



**DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION**

MEMORANDUM

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DATE: March 13, 2025

TO: Andrew Stolfi, Director, Department of Consumer & Business Services
Renée Stapleton, Administrator, Oregon Occupational Safety & Health Div.

FROM: Kyle J. Martin, Attorney-in-Charge, Business Activities Section
Greg Santiago, Assistant Attorney General, Business Activities Section

SUBJECT: Advice on DCBS/Oregon OSHA rulemaking authority for Agricultural Labor
Housing
DOJ File No. 440500-GB0168-25

QUESTION PRESENTED

Whether the Department of Consumer & Business Services (DCBS) has the authority to adopt agricultural labor housing rules that apply to “single, isolated dwelling[s] occupied solely by members of the same family, or by five or fewer unrelated individuals”?

SHORT ANSWER

Yes. We have previously advised that the Oregon Occupational Safety & Health Division (Oregon OSHA) under its predecessor name, has authority under the Oregon Safe Employment Act (OSEA) to regulate farmers, farm labor contractors and others who provide living quarters or shelter for employees.¹ A copy of this prior advice is attached for your reference. There have been no changes in the law since then that alter that authority. Consistent with that advice and the statutory text and context of the OSEA, we conclude that the DCBS director² has authority to adopt agricultural labor housing rules that apply to “single, isolated dwelling[s] occupied solely by members of the same family, or by five or fewer unrelated individuals.”

ANALYSIS

A state agency can act only to the extent it has been granted express or implied authority to do so by the legislature.³ Through the OSEA, the legislature has expressly granted the director jurisdiction over every place of employment in the state and authority to enforce and administer all laws and rules related to the occupational health and safety over every employee in such places of employment.⁴ The OSEA provides the director with broad rulemaking authority to carry out its provisions under ORS 654.025(2), (5)⁵ and ORS 654.035.⁶

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Analysis of an agency's authority is dependent upon the specific statutory language at issue. To interpret a statute, we follow the methodology for determining legislative intent that is set forth in *PGE v. Bureau of Labor and Industries*, as modified by *State v. Gaines*.⁷ The first step is to examine the text and context of a statute.⁸ The second step is to consider pertinent legislative history. Legislative history may be used, for example, to confirm or illuminate the plain meaning of the text, or to indicate a latent ambiguity, but cannot displace the plain meaning of the text if only one interpretation is possible.⁹

The text and context of the OSEA shows that the director has statutory authority to adopt agricultural labor housing rules that apply to living quarters or shelter provided for employees, including single, isolated dwelling[s] occupied solely by members of the same family, or by five or fewer unrelated individuals. ORS 654.025 provides that the director's jurisdiction is over every place of employment in this state and grants the director broad rulemaking authority to carry out the OSEA.¹⁰ The OSEA defines "place of employment" broadly to include "[e]very place where there is carried on any process, operation or activity related, either directly or indirectly, to an employer's industry, trade, business or occupation, including a labor camp, wherever located, provided by an employer for employees or by another person engaged in providing living quarters or shelters for employees."¹¹ The only exceptions the OSEA provides to the definition of "place of employment" are "any place where the only employment involves nonsubject workers employed in or about a private home" and "any corporate farm where the only employment involves the farm's family members, including parents, spouses, sisters, brothers, daughters, sons, daughters-in-law, sons-in-law, nieces, nephews or grandchildren."¹²

The OSEA does not contain a size restraint on labor camps that are considered places of employment. Thus, under the OSEA, agriculture or farm labor camps with "single, isolated dwellings occupied solely by members of the same family, or by five or fewer unrelated individuals" are "places of employment" and subject to the director's jurisdiction and rulemaking authority. It is also noteworthy that the OSEA "place of employment" definition specifically includes "a labor camp, wherever located"¹³ which provides context that the term "place of employment" as applied to labor camps is broad and intended to be inclusive for purposes of the OSEA.

As previously mentioned, the OSEA does contain an agriculture related exception to the director's jurisdiction. In cases of corporate farms where the only employment involves the farm's family members, these types of farms are not considered "places of employment" for purposes of the OSEA and not subject to the director's jurisdiction.¹⁴ This is the only agricultural related exemption to the director's jurisdiction and there is no exception in the OSEA for agricultural labor camps or housing.

A review of the legislative history concerning House Bill (HB) 2402 (1999),¹⁵ which added the corporate family farms exemption into the OSEA, does not indicate that the legislature intended to add any exemption for "farmworker camps" from the director's jurisdiction or rulemaking authority. HB 2402 (1999) actually expanded the director's authority over

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agricultural labor camps as in addition to exempting corporate family farms from the OSEA definition of “places of employment” this bill added the phrase “wherever located” into the OSEA definition of “places of employment” so that it specifically refers to a labor camp “wherever located.”¹⁶ These changes show legislative intent for the OSEA to have jurisdiction over agricultural labor camps wherever located except for those that are corporate family farms exempt under ORS 654.005(8)(b)(B).

