

July 18th, 2022

Dear Oregon Bureau of Labor and Industries,

My name is Tarah Heinzen, and I live in Portland. I am writing on behalf of Food & Water Watch and our 39,000 members and supporters in Oregon. Food & Water Watch fights for bold and uncompromising solutions to the most pressing food, water and climate issues of our time, and strongly believes that farmworkers deserve dignity, respect, and labor rights. For too long they have been denied rights other workers have been afforded. Ensuring farmworkers are paid equitably for their work is essential for a truly just agricultural system.

Earlier this year, the Oregon legislature passed House Bill 4002 to phase in overtime pay for agricultural workers. Now it is up to BOLI to implement the law by updating its rules to include farmworkers in its overtime provisions.

I write to you in support of BOLI amending its administrative rules by repealing OAR 839-020-0135 and including farmworkers in the existing overtime and piece-rate rules without delay. Once it amends the rules to include farmworkers, BOLI must begin enforcing them immediately and effectively to prevent any cases of wage theft.

Sincerely,

Tarah Heinzen
Legal Director
Food & Water Watch



July 20, 2022

Val Hoyle, Labor Commissioner
Bureau of Labor and Industries
BOLI.Commissioner@BOLI.Oregon.Gov

Erin Seiler, Rules Coordinator
Bureau of Labor and Industries
erin.seiler@boli.oregon.gov

Dear Oregon Bureau of Labor and Industries,

The Friends of Family Farmers would like to write in support of BOLI amending its administrative rules by repealing OAR 839-020-0135 and including farmworkers in the existing overtime and piece-rate rules.

In the 2022 Legislative Session, the Oregon Legislature made the important decision of phasing in overtime pay for agricultural workers through HB 4002. FoFF was strongly in favor of this legislation, as it reflects the core values of our organization: sustaining local communities and providing a viable livelihood for family farmers. Farmworkers deserve dignity, justice and respect in the workplace, like all of us expect. Now it is up to BOLI to implement the law, update its rules, and ensure that farmworkers are included in overtime provisions — providing them the fair labor protections they have worked without for far too long.

We strongly believe that farmworkers deserve commensurate and livable compensation for their work, which all Oregonians rely upon to put food on the table. The producers that we represent at FoFF have long been working to build a more equitable food system for everyone — our farmers and the communities they serve. We are grateful to see farmworkers finally receive the same protections and aspirations that public policy has afforded all other workers — the repealing of OAR 839-020-0135 will make this happen.

Once this rule has been repealed and the overtime rules have been amended to include farmworkers, and the phase in period and incentives to ease small farms through the process as dictated in HB 4002 have been dispensed, their enforcement must begin immediately and effectively.

Sincerely,
Friends of Family Farmers

July 21, 2022

Dear Oregon Bureau of Labor and Industries,

My name is Jill Pham, and I am writing on behalf of Portland Jobs with Justice. We are a coalition of over 100 faith, labor, community, student groups and individual activists taking action for workers rights and economic justice, especially with those most marginalized by our economic system such as people of color, immigrants, LGBTQ people and women

Earlier this year, the Oregon legislature passed House Bill 4002 to phase in overtime pay for agricultural workers. Now it is up to BOLI to implement the law by updating its rules to include farmworkers in overtime provisions.

I write to you in support of BOLI amending its administrative rules by repealing OAR 839-020-0135 and including farmworkers in the existing overtime and piece-rate rules.

We strongly believe that farmworkers deserve dignity, respect, and labor rights. For too long they have been denied rights other workers have been afforded. The labor movement has strong roots in farmworkers organizing. We continue their legacy today by asserting that BOLI has the responsibility to assure that farmworkers begin to see the respect they deserve. Farmworkers feed our community and we need to honor their sacrifices. We especially want to highlight the need for more worker protections for farmworkers as we lost one too many workers out on the fields last year. Presente Sebastian Francisco Perez.

The repealing of this rule is plain and simple because there is already an existing overtime rule. Once the rules have been amended to include farmworkers, their enforcement must begin immediately and in an effective way to prevent any cases of wage theft.

Sincerely,

A handwritten signature in black ink that reads "JPham". The signature is written in a cursive, flowing style.

Jill Pham
Executive Director
Portland Jobs with Justice



August 22, 2022

Val Hoyle, Labor Commissioner
Bureau of Labor and Industries
BOLI.Commissioner@BOLI.Oregon.Gov

Erin Seiler, Rules Coordinator
Bureau of Labor and Industries
erin.seiler@boli.oregon.gov

Dear Oregon Bureau of Labor and Industries,

The 35 undersigned groups represent a cross-section of unions, community-based organizations, advocacy groups, environmental and environmental justice organizations, faith leaders, and a coalition of family farms.

