as they would in a shop or work area. However, the rules that require checking and maintenance of the extinguishers do apply to all extinguishers on the ALH site. Mostly, items that might not apply would be for extinguishers inside private living space. Then paragraphs 5 and 6 about keeping the area around extinguishers clear would fall under the exemption in paragraph 1120(1)(g). All other parts of 4/L apply.

41. There was confusion around fire extinguishers and the hose option [(17)(c) and Note]. What if a hose can reach all points of the site? Does it matter that a worker would have to run 500 feet to turn the hose on?

The rule says the hose substitutes for extinguishers. It does not say the conditions change because of that substitution. Thus, occupants should never have to travel more than 50 feet to get to the point where they turn on the water. This could be the end of the hose if the water is always on but most often will be the connection point.

OTHER

42. How will the 500 feet livestock rule be applied when a neighbor's property line is within 500 feet of an established housing unit and the neighbor chooses to have livestock on their property?

The rule uses and defines the term "livestock operation." Thus, if your neighbor just has a few animals at pasture, there is no issue. However, if the neighbor starts a confined feeding operation or other "livestock operation," Oregon OSHA would have to assess the particular circumstances to see if there was a violation. Among the issues would be significant numbers of vectors like flies, waste runoff or collection, and any other issues that could impact the health of the ALH occupants. This requirement is very case-specific and a variance might be one solution. However, operators cannot simply ignore the case when a neighbor's actions create a problem for ALH occupants. Working with the OR-OSHA technical staff would be the best approach.(16)(i)

43. Is full time employee housing that is rented from the employer subject to ALH rules?

Oregon OSHA's ALH rules cover all housing provided in connection with employment.

See paragraph (1)(d) of the rule. It is the registration requirement that has a more narrow application.

44. What is the rule on utility payments such as electricity, gas, water, garbage, sewer, etc? Can the owner/manager charge for some utilities such as heating bills to offset operational costs?

OAR 437-004-1120 (3) Charging occupants for required services, the rule states "Operators may not charge for services. Although "services" are not specifically defined in the rule, we interpret "services" broadly to include utilities such as electricity, gas, water, garbage, and sewer in the facility and also includes the provision of heat.

45. Can the owner/manager charge a cleaning/security deposit, which is refunded to the tenant at the end of their stay as long as the unit is clean and items such as fire extinguishers, appliances, and furniture have not been damaged or stolen?

The ALH rules do not address whether or not you can charge your occupants cleaning/security deposits.

46. During BOLI's presentation, there was some discussion around their PPE requirements and ours. Does OSHA's PPE rule revision (who pays?) affect BOLI's requirement (or vice versa)?

The rules complement each other. BOLI's rule does not affect our rule.

47. Is employee provided housing allowed?

Yes, but it must be over and above the housing required by the camp occupancy permit. It must be entirely the occupant's choice to live in their own housing instead of what we require the ALH operator to provide. If the occupant(s) move into their own housing, the ALH operator cannot place people in the vacant units as that would cause the facility to exceed its permitted limit.

48. Is there a number of occupants in a single area that makes the area a dormitory?

No. That determination is more a product of the layout and use characteristics of the area.

49. What is adequate lighting in the sleeping/living areas?

Paragraph (6)(l) gives the basic lighting requirement. If the unit meets that and meets the requirement for 10% window space we must presume the lighting is adequate. (16)(p)

50. Does 1120(12)(j) require a waste containers by each toilet or in each toilet stall?

No.