The other agricultural related provisions of the OSEA provide additional context in that none of them limit the director’s broad authority to promulgate rules to regulate occupational safety and health under the OSEA; specifically related to agricultural farm labor camps that are single, isolated dwellings occupied solely by members of the same family, or by five or fewer unrelated individuals. Those provisions only limit Oregon OSHA from conducting inspections or investigations of employers engaging in agricultural activities that have 10 or fewer employees under specified conditions.¹⁷ Those provisions do not limit the director’s rulemaking authority over these employers under the OSEA, but rather only exempt them from inspection if they meet the specified criteria. These employers are still subject to the director’s enforcement of rules adopted under the OSEA if they do not meet the statutory exemption criteria.

The OSEA also contains requirements for agricultural employers to provide sanitation facilities for workers harvesting food crops,¹⁸ and requirements for agriculture employers to provide information, personal protective equipment, and training to employees handling hazardous chemicals.¹⁹ These requirements do not limit the director’s jurisdiction or rulemaking authority. Thus, these other provisions in the OSEA provide context that the legislature has considered the application of the OSEA to agriculture employers and intended to give the director broad jurisdiction and rulemaking authority over agriculture employers, which include agriculture labor housing except for the limited exceptions in ORS 654.005(8)(b)(B) and 654.172(1).

A separate set of statutes, ORS 658.705 to 658.850, sets out requirements for the registration and operation of “farmworker camps,” but these statutes do not restrict the Director’s authority under the OSEA. While ORS 658.705(7) defines “farmworkers camps” for purposes of registration under ORS 658.705 to 658.850 to exclude “single, isolated dwellings occupied solely by members of the same family, or by five or fewer unrelated individuals,” this definition does not apply to the OSEA nor to the definition of “places of employment” in the OSEA.²⁰ Furthermore, ORS 658.705 to ORS 658.850 reference the OSEA multiple times and require farmworker camps to follow the OSEA and regulations adopted pursuant to the OSEA as a requirement for registration.²¹ These references to the OSEA in ORS 658.705 to 658.850 further indicate an intent by the legislature not to apply the provisions in ORS 658.705 to 658.850 to limit the application of OSEA nor the director’s rulemaking authority under the OSEA.

In conclusion, we have previously advised that Oregon OSHA, under its predecessor name, has the authority under the OSEA to regulate farmers, farm labor contractors and others who provide living quarters or shelter for employees.²² There have been no changes in the law

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since our prior advice that alter that authority. The farmworker camp registration statutes in ORS 658.705 to 658.850 do not alter or limit the director's authority to regulate agriculture labor housing under the OSEA. Thus, consistent with our prior advice and the above analysis, under the OSEA, we conclude that the director has broad authority to adopt rules related to agricultural labor housing, including for single, isolated dwelling[s] occupied solely by members of the same family, or by five or fewer unrelated individuals.

This memorandum is prepared solely for the Department of Consumer and Business Services' use and benefit. It cannot be relied upon as advice by anyone other than a state officer.

¹ Letter of Advice to Sen. Larry Hill (OP-6290), 1989 WL 439838 (Jun. 7, 1989). Copy attached to this memo. This opinion request concerned the regulatory authority of the then-Accident Prevention Division of the Department of Insurance & Finance over farm labor camps. The Accident Prevention Division and the Department of Insurance & Finance have since been renamed as the Oregon Occupational Safety & Health Division (Oregon OSHA) and the Department of Consumer & Business Services respectively.

² The OSEA, ORS 654.001 to 654.295, 654.412 to 654.423, 654.750 to 654.780 and 654.991, contains references to the director of the Department of Consumer and Business Services. We use this statutory reference in this memo but note that this term is interchangeable with Oregon OSHA as the director, pursuant to ORS 654.025(5), has delegated their powers and responsibilities under the OSEA to Oregon OSHA as stated in OAR 437-001-0020.

³ "An agency is a creature of statute. It has no inherent power, but only such power and authority as has been conferred upon it by its organic legislation. * * * This power includes that expressly conferred by statute as well as such implied power as is necessary to carry out the power expressly granted." *Ochoco Constr., Inc. v. Dept. of Land Conservation & Dev.*, 295 Or 422, 426 (1983). In prior case law, the Oregon Court of Appeals has explicitly applied this principle to the rulemaking authority within the OSEA. *Or. Occupational Safety & Health Div. v. Don Whitaker Logging*, 123 Or App 498, 500-01 (1993) (applying *Ochoco* and finding that the Workers' Compensation Board lacked statutory authority to award attorney's fees or give equitable relief in an Oregon OSHA contested case).