Oregon farmworkers have been unjustly excluded from overtime wages and protections for over 84 years. The 2022 legislative body recognized this historical wrong and passed House Bill 4002 in an effort to treat agricultural workers the same as workers in other industries. For these reasons, we write to you in support of BOLI amending its administrative rules by repealing OAR 839-020-0135, which exempts individuals employed in agricultural employment from the overtime provisions.

BOLI must also address the overtime requirements for employers regulated under the Fair Labor Standards Act, and clarify that the FLSA-based exemption in 839-020-0125(3)(k) does not supersede the new state law.

Given the existing rule structure for overtime, we believe that the repealing of this rule is plain and simple. We do not see a need to recreate a new rule structure for agricultural workers and they should be included in the existing overtime and the piece-rate rules.

Once BOLI's rules have been amended to include agricultural workers in overtime provisions, we firmly believe enforcement should begin immediately and robustly.

Sincerely,

American Federation of Teachers-Oregon

Cannabis Workers Coalition

Colibri Consulting

Comunidades

Fair Shot for All Coalition	Family Forward Oregon
Farm Worker Ministry Northwest	Food and Water Watch
Friends of Family Farmers	Next Up Action Fund
North Coast Food Web	Northwest Environmental Advocates
Oregon Just Transition Alliance	Oregon Law Center
Oregon AFL-CIO	Oregon AFSCME Council 75
Oregon Chapter Sierra Club	Oregon Fellowship of Reconciliation
Oregon Human Development Corporation	Oregon League of Conservation Voters
Oregon Nurses Association	Oregon Physicians for Social Responsibility
PK Pastures	Pineros y Campesinos Unidos del Noroeste
Planned Parenthood Advocates of Oregon	Portland Jobs with Justice
Rogue Farm Corps	SEIU Oregon
Stand Up to Factory Farms	United Farm Workers
United Farm Workers Foundation	NOWIA Unete, Center for Farmworker Advocacy
Unidos Bridging Community	Union of Concerned Scientists
Virginia Garcia Memorial Health Center	

August 22, 2022

To: Erin Seiler, Bureau of Labor and Industries
From: Paloma Sparks, Oregon Business & Industry
RE: OBI Comments on Proposed Rules Chapter 839, Division 020

Ms. Seiler:

Thank you for the opportunity to provide comments on the rules the Bureau of Labor and Industries (BOLI) has proposed to implement HB 4002 (2022). This is very important to Oregon Business & Industry members and partners. OBI is Oregon's most comprehensive business association, representing over 1,600 businesses that employ over 250,000 people. The majority of our members are small businesses, and many are farms or work directly with agriculture.

Prior to the passage of HB 4002 earlier this year, agricultural workplaces were not subject to overtime. Regardless of one's feelings about this policy change, the effects will dramatically alter the recordkeeping requirements for farms. Small farms, which are already struggling to survive, will face yet another complicated regulation that they simply don't have the staff or resources to absorb. Any rule adopted by BOLI must address the complications of this new reality for these employers rather than simply applying all existing overtime rules as if agricultural employers are no different from other types of employers.

First, we urge that overtime payments be based on minimum wage, rather than a complicated piece-rate calculation. The complex calculations for applying piece-rates to overtime in this industry will create confusion and will create the risk of unintended miscalculations. Additionally, piece-rate in agricultural setting is constantly fluctuating based on the activity and the crop. For example, the piece-rate for blueberries may be different than that for pears. Because of this, it is unworkable to have piece-rate calculations that are backward looking. A simpler and fairer approach would be to require overtime be paid at no less than time and half of minimum wage.

Second, there are several long-standing exceptions to overtime that should also apply in this industry. However, the way those exceptions have traditionally been described makes it seem as if they would not apply in agriculture. We urge BOLI to update language to reflect that the exception in the overtime rules to also recognize managers in agriculture. We believe these managers clearly fit into both the FLSA and BOLI descriptions of the executive or administrative exemptions. We also urge BOLI to align with Washington and California to fully recognize that certain employees may also be exempt, particularly those that are commercial drivers licensed employees.

Thank you for considering our comments.



Locally Grown
— and —
GROWING STRONG

August 22, 2022

Erin Seiler
Senior Policy Advisor
800 NE Oregon Street #1045
Suite 1045
Portland, OR 97232

Re: Comments on the Rules Implementing OL Chapter 115, 2022 (HB 4002)

Ms. Seiler,

Thank you for the opportunity to provide comments to the Bureau of Labor and Industries (“BOLI”) in response to the draft rules to implement HB 4002 (2022). As a reference, the Oregon Farm Bureau Federation (“OFB”) is the state’s largest general agriculture association, representing nearly 7,000 families actively engaged in farming and ranching.

