EXECUTIVE ORDER NO. 20-58

ENHANCED HEALTH AND SAFETY REQUIREMENTS FOR CERTAIN EMPLOYER-PROVIDED HOUSING DURING AGRICULTURAL OFF SEASON IN RESPONSE TO CORONAVIRUS (COVID-19) OUTBREAK

Since January 2020, the State of Oregon has been engaged in responding to the public health threat posed by the novel infectious coronavirus (COVID-19). As the threat escalated, the State's response elevated to meet the threat. On March 8, 2020, I declared a state of emergency pursuant to ORS 401.165 *et seq.*, and directed certain immediate response actions.

During March and April 2020, as COVID-19 continued to spread around the world, I took a series of actions aimed at slowing the spread of the virus, and to mitigate the public health and economic impacts of the pandemic. Those actions helped prevent and control the spread of COVID-19 in Oregon, and increased the state's preparedness to live with this virus until a vaccine or cure can be found.

Following the success of these early measures, in late April and early May 2020, I began to take steps to ease the restrictions that had been imposed in March and April. I signed executive orders directing the State to begin a data-driven, phased reopening. This process has been gradual and cautious. In response to rising case numbers during the summer, I imposed additional measures, including face-covering requirements for individuals. Outbreaks and community spread in certain counties also have required us to reimpose restrictions at times, to maintain public health and safety. Although Oregon has been able to cautiously reopen sectors of its economy, this virus remains very dangerous. As of today, there are at least 38,406 cases and 635 deaths in Oregon, with more than 8 million cases and 222,000 deaths from COVID-19 nationwide. Continued work is necessary to bring virus levels down to where it is safe for K-12 schools across the state to fully reopen for in-person instruction, among other critical priorities.

It is by now very clear that this virus has had a disproportionate impact on communities of color. We have also seen outbreaks spread quickly in crowded housing, and in settings where workers live together and work in close quarters. Due to the convergence of these factors, agricultural Labor Housing and Related Facilities and Labor Camps are an area of particular concern when it comes to the impacts and spread of COVID-19. While the population of workers occupying this housing is lower during the off season, there are still a variety of critical farm labor activities that occur during the October to April timeframe. The health and safety requirements set forth in this Executive Order mirror the requirements that have been in place for the last six months, and are intended to help preserve the health

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and safety of these workers, their employers, and the surrounding communities, and to allow this critical work to go forward in a safe manner.

NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

Pursuant to my emergency powers under ORS 401.168, ORS 401.175, ORS 401.188, ORS 401.192, and ORS 433.441, and pursuant to the emergency declaration made in Executive Order 20-03, I am issuing the following directives:

1) Applicability:

   a) The requirements set forth in this Executive Order apply to all temporary worker housing or other employer-provided housing if such housing is currently covered by OAR 437-004-1120 "Agricultural Labor Housing and Related Facilities" or by CFR 1910.142 and OAR 437-002-0142 "Labor Camps."

   b) The requirements set forth in this Executive Order do not apply to:

      i) Hotels or motels that provide similar housing commercially to the public on the same terms as they do to workers. This includes hotels or motels that have been temporarily closed due to the current emergency, but that restore their operations on a limited basis to allow employers to house workers in the facility, provided that the following conditions are met:

         (1) The hotel/motel facility must be licensed and meet the other requirements in Chapter 333, Division 29, Travelers' Accommodation.

         (2) The rooms provided must maintain the configuration typically offered to travelers (while this does not preclude changing the arrangement of beds, it does preclude the addition of bunk beds or other measures to increase the occupancy of the room).

         (3) Room assignment must ensure privacy and separation for families and to unrelated occupants of different genders.

         (4) The occupied rooms must continue to receive regular services for cleaning and for the laundry of linens used by guests.

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(5) The rooms must not be modified to include kitchen facilities not already part of the room as previously available to guests. Note: Because such facilities are exempt from this rule, the presence of a pre-existing kitchenette or other food preparation facility does not require the square footage requirements of the rule.

ii) Accommodations subject to licensing as manufactured dwelling parks, organizational camps, traveler's accommodations or recreation vehicle parks and open to the general public on the same terms.

iii) Manufactured homes or dwellings being moved regularly from place to place because of the work when at parks or camps meant for parking mobile vehicles and open to the general public on the same terms.

2) Definitions:

a) "Housing Operator" means an operator of housing covered by this Executive Order.

b) "Occupant" means a person residing in housing covered by this Executive Order, whether that person is an employee of the housing operator or not.

3) Physical Distancing Officer: Housing operators must identify one or more individuals who will be responsible for identifying appropriate physical distancing and sanitation measures and ensuring that such measures are implemented.

4) General Physical Distancing Requirements. Housing operators must plan and implement housing operation activities so that unrelated occupants will not need to be within 6 feet of each other. In the event that the housing operator determines and can demonstrate that it is impossible to structure activities to avoid such contact, contact within 6 feet must be minimized and the housing operator must implement appropriate additional sanitation and protective measures (including the use of masks, face shields, or face coverings when appropriate by the affected employees).

5) Toilets: Having a limited number of toilet facilities can encourage crowding, which in turn promotes the spread of COVID-19. Accordingly, during this emergency, housing operators must:

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a) Provide one toilet facility for each 10 occupants or fraction thereof. If the housing operator can demonstrate that market availability prevents immediate compliance with this provision, the operator must provide as many toilet facilities as possible until the ratio has been satisfied.

b) Portable toilets or chemical toilets must be sanitized three times a day, and plumbed common-use toilet facilities must be sanitized at least twice a day, or more often, if necessary.