⁴ ORS 654.025(1) provides: The Director of the Department of Consumer and Business Services is vested with full power and jurisdiction over, and shall have such supervision of, every employment and place of employment in this state as may be necessary to enforce and administer all laws, regulations, rules, standards and lawful orders requiring such employment and place of employment to be safe and healthful, and requiring the protection of the life, safety and health of every employee in such employment or place of employment.

⁵ ORS 654.025(2) provides: (2) The director and the Workers' Compensation Board may make, establish, promulgate and enforce all necessary and reasonable regulations, rules, standards, orders and other provisions for the purpose of carrying out their respective functions under ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780, notwithstanding any other statutory provisions which may be to the contrary. Nothing in ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780, however, shall authorize or require medical examination, immunization or treatment for those who object thereto on religious grounds, except where such is necessary to protect the health or safety of others.

ORS 654.025(5) provides: The director and the board may do and perform all things, whether specifically designated in ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780 or in addition thereto, which are necessary or convenient in the exercise of any power, authority or jurisdiction conferred upon them by ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780.

⁶ ORS 654.035 provides the authority for the agency to adopt by rule reasonable standards of methods, processes, work practices, etc. to render every employment or place of employment safe and healthful or for the protection of the life, safety, and health of employees. *See also Assn of Oregon Loggers, Inc. v. Dept. of Ins. & Finance*, 130 Or App 594, 600 (1994) (finding that ORS 654.025 confers on Oregon OSHA extremely broad delegated authority to adopt reasonable and necessary rules consistent with the OSEA but notes that Oregon OSHA cannot supplement the

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OSEA through rulemaking.); *Hood Technology Corp. v. Or. Occupational Safety & Health Div.*, 168 Or App 293, 304 (2000) (commentating that under ORS 654.025(2) the director has broad plenary rulemaking authority); *Or. Occupational Safety & Health Div. v. United Parcel Service, Inc.*, 312 Or App 424, 432-33 (2021) (noting that the OSEA gives the director broad general rulemaking authority).

⁷ *PGE v. BOLI*, 317 Or 606, 610-12 (1993); *State v. Gaines*, 346 Or 160, 171-73 (2009).

⁸ *Gaines*, 346 Or at 171-72.

⁹ ORS 174.020; *Gaines*, 346 Or at 172-73. If the legislature's intent still remains unclear after examining the text, context and legislative history, we look to maxims of statutory construction to resolve the remaining uncertainty. *PGE*, 317 Or at 612; *Gaines*, 346 Or at 172.

¹⁰ ORS 654.025(1) & (2).

¹¹ ORS 654.005(8)(a)(B).

¹² ORS 654.005(8)(b).

¹³ ORS 654.005(8)(a)(B).

¹⁴ ORS 654.005(8) defines (a) "Place of employment" includes:

(A) Every place, whether fixed or movable or moving, whether indoors or out or underground, and the premises and structures appurtenant thereto, where either temporarily or permanently an employee works or is intended to work; and

(B) Every place where there is carried on any process, operation or activity related, either directly or indirectly, to an employer's industry, trade, business or occupation, including a labor camp, wherever located, provided by an employer for employees or by another person engaged in providing living quarters or shelters for employees.

(b) "Place of employment" does not include:

(A) Any place where the only employment involves nonsubject workers employed in or about a private home; and

(B) Any corporate farm where the only employment involves the farm's family members, including parents, spouses, sisters, brothers, daughters, sons, daughters-in-law, sons-in-law, nieces, nephews or grandchildren.

¹⁵ Or Laws 1999, ch 433, available at:

https://www.oregonlegislature.gov/bills_laws/lawsstatutes/1999orLaw0433.html.

¹⁶ ORS 654.005(8)(a)(B) Every place where there is carried on any process, operation or activity related, either directly or indirectly, to an employer's industry, trade, business or occupation, including a labor camp, **wherever located**, provided by an employer for employees or by another person engaged in providing living quarters or shelters for employees. (**emphasis added** to delineate statutory changes made by HB 2402 (1999)).

¹⁷ ORS 654.172(1) provides: (1) Notwithstanding any other provision of the Oregon Safe Employment Act, an employer engaged in agricultural activities with 10 or fewer agricultural employees is exempt from inspection or investigation under ORS 654.067 under the following conditions:

(a) There has not been a complaint filed pursuant to ORS 654.062 or, within the preceding two-year period, an accident at the employer's agricultural place of employment resulting in death or serious disabling injury from violation of the Oregon Safe Employment Act or rules adopted pursuant thereto.

(b) The employer and principal supervisors of the agricultural employees annually attend four hours of instruction on agricultural safety rules and procedures at a course conducted or approved by the Director of the Department of Consumer and Business Services.

(c) The agricultural activities are inspected once every four years by an individual acting in a safety consultant capacity, and all violations found upon inspection are remedied within 90 days of the date of inspection.

¹⁸ ORS 654.174.

¹⁹ ORS 654.750 to 654.780.

