



June 10, 2022

RE: Oregon Bureau of Labor and Industries - Notice of Rulemaking

To Interested Parties,

During the 2021 Legislative Session, the Legislature passed House Bill 4002 establishing maximum hour and overtime wage requirements for Oregon agricultural workers. Under the measure, maximum hours are phased in over five years starting at 55 hours in 2023 and reducing to 40 hours by 2027.

In order to implement the measure, the agency must amend its administrative rules by repealing OAR 839-020-0135, which exempts individuals employed in agricultural employment from the overtime provisions and must clarify overtime requirements for Employers Regulated Under the Federal Fair Labor Standards Act.

There will be a public hearing on July 15, 2022, 9:00 – 10:00 AM.

The hearing will be conducted using Microsoft Teams:

**Join on your computer or mobile app**

[Click here to join the meeting](#)

**Or call in (audio only)**

[+1 503-446-4951](tel:+15034464951), [7752233338#](tel:+17752233338) United States, Portland

Phone Conference ID: 775 223 338#

**The deadline for public comment is 5:00 p.m. on July 21, 2022.**

Comments can be submitted using the comment form [here](#)

A copy of the Notice and proposed rule are attached.

Sincerely,

Erin Seiler, Senior Policy Advisor

OFFICE OF THE SECRETARY OF STATE

SHEMIA FAGAN  
SECRETARY OF STATE

CHERYL MYERS  
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION

STEPHANIE CLARK  
DIRECTOR

800 SUMMER STREET NE  
SALEM, OR 97310  
503-373-0701

**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 839  
BUREAU OF LABOR AND INDUSTRIES

**FILED**

06/09/2022 3:14 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Implementation of OL Chapter 115, 2022

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 07/21/2022 5:00 PM

*The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.*

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800 NE Oregon #1045  
Portland, OR 97232

Filed By:  
Erin Seiler  
Rules Coordinator

HEARING(S)

*Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.*

DATE: 07/15/2022

TIME: 9:00 AM - 10:00 AM

OFFICER: erin seiler

ADDRESS: erin seiler

800 NE Oregon

#1045

Portland, OR 97232

SPECIAL INSTRUCTIONS:

The public may attend the hearing over Microsoft Teams using the web address or phone number provided.

Join on your computer or mobile app

Click here to join the meeting

[https://teams.microsoft.com/l/meetup-](https://teams.microsoft.com/l/meetup-join/19%3ameeting_MWYONGFINTMtMWM1Yi00Njk5LWE0MzItMzQ1ZDYwNjNkYzBi%40thread.v2/0?context=%7b%22Ti)

[join/19%3ameeting\\_MWYONGFINTMtMWM1Yi00Njk5LWE0MzItMzQ1ZDYwNjNkYzBi%40thread.v2/0?context=%7b%22Ti](https://teams.microsoft.com/l/meetup-join/19%3ameeting_MWYONGFINTMtMWM1Yi00Njk5LWE0MzItMzQ1ZDYwNjNkYzBi%40thread.v2/0?context=%7b%22Ti)

Or call in (audio only)

+1 503-446-4951,,775223338# United States, Portland

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NEED FOR THE RULE(S)

During the 2021 Legislative Session, the Legislature passed House Bill 4002 establishing maximum hour and overtime wage requirements for Oregon agricultural workers. Under the measure, maximum hours are phased in over five years starting at 55 hours in 2023 and reducing to 40 hours by 2027.

In order to implement the measure, the agency must amend its administrative rules by repealing OAR 839-020-0135,

which exempts individuals employed in agricultural employment from the overtime provisions and must clarify overtime requirements for Employers Regulated Under the Federal Fair Labor Standards Act.

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#### DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Oregon Law, Chapter 115, 2022 -

<https://olis.oregonlegislature.gov/liz/2022R1/Downloads/MeasureDocument/HB4002>

ORS 653.040 - [https://www.oregonlegislature.gov/bills\\_laws/ors/ors653.html](https://www.oregonlegislature.gov/bills_laws/ors/ors653.html)

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#### STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The administrative rules have no affect on racial equity. Any positive or negative affect on racial equity in this state would be a result of the statutory change in OL Chapter 115, 2022.

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#### FISCAL AND ECONOMIC IMPACT:

Any fiscal or economic impact of the administrative rules is a result of the statute being implemented (OL Chapter 115, 2022). There is no fiscal or economic impact associated with the administrative rules.

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#### COST OF COMPLIANCE:

*(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).*

(1) The administrative rules have no economic impact on state agencies, units of local government, or the public.

(2) Effect on Small Businesses:

(a) The small businesses subject to the rules are those that employ workers to perform services in agricultural, as described in OL Chapter 115, 2022. According to the 2017 U.S. Department of Agriculture state census, Oregon had nearly 38,000 farms that employ agricultural workers, how many are considered small business is not something the agency is able to determine.

(b) Any reporting, recordkeeping and administrative costs would be the result of the statute being implemented. There is no cost associated with the administrative rules.

(c) Any professional services, equipment supplies, labor and increased administrative costs would be the result of the statute being implemented. There is no cost associated with the administrative rules.