6) Beds: Housing operators must ensure the following:

a) Each sleeping room without double bunk beds must have at least 50 square feet of floor space per occupant. Where there are double bunk beds for related individuals, provide 40 square feet per occupant. Do not use triple bunks, and do not allow the use of double bunk beds by unrelated individuals.

b) Beds must be arranged so that at least one of the following is true:

i) Beds and cots must be spaced at least six (6) feet apart between frames in all directions and arranged so that occupants sleep head to toe; OR

ii) Beds and cots must be separated by a bed length, floor to near ceiling temporary non-permeable barrier (for example, using plexiglass, heavy plastic, lightweight wood sheeting, etc.) placed perpendicular to wall such that a 28-inch minimum aisle remains available to the occupant of each bed; OR

iii) A housing operator may implement other effective engineering and/or administrative controls to modify this requirement with prior approval by Oregon OSHA.

c) If a housing operator finds it difficult to space the beds or to provide an impermeable barrier, then the housing operator is allowed to devise an effective engineering or administrative control to provide equivalent protection. Housing operators who devise an alternate protective scheme must have it approved by Oregon OSHA before implementation

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7) High-contact areas/sanitation:

   a) Housing operators must clean the facilities and equipment before each occupancy. They must also ensure that high-touch or high-contact surfaces and areas in common use facilities are sanitized at least two times daily (if housing occupants are assigned this task, it must be treated as a work assignment rather than a voluntary action). Such surfaces include, but are not limited to: door handles, controls and adjustable shower heads, paper towel dispensers, handles on portable containers, cans, garbage bins and dumpsters.

   b) Housing operators must provide cleaning materials at no cost to occupants, allowing occupants to clean and sanitize their living areas regularly.

8) Requirements if a resident in ag housing contracts COVID

   a) The housing operator must comply with existing law regarding communicable disease reporting, including OAR 333-018- 0000, Who Must Report and OAR 333-018-0015, What To Report And When.

   b) The housing operator must implement policies and procedures to identify and isolate sick occupants, including:

      i) Suspected COVID-19 cases must be isolated with sleeping, eating, and bathroom accommodations that are separate from others. Sick people should be isolated from others, have adequate hygiene facilities, and be taken care of by only one person in the household. If such isolation is not possible, follow guidance provided by the Oregon Health Authority or the local public health authority to make appropriate arrangements.

      ii) Confirmed COVID-19 cases must be isolated and only housed with other confirmed cases and must have separate bathroom, cooking and eating facilities from people who have not been diagnosed with COVID-19. Sick people should be isolated from others, have adequate hygiene facilities, and be taken care of by only one person in the household. If such isolation is not possible, follow guidance provided by the Oregon Health Authority or the local public health authority to make appropriate arrangements.

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iii) The housing operator must ensure that food and water is provided and monitor the safety of occupants in isolation at the operator's facility or ensure that these services are provided if isolated at another facility.

9) Directives not exclusive: The directives in this Executive Order are in addition to any health and safety regulations governing the housing covered by this Executive Order that may exist or be promulgated while this executive order is in effect.

10) Interpretation: It is my intent that the requirements of this executive order be interpreted consistently with the comparable requirements in OAR 437-001-0749, which expires October 24, 2020. To that end, I delegate to Oregon OSHA authority to issue guidance, frequently asked questions, and respond to and resolve inquiries regarding this Executive Order, as needed. Any interpretive or enforcement guidance issued by Oregon OSHA in relation to the expiring OAR 437-001-0749 will remain in effect for the duration of this executive order.

11) Enforcement. This Executive Order and any agency guidance issued by Oregon Occupational Safety and Health Administration (OR-OSHA) pursuant to this Executive Order at the Governor's direction are public health laws, as defined in ORS 431A.005, and may be enforced as permitted under ORS 431A.010. In addition to any other penalty that may be imposed under applicable laws, any person, business, or entity found to be in violation of this Executive Order or guidance issued pursuant to this Executive Order also is subject to the penalties described in ORS 401.990. These enforcement mechanisms are in addition to any other private rights of action or other enforcement mechanism, including but not limited to enforcement by Oregon OSHA that may exist in statute or at common law, or under federal law.

12) Discretion; No Right of Action. Any decision made by the Governor pursuant to this Executive Order is made at her sole discretion. This Executive Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of Oregon, its agencies, departments, or any officers, employees, or agents thereof.

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13) Legal Effect. This Executive Order is issued under the authority conferred to the Governor by ORS 401.165 to 401.236. Pursuant to ORS 401.192(1), the directives set forth in this Executive Order shall have the full force and effect of law, and any existing laws, ordinances, rules and orders shall be inoperative to the extent they are inconsistent with this exercise of the Governor's emergency powers.

14) Effective Dates. This Executive Order is effective immediately, and remains in effect until April 30, 2021, unless extended or terminated earlier by the Governor.

Done at Salem, Oregon this 23rd day of October, 2020.

Kate Brown

Kate Brown
GOVERNOR

ATTEST:

Bev Clarno

Bev Clarno
SECRETARY OF STATE

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