²⁰ The "Farmworker camp" definition in ORS 658.705(7) is not applicable to the OSEA because the definitions contained in ORS 658.705 are by the wording in the statute only applicable to ORS 658.705 to 658.850. ORS 658.705 specifically provides: **As used in ORS 658.705 to 658.850** * * * (7) "Farmworker camp" means any place or area of land where sleeping places, manufactured structures or other housing is provided by a farmer, farm labor contractor, employer or any other person in connection with the recruitment or employment of workers to work in the production and harvesting of farm crops or in the reforestation of lands, as described in ORS 658.405.

"Farmworker camp" does not include:

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- (a) A single, isolated dwelling occupied solely by members of the same family, or by five or fewer unrelated individuals; or
- (b) A hotel or motel which provides housing with the same characteristics on a commercial basis to the general public on the same terms and conditions as housing is provided to such workers. (**emphasis added**)

It is worth noting that the housing registration requirements in OR-OSHA's rules for Agricultural Labor Housing and Related Facilities apply to the same operators of labor housing as for farmworker camps under the above definition in ORS 658.705(7). *See* OAR 437-004-1120(2)(a) and (5)(a)(A),(B).

²¹ ORS 658.755(1)(b), (2)(d); ORS 658.785(4); ORS 658.825; and ORS 658.827.

²² OP-6290, 1989 WL 439838.



DEPARTMENT OF JUSTICE

ECONOMIC AFFAIRS DIVISION

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June 7, 1989

The Honorable Larry Hill
State Senator
S-205 State Capitol
Salem, OR 97310

Re: Opinion Request OP-6290

Dear Senator Hill:

You have asked three questions about the interrelationship of federal and state occupational safety and health laws and the extent of authority possessed by the Accident Prevention Division (APD), Department of Insurance and Finance (DIF), to regulate and enforce certain health and safety standards. We set forth your questions and short answers, followed by a discussion.

1. How does federal occupational safety and health law limit state regulation of farm labor camps, and provide funding for such state regulation?

Federal occupational safety and health law preempts state regulation of similar concerns. If, however, states choose to obtain federal approval of plans to enforce occupational safety and health standards in a manner at least as effective as federal standards, their sovereignty in such matters is restored. Thus, states with federally approved plans, such as Oregon, may choose to regulate more expansively than federal standards require. Federal funding, however, is restricted to the approved plan and subject to specific limitations contained in federal law.

2. Does APD have authority to regulate and enforce health and safety standards with respect to farmers, farm labor contractors and others who do not actually provide living quarters or shelter for employees?

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APD has little, if any, oversight over a person who does not provide living quarters or shelter for employes, unless that person is an employer (see ORS 654.005(5)) or an employer's representative, OAR 437-01-015(6). In those instances, APD may regulate the nature of the employment as well as the condition of any place of employment.

3. Does APD have authority to regulate farmers, farm labor contractors and others who do provide living quarters or shelter for employes?

If the farmer, labor contractor or other person provides living quarters or shelter for employes, APD may inspect and regulate these premises. ORS 654.005(8). Additionally, APD may seek injunctive or other legal relief to enforce its health and safety orders issued consistent with its labor camp regulations. ORS 654.025(5). See OAR 437-147-003 to 437-147-075. APD also has authority to assess civil penalties against employers who violate health and safety standards. These civil penalties generally are unavailable against nonemployers. See, e.g., ORS 654.020(1); 654.071(1); 654.086; 654.991(1).

Farmers, whether or not they provide living quarters for employes, also are subject to specific safety and health standards governing agriculture operations. See OAR 437-81-001 to 437-81-2943. Oregon, however, generally provides no funding to enforce these regulations with respect to farm operations with ten employes or less that do not have a labor camp.

Discussion

A. Impact of Federal Law on State Regulation of Farm Labor Camps -- Federal Funding for State Regulation

1. Occupational Safety and Health Act of 1970

Your first question concerns the impact of federal law on APD regulation. To address that question, we begin with a brief review of the Occupational Safety and Health Act of 1970 (OSHA). Pub L No. 91-596, 84 Stat 1590 (1970). Congress' adoption of OSHA significantly altered the regulation of health and safety conditions for workers across the nation. Now codified at 29 USC §§ 651-678, this legislation is designed, among other things, "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions * * *." 29 USC § 651(b).

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Under 29 USC § 655, the Secretary of Labor must promulgate national health and safety standards related to employment. Standards adopted pursuant to this directive presently appear inter alia in 29 CFR Ch XVII, Part 1910 (July 1, 1988) and Part 1928 (July 1, 1987). They include standards for temporary labor camps, 29 CFR § 1910.142, and agricultural operations, 29 CFR § 1928.21.