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#### DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses were not associated with the development of the administrative rules.

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#### WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

An administrative rule advisory committee was not consulted because the administrative rules are technical amendments that only address language that conflicts with OL Chapter 115, 2022.

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#### RULES PROPOSED:

AMEND: 839-020-0125

RULE SUMMARY: Implementation of OL Chapter 115, 2022 - House Bill 4002, 2022

CHANGES TO RULE:

839-020-0125

Overtime Exemptions Pertaining to Employers Regulated Under the Federal Fair Labor Standards Act ¶¶

(1) This rule applies to employers and employees subject to OAR 839-020-0030, Overtime Generally, by virtue of the repeal of ORS 653.020(7) by Section 2, Chapter 446, 1989 Oregon Laws.¶¶

(2) No employer shall be deemed to have violated OAR 839-020-0030 under the following circumstances:¶¶

(a) By employing any employee for a workweek in excess of that specified in OAR 839-020-0030 without paying the compensation for overtime employment prescribed therein; provided that, such employee received compensation for employment in excess of 12 hours in any workday, or for employment in excess of 56 hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which the employee is employed; and, provided further that such employee is so employed as follows:¶¶

(A) In pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that no employee shall be employed more than 1,040 hours during any period of 26 consecutive weeks; or¶¶

(B) In pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board which provides that during a specified period of 52 consecutive weeks the employees shall be employed not more than 2,240 hours and shall be guaranteed not less than 1,840 hours (or not less than 46 weeks at the normal number of hours worked per week, but not less than 30 hours per week) and not more than 2,080 hours of employment for which the employee shall receive compensation for all hours guaranteed or worked at rates not less than those applicable under the agreement to the work performed and for all hours in excess of the guaranty which are also in excess of the maximum workweek applicable to such employee under OAR 839-020-0030 or 2,080 hours in such period at rates not less than one and one-half times the regular rate at which the employee is employed. (Reference: Sec. 7(b)(1) and Sec. 7(b)(2), FLSA)¶¶

(b) By an independently owned and controlled local enterprise (including an enterprise with more than one bulk storage establishment) engaged in the wholesale or bulk distribution of petroleum products, if:¶¶

(A) The annual gross volume of sales of such enterprise is less than \$1,000,000 exclusive of excise taxes; and¶¶

(B) More than 75 per centum of such enterprise's annual dollar volume of sales is made within the state in which such enterprise is located; and¶¶

(C) Not more than 25 per centum of the annual dollar volume of sales of such enterprise is to customers who are engaged in the bulk distribution of such products for resale; and¶¶

(D) Such employee receives compensation for employment in excess of forty hours in any workweek at a rate not less than one and one-half times the minimum wage rate applicable to the employee under ORS 653.025.

(Reference: Sec. 7(b)(3), FLSA)¶¶

(c) By employing any employee for a workweek in excess of the maximum workweek applicable to such employee under OAR 839-020-0030 if such employee is employed pursuant to a bona fide individual contract, or pursuant to an agreement made as a result of collective bargaining by representatives of employees, if the duties of such employee necessitate irregular hours of work, and the contract or agreement specifies a regular rate of pay of not less than the minimum hourly rate provided in ORS 653.025 and compensation at not less than 1-1/2 times such rate for all hours worked in excess of such maximum workweek, and a weekly guarantee of pay for not more than 60 hours based on the rates so specified. (Reference: Sec. 7(f), FLSA);¶¶

(d) By employing any employee of a retail or service establishment for a workweek in excess of the applicable workweek specified in OAR 839-020-0030, if the regular rate of pay of such employee is in excess of one and one-half times the minimum hourly rate applicable under ORS 653.025 and if more than half of the employee's compensation for a representative period (not less than one month) represents commissions on goods or services. In determining the proportion of compensation representing commission, all earnings resulting from the application of a bona fide commission rate shall be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw of guarantee. (Reference: Sec. 7(i), FLSA);¶¶

(e) When an employer engaged in the operation of a hospital or an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises enters into an agreement or understanding arrived at between the employer and employee before performance of the work, that provides for a work period of 14 consecutive days in lieu of the workweek of seven consecutive days for

purposes of overtime computation and provides further that for the employee's employment in excess of eight hours in any workday and in excess of 80 hours in such 14-day period, the employee receives compensation at a rate not less than one and one-half times the regular rate at which the employee is employed. (Reference: Sec. 7(j), FLSA);¶

(f) By employing an employee of a not for profit amusement or recreational establishment in excess of the applicable work week specified in OAR 839-020-0030 if the establishment does not operate for more than seven months in any calendar year, or if, the establishment's average receipts for any six months of such year were not more than 33-1/3 per centum of its average receipts for the other six months of such year. (Reference: Section 13(a)(3), FLSA);¶

(g) By employing an employee in excess of the applicable workweek specified in OAR 839-020-0030 when the employee is employed in the catching, taking, propagating, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacean, sponges, seaweeds, or other aquatic forms of animal and vegetable life, or in the first processing, canning or packing such marine products at sea as an incident to, or in conjunction with, such fishing operations, including the going to and returning from work and loading and unloading when performed by any such employee. (Reference: Sec. 13(a)(5), FLSA)¶