OSHA regulates employers. Employers are persons engaged in a business affecting commerce who have employes, other than the United States or any state or political subdivision of a state. 29 USC § 652(5). "Business" includes any commercial or non-commercial activity affecting commerce and involving the employment of one or more employes. 29 CFR § 1975.3(d) (July 1, 1987). Because of these expansive terms, OSHA's application is extremely broad. See Lemert & Sours, What The Employers' Counsel Should Know About The Occupational Safety & Health Act of 1970, 10 Law Notes 41 (June 1974). By its terms, however, OSHA applies only to the regulation of health and safety concerns arising from employment. See 29 USC § 651(b). Thus, for example, OSHA provides jurisdiction to regulate only farm labor housing that is a condition of employment, not housing merely available to workers. Frank Diehl Farms v. Secretary of Labor, 696 F2d 1325, 1329-31 (11th Cir 1983).

2. Federal Preemption

Where the Secretary has adopted standards, those standards preempt state regulation in the same area. See, e.g., United Steelworkers of America v. Auchter, 763 F2d 728, 734 (3rd Cir 1985); N.J. State Chamber of Commerce v. State of N.J., 653 F Supp 1453, 1464 (D NJ 1987) (OSHA consistently interpreted to bar exercise of state jurisdiction over issues addressed by OSHA standards, "even where the state law may arguably be more stringent or where OSHA has not explicitly addressed a provision"); Five Migrant Farmworkers v. Hoffman, 136 NJ Super 242, 345 A2d 378, 381-82 (1975) (provisions of OSHA preempted provisions of New Jersey's Seasonal Farm Labor Act, negating duty and authority of state, except where otherwise allowed by federal law, to make pre-occupancy inspections of farm labor camps); accord 29 CFR § 1901.2 (July 1, 1988). OSHA, however, does not preempt independent state statutory schemes related to health or safety where federal standards have not been adopted, 29 USC § 667(a), or where the "employment" requirement of OSHA is not satisfied. See N.J. State Chamber of Commerce v. Hughey, 774 F2d 587, 594-96 (3rd Cir 1985) (state environmental reporting law preempted by OSHA only where (1) preemption is express; (2) it is impossible to comply both with state law and with federal

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law; or (3) state law is an obstacle to effort under OSHA to promote safe and healthful working conditions); Township of Greenwich v. Mobil Oil Corp., 504 F Supp 1275, 1279-80 (D NJ 1981) (township's right to enforce zoning ordinance and construction code against refinery not preempted by OSHA); Harrington v. Dept. of Labor and Industry, 163 NJ Super 595, 395 A2d 533, 535-36 (1978) (New Jersey Drinking Water and Field Toilet Act not preempted by OSHA).

3. State Enforcement of Occupational Safety and Health

OSHA was not designed to remove the states from enforcement of occupational health and safety. OSHA provides that "[n]othing in this chapter shall prevent any State agency or court from asserting jurisdiction under State law over any occupational safety or health issue with respect to which no standard is in effect under section 655 of this title." 29 USC § 667(a). OSHA also permits states "to assume responsibility for development and enforcement" of occupational safety and health issues where federal standards have been promulgated by submitting plans for state enforcement to the Secretary of Labor. 29 USC § 667(b).¹

29 USC § 667 does not confer federal power on a state that adopts an approved plan. Instead, it merely removes federal preemption so that the state may exercise its own sovereign powers. See, e.g., American Federation of Labor, Etc. v. Marshall, 570 F2d 1030, 1033 (DC Cir 1978); Occ. Saf. & Health Div. v. St. Bd. of Control, 234 Cal Rptr 661, 667 (Cal App 3 Dist 1987); see also 29 USC § 651(b)(11). So long as the state regulates pursuant to an approved plan, the state may choose to be more stringent than the corresponding federal standards. See Occ. Saf. & Health Div. v. St. Bd. of Control, *supra*; United Air Lines v. Occupational Safety, Etc., 32 Cal 3d 762, 187 Cal Rptr 387, 654 P2d 157, 164 (1982); Skyline Homes, Inc. v. Occupational Safety & Health Appeals Bd., 120 Cal App 3d 663, 671, 174 Cal Rptr 665, 673 (1981). Because OSHA requires a state to provide only a program "at least as effective" as that maintained by the federal government, 29 USC § 667(c)(2), it also apparently permits a state with an approved plan to grant to its own occupational safety and health agency more extensive authority than that granted by OSHA. See Occ. Saf. & Health Div. v. St. Bd. of Control, *supra*; United Air Lines v. Occupational Safety, Etc., *supra*. When applicable to interstate commerce, however, state regulation must be "required by compelling local conditions and [may] not unduly burden interstate commerce." 29 USC § 667(c)(2).

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4. Federal Funding of State Enforcement

The Secretary of Labor may "make grants to the States to assist them in administering and enforcing programs for occupational safety and health contained in State plans approved by the Secretary." 29 USC § 672(g). This financial assistance may not exceed 50 percent of the total cost to a state for its enforcement of an approved plan. Id. Only programs approved by the Secretary may receive funding. Id.; see also OSHA Instruction CPL 2.51D CH-3, July 13, 1988.