(h) By employing an employee who is compensated at a rate of not less than the equivalent of \$27.63 per hour for each hour worked and who is a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker, whose primary duty consists of the following:¶

(A) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications;¶

(B) The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;¶

(C) The design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or¶

(D) A combination of duties described in paragraphs (A), (B), and (C) of this paragraph the performance of which requires the same level of skills. (Reference: Sec. 13 (a) (17), FLSA)¶

(3) The provisions of OAR 839-020-0030 do not apply when the provisions of Section 13(b), of the Fair Labor Standards Act apply to employees as follows:¶

(a) Any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of Section 204 of the Motor Carrier Act, 1935; or¶

(b) Any employee of an employer engaged in the operation of a common carrier by rail and subject to the provisions of Part I of the Interstate Commerce Act; or¶

(c) Any employee of a carrier by air subject to the provisions of Title II of the Railway Labor Act; or¶

(d) Any individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state; or¶

(e) Any employee employed as a seaman; or¶

(f) Any employee employed as an announcer, news editor, or chief engineer by a radio or television station the major studio of which is located in a city or town of 100,000 population or less, according to the latest available decennial census figures as compiled by the Bureau of the Census, except where such city or town is part of a standard metropolitan statistical area, as defined and designated by the Bureau of the Budget, which has a total population in excess of 100,000, or is located in a city of 25,000 population or less, which is part of such an area but is at least 40 airline miles from the principal city in such area; or¶

(g) Any sales person, parts person or mechanic primarily engaged in selling or servicing automobiles, trucks, or farm implements, if the employee is employed by a non-manufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers; or¶

(h) Any sales person primarily engaged in selling trailers, boats, or aircraft if the salesperson is employed by a non-manufacturing establishment primarily engaged in the business of selling trailers, boats or aircraft to ultimate purchasers; or¶

(i) Any employee employed as a driver or driver's helper making local deliveries, who is compensated for such employment on the basis of trip rates, or other delivery payment plan, if the Commissioner shall find that such plan has the general purpose and effect of reducing hours worked by such employees to, or below, the maximum workweek applicable to them under OAR 839-020-0030; or¶

(j) Any employee employed in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, or operated on a sharecrop basis, and which are used exclusively for supply and storing of water for agricultural purposes; or¶

(k) Any employee with respect to the employee's employment in agriculture by a farmer, notwithstanding other employment of such employee in connection with livestock auction operations in which such farmer is engaged as an adjunct to the raising of livestock, either on the farmer's own account or in conjunction with other farmers, if such employee is primarily employed during the employee's workweek in agriculture by such farmer, and if such employee is paid for the operations at a wage rate not less than that prescribed by ORS 653.025 and in compliance

with OL Chapter 115, 2022; or

(l) Any employee employed within the area of production (as defined by the Commissioner) by an establishment commonly recognized as a country elevator, including such an establishment which sells products and services used in the operation of a farm, if no more than five employees are employed in the establishment in such operation; or

(m) Any employee engaged in the transportation and preparation for transportation of fruits and vegetables, whether or not performed by the farmer, from the farm to a place of first processing or first marketing within the State of Oregon, or any employee engaged in transportation, whether or not performed by the farmer, between the farm and any point within the State of Oregon of persons employed or to be employed in the harvesting of fruits or vegetables; or

(n) Any employee employed by an establishment which is a motion picture theater; or

(o) Any employee employed in planting or tending trees, cruising, surveying, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal, if the number of employees employed by the employee's employer in such forestry or lumbering operations does not exceed eight; or

(p) Any employee of an amusement or recreational establishment located in a national park or national forest or on land in the National Wildlife Refuge System if such employee is an employee of a private entity engaged in providing services or facilities in a national park or national forest, or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture, and receives compensation for employment in excess of 56 hours in any workweek at a rate not less than one and one-half times the regular rate at which the employee is employed. (Reference: Sec. 13(b), (1), (2), (3), (5), (6), (9), (10), (11), (12), (13), (14), (16), (21), (27), (28), and (29), FLSA)

(4) The provisions of OAR 839-020-0030 shall not apply with respect to any employee engaged in the delivery of newspapers to the consumer or to any homemaker engaged in the making of wreaths composed principally of natural holly, pine, cedar or other evergreens (including the harvesting of the evergreens or other forest products used in making such wreaths). (Reference: Sec. 13(d), FLSA)

Statutory/Other Authority: ~~ORS 653.040 & ORS 653.261, OL Ch. 457~~apter 115, 201522

Statutes/Other Implemented: ~~ORS 653.261, OL Ch. 457~~L Chapter 115, 201522

REPEAL: 839-020-0135

RULE SUMMARY: Implementation of OL Chapter 115, 2022

CHANGES TO RULE:

~~839-020-0135~~

~~Overtime Exemption for Agricultural Employees~~

~~Pursuant to the provisions of ORS 653.261(2), OAR 839-020-0030 does not apply to individuals employed in agricultural employment.~~

~~Statutory/Other Authority: ORS 653~~

~~Statutes/Other Implemented: ORS 653.261(2)~~