Since 1977, Congress has denied federal funding of OSHA enforcement activity concerning small agricultural employers. See, e.g., Pub L No 94-439, 90 Stat 1418 (1976) (Department of Labor - Department of Health, Education and Welfare Appropriation Act for Fiscal Year 1977 (1977 Appropriation Act)). Appropriation bills since the 1977 Appropriation Act have specified that no funds appropriated to the Occupational Safety and Health Administration may be "obligated or expended to prescribe, issue, administer, or enforce any standard, rule, regulation, or order under the [OSHA] which is applicable to any person who is engaged in a farming operation which does not maintain a temporary labor camp and employs 10 or fewer employees * * *." Pub L No 95-480, 92 Stat 1567, 1569 (1978).²

5. Oregon Safe Employment Act

Before 1970, the State of Oregon regulated employment safety. See Miller v. Georgia-Pacific Corp., 294 Or 750, 752, 662 P2d 718 (1983); Hillman v. North. Wasco Co. PUD, 213 Or 264, 287-96, 323 P2d 664 (1958) (historical summary), overruled on other grounds, Maulding v. Clackamas County, 278 Or 359, 563 P2d 734 (1977). Accordingly, it reacted to the adoption of OSHA through legislation that enabled the state to obtain federal approval of a state plan for continued enforcement of occupational safety and health.

On October 18, 1971, Governor McCall designated the then-Workmens' Compensation Board as the responsible agency for development and administration of an approved plan. Minutes, Senate Committee on Labor (SB 44), April 16, 1973, at 9 (Statement of George A. Moore, Member of the Workmens' Compensation Board). The state developed a plan, which the federal government approved on December 22, 1972. Id. at 10. In 1973, the Oregon legislature extensively revised ORS chapter 654 to provide implementing legislation for the plan. Id. See Or Laws 1973, ch 833, §§ 1-38 (now codified at ORS 654.001 to 654.295, 654.750 to 654.780 and 654.991 as the Oregon Safe Employment Act (OSEA)).

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ORS 654.003(4) empowers the DIF director³ and his designees⁴ to enforce "all laws, regulations, rules and standards adopted for the protection of the life, safety and health of employes." The director has delegated to APD the principal responsibility for oversight and enforcement. OAR 437-01-020. In meeting these OSEA obligations, APD (and the director) must satisfy the OSHA plan requirements. ORS 654.003(6).

6. Summary

In sum, OSHA governs the relationship between the state and federal governments in regulating occupational safety and health. Although OSHA generally preempts state regulation, Oregon recaptured jurisdiction in this area by adopting a plan, approved by the United States Secretary of Labor, for the enforcement of worker safety and health. That plan calls for APD to provide employment regulations as effective as those required under OSHA. APD regulations approved pursuant to the plan qualify for federal financial assistance in an amount up to 50 percent of actual costs.

We now turn to your remaining questions concerning APD's authority under OSEA to regulate farm labor housing. In this discussion, we also will address who is subject to that regulation, and the nature of APD's enforcement power.

B. APD Authority Over Farm Labor Housing

1. APD Jurisdiction over Employment and Places of Employment

ORS 654.025, governing the director's authority to administer OSEA, focuses on the nature and locus of employment. The director "is vested with full power and jurisdiction over [and the right to supervise] every employment and place of employment in this state as may be necessary to enforce and administer all laws, regulations, rules, standards and lawful orders requiring such employment and place of employment to be safe and healthful, and requiring the protection of the life, safety, and health of every employe in such employment or place of employment." ORS 654.025(1) (emphasis added).

"Place of employment" includes "every place * * * and the premises and structures appurtenant thereto, where either temporarily or permanently an employe works or is intended to work and every place where there is carried on any process, operation or activity related, either directly or indirectly, to

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an employer's industry, trade, business or occupation, including a labor camp provided by an employer for employes or by another person engaged in providing living quarters or shelters for employes, but 'place of employment' does not include any place where the only employment involves nonsubject workers employed in or about a private home." ORS 654.005(8) (emphasis added).

The director may "make, establish, promulgate and enforce all necessary and reasonable regulations, rules, standards, orders and other provisions for the purpose of carrying out" his OSEA functions "notwithstanding any other statutory provisions which may be to the contrary." ORS 654.025(2). The director also "may enforce all regulations, rules and standards duly adopted by any other state agency for the safety and health of employes." ORS 654.025(3)(a). The legislature further provided that the director "may do and perform all things, whether specifically designated in [OSEA] or in addition thereto, which are necessary or convenient in the exercise of any power, authority or jurisdiction conferred upon [him] by [OSEA]." ORS 654.025(5). Accordingly, the director and, by delegation, APD, have broad power to regulate labor camps.

Only labor camps provided by an employer or other person "for employes" are subject to the director's authority. See ORS 654.005(8) (defining "place of employment"); 654.025(1) (director's authority over places of employment). This coverage, restricted by the employment-related purpose of the housing, is nonetheless broader than that of OSHA, which extends only to labor camp housing provided as a condition of employment. Frank Diehl Farms v. Secretary of Labor, supra. Those persons subject to regulation for supplying labor housing include employers, representatives of employers or camp operators. OAR 437-147-003(5). OSEA also regulates "owners," that is, camp operators.

OSEA defines an "employer" as "any person who has one or more employes, or any sole proprietor or member of a partnership who elects workers' compensation coverage as a subject worker pursuant to ORS 656.128." ORS 654.005(5). "Owner" means "every person having ownership, control or custody of any place of employment or of the construction, repair or maintenance of any place of employment." ORS 654.005(6). "'Operator' means a person holding legal title to the land on which a labor camp is located. However, if the legal title and the right to possession are in different persons, 'operator' means a person having the lawful control or supervision over the labor camp under a lease or otherwise." OAR 437-147-005(7).

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Employers and owners must maintain safe and healthful places of employment. ORS 654.015 provides that "[n]o employer or owner shall construct or cause to be constructed or maintained any place of employment that is unsafe or detrimental to health." This prohibition applies to labor camps.

The rules adopted by the director to protect the life, safety and health of employes are derived largely from the federal standards adopted under 29 USC § 655. Compare OAR ch 437 with 29 CFR ch XVII, Part 1910, supra. OSEA differs, however, by specifically subjecting parties other than employers to regulation. See OAR 437-147-003(5), (7).

Thus, APD may inspect (ORS 654.067) and regulate farm labor camps provided for employes by employers, employer representatives, or owners (whether defined by title or right to possession). This broad regulatory ambit normally covers all providers of housing for employes. Also, because employers and owners must maintain safe and healthful places of employment, we believe that APD may conduct pre-occupancy inspections and enforcement efforts. Cf. Five Migrant Farmworkers v. Hoffman, supra (because federal standards preempt pre-occupancy inspection authority, federally approved state plan, employing no less stringent rules, arguably includes pre-occupancy inspection authority); OAR 437-147-010 (Oregon pre-occupancy registration requirements).

2. APD Enforcement Authority Over Employers, and Over Owners or Operators of Labor Camps

Oregon's pre-1973 safety laws were designed to maintain the common law rule of reasonable care by limiting their application to employers and owners, operators and lessors of places of employment. See Hillman v. North. Wasco Co. PUD, supra, 213 Or at 295. Those laws did not impose obligations on new classes of persons. Id. at 295-96. The 1973 legislative revisions to ORS chapter 654 were consistent with this approach. By following the format used in OSHA (compare 29 USC §§ 651-678 with ORS 654.001 to 654.295, 654.750 to 654.780 and 654.991), the legislature focused OSEA's enforcement provisions against employers. See, e.g., ORS 654.295; 654.750 to 654.780; 654.991. Thus, although OSEA covers individuals outside of OSHA's scope (i.e., representatives of employers and owners of places of employment), intrinsic to OSEA's statutory scheme is the policy of providing employers with incentives to comply with its safety provisions. Accident Prev. Div. v. Hoffman Const., 64 Or App 73, 78-79, 667 P2d 543 (1983).

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ORS 654.031 requires the director to issue an appropriate citation or order "[w]henever the director has reason to believe, after an inspection or investigation, that any employment or place of employment is unsafe or detrimental to health * * *." Cf. M & M Wood Working Co. v. S.I.A.C., 201 Or 603, 614-15, 271 P2d 1082 (1954) (discussing similar prior statutory scheme). An order may identify specific improvements that "are reasonably required to render such employment or place of employment safe and healthful, in the manner and within the time specified in the order." ORS 654.031. ORS 654.022 directs all employers, owners, employes and other persons to obey these orders. It also obligates the identified parties to obey all decisions, directions, standards, rules or regulations prescribed by APD. Id.; see Kemp v. Utah Construction and Mining Company, 225 F Supp 250, 251-52 (D Or 1963); Rascoe v. Employment Division, 34 Or App 339, 341, 578 P2d 3 (1978).

The director or the designee may institute legal or equitable proceedings to enforce orders, decisions and rules under OSEA. ORS 654.025(5)(b). Thus, APD may institute actions for injunctive or other relief against all those who fail to comply with its enforcement orders concerning the condition and operation of farm labor camps for employes.⁵ Despite this power, the director's enforcement authority to assess civil penalties for safety and health violations is largely confined to employers.⁶ Cf. Accident Prev. Div. v. Stadeli Pump, 18 Or App 357, 364, 525 P2d 170 (1974) (employer responsible only for working conditions of own employes; employer-employee relationship assessed by reviewing factors indicating control of workplace and work).

With some exceptions,⁷ APD's primary enforcement power -- to issue citations and assess civil penalties -- is limited to use against employers. ORS 654.071 authorizes the director to issue to employers a citation and notice of proposed civil penalty for violation of any state occupational safety and health law, regulation, standard, rule or order. Accident Prevention Div. v. Fought, 27 Or App 97, 555 P2d 472 (1976). The director must deliver to the operator of a farm labor camp a copy of any notice, evaluation, report or citation resulting from an inspection. ORS 654.071(7).

ORS 654.086 authorizes the director to assess civil penalties against employers for violation of the requirements of any state occupational safety or health statute or the lawful rules, standards or orders adopted thereunder. A civil penalty, however, "shall not be assessed against a farm labor camp operator" for a non-serious first-time violation.

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Any employer whose wilful violation of any OSEA provision causes or materially contributes to the death of an employe may be punished, upon conviction, by a fine not exceeding \$10,000, imprisonment not exceeding six months, or both. ORS 654.991(1). More serious criminal penalties apply for repeat offenses. Id. Additionally, anyone who gives advance notice of safety inspections without authority, or knowingly makes false statements in applications or records required by OSEA, may be fined up to \$10,000, imprisoned for up to six months, or both. ORS 654.991(2), (3).

Conclusion

By adopting a plan approved by the United States Secretary of Labor and permitted by OSHA, Oregon has assumed sovereign control over the safety and health of workers in the state. Under the terms of the plan, APD has supervisory responsibilities over farm labor camps provided for employes. Pursuant to this authority, it has established health and safety standards "at least as effective" as federal standards. APD enforces these regulations by periodic inspections followed by orders identifying deficiencies and mandating compliance. APD regulatory activity qualifies for federal funding to the extent it is allowed in the federally approved plan submitted pursuant to OSHA guidelines and has not otherwise been omitted from federal financing.

Employers, their agents, owners, and other operators of farm labor camps provided for employes may be enjoined from continued violations if they persist contrary to APD orders. Both civil and criminal penalties are available against employers for health and safety violations.

Very truly yours,


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ros/4692G

¹ The criteria for plan approval appear in 29 USC §§ 667(c) and (d).

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² With certain exceptions, Oregon has chosen to follow this financing limitation. Oregon Laws 1987, chapter 878, section 2 provides:

"(1) Notwithstanding any other provision of law, no portion of any moneys appropriated or otherwise made available by law or from other sources to the Department of Insurance and Finance [see Or Laws 1987, ch 373, § 30] may be expended to prescribe, issue, administer or enforce any rule, order or standard pursuant to ORS 654.001 to 654.295 that applies to a person engaged in farming who does not maintain a temporary labor camp and who employs 10 or fewer employees, except as provided in subsection (2) of this section.

"(2) Nothing in subsection (1) of this section prevents the department from expending moneys to conduct inspections, investigations or other enforcement proceedings:

"(a) In response to a complaint made pursuant to ORS 654.062;

"(b) To administer or enforce ORS 654.174;

"(c) Relating to an accident; or

"(d) Relating to the issuance of a citation."

Oregon Laws 1987, chapter 878, section 4 provides:

"Section 2 of this Act is repealed on whichever of the following dates first occurs:

"(1) July 1, 1991; or

"(2) The date of repeal of federal laws or regulations which exempt the individuals described in section 2 of this Act from inspection for violation of the federal Occupational Health and Safety Act."

³ See ORS 654.025(5)(a). Immediately before 1987 (Or Laws 1987, ch 373, § 30), it was the responsibility of the Director of the Workers' Compensation Department to administer the Oregon Safe Employment Act. See Accident Prev. Div. v. Hoffman Const., 64 Or App 73, 76-78, 667 P2d 543 (1983) (ORS 654.025(2) confers broad authority on department). The Workers' Compensation Department Director assumed those responsibilities from the board in 1977. See Or Laws 1977, ch 804, § 36.

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⁴ Or Laws 1987, ch 884, § 55. The Workers' Compensation Board also retains a limited statutory role. See ORS 654.025.

⁵ This litigation authority includes, but is "not limited to seeking injunctive relief to enjoin an employer from operating the place of employment until the employer has complied with the provisions of such law, regulation, rule, standard or order." ORS 654.025(5)(b).

⁶ ORS 654.086(1)(g) mandates a civil penalty of not less than \$100 and not more than \$5,000 for "[a]ny person who violates the provisions of ORS 654.082(2) or (3)." ORS 654.082 prohibits the use of any place of employment, machine, device apparatus or equipment identified by a red warning notice from APD. ORS 654.991(1), (2) and (3) also provide for monetary penalties and imprisonment for others in addition to employers.

⁷ See note 6, supra.