As you are aware, our members strongly opposed HB 4002 throughout the 2022 legislative session, due to well-documented concerns that farmers and ranchers cannot afford to pay for the cost increases that are inherent in HB 4002.

Oregon Farmers Are Price Takers

Oregon family farms and ranches compete in a global economy. As prices for inputs in Oregon rise, which they have substantially in the past year, farmers and ranchers cannot raise the price of their commodities, meaning that they are often forced to sell at a loss. If the margins become too thin and they operate at a loss for enough years, they will either move to a different commodity where margins are better or go out of business entirely. For row crops and vegetables, those acres are more likely to transition to non-food crops, while multi-year crops such as tree fruit and blueberries are more likely to be sold to a larger company who can operate with economies of scale and afford a smaller margin for their products. Either way, Oregon’s diverse landscape of family farms will be significantly and negatively impacted by HB 4002.

Many of Oregon’s most beloved commodities rely heavily on agricultural labor, which has become the driving cost for farmers of those commodities over the past decade as wages, benefits, and the cost of employing workers has risen. Over the last 6 years, Oregon has adopted policies that increase regulatory and workforce costs well above

other states and countries. Our farmers have come to see their margins become increasingly tighter, and many small and medium size farms are leaving the state.¹ Oregon agriculture is unique and diverse – every commodity will face challenges specific to their operations as they try to absorb the financial and operational challenges any overtime proposal creates.

Across all sectors, Oregon farmers and ranchers are increasingly seeing agricultural production leave the state and the nation. Particularly for food crops, we face increasing competition from Central and South America, where the cost of labor is dollars a day and environmental regulations are much less stringent. We hear every day of grocery retailers and other distributors shifting their buying to Central and South America. For many commodities, where you could once count on a local market for most of the summer, Oregon producers are often lucky to get a month where their commodities are being sold locally before purchasing shifts to another state or country. A further increase in costs for Oregon family farms and ranches will only serve to hasten the transition of our food production out of Oregon and the trend toward agricultural land ownership being vested in fewer and fewer businesses.

Oregon Family Farms and Ranches Cannot Afford to Pay Overtime

Most farmers simply cannot afford a year-round 40-hour overtime threshold that fails to recognize the undue hardship our farms face when crops and animals dictate work schedule. Unable to absorb or recoup the cost of overtime wages, our economic study clearly showed that farm employers will be forced to adjust work schedules, mechanize or switch to less labor-intensive crops to control labor costs.² Growers who do not have those options will be forced to downsize or sell their operation to survive.

Farmworkers will bear the consequences. Without some allowance for an increased threshold for overtime, workers will face fewer hours and lower overall wages as farmers adapt to mitigate impacts. California's 40-hour overtime policy, which was phased in this year, has resulted in reduced hours and lost wages for farmworkers.³

Comments on Overtime Rules

Given that over 96% of farms in Oregon are family owned and operated, and it is important that the final rules be clear and accessible to our family farms and ranches. Many of our members are struggling to grasp the complexities and real-world application of HB 4002, given the diversity of the production methods and commodities grown in Oregon, and the rulemaking leaves many of these questions unanswered. We

¹ https://agsci.oregonstate.edu/sites/agscid7/files/main/about/oragecon_report_2021.pdf (showing loss of over 1200 farms between 50-1000 acres between 2012-2017).

² https://oregonfb.org/wp-content/uploads/2020/08/Economic-Effects-of-Proposed-Oregon-Agricultural-Overtime_Final-with-Surveys.pdf

³ https://www.bakersfield.com/news/farmworkers-growers-dissatisfied-after-overtime-change/article_48675756-7562-11ec-b6a6-7300e290a469.html

understand that additional agency guidance and technical assistance will be forthcoming, and we strongly encourage BOLI to prioritize that work and roll it out well ahead of the January 1, 2023 enactment of a 55-hour threshold.

As it relates to the Range Exemption found in Section 4a of HB 2002 and ORS 653.020 (1), we understand that the exemption will be interpreted consistent with Fair Labor Standards Act (FLSA) guidance and case law and would appreciate that clarification in a forthcoming Frequently Asked Questions (FAQs) document.

BOLI has also failed to fully incorporate the Commercial Driver's License (CDL) overtime exemption found in the Motor Carrier Safety Act of 1935. In both the Washington and California overtime law, legislators included the MCSA exemption in the respective bills to allow CDL drivers the continuity of complying with logbook requirements, required random drug and alcohol testing, as well as other safety provisions under the Act. The MCSA exemption should apply to CDL drivers in Oregon to ensure the safety provisions are consistent and to avoid creating one standard for CDL drivers in agriculture and a different standard for all other CDL drivers in Oregon. Given that CDL's were not intended to be covered by HB 4002 and are exempt in the other states that Oregon's law was based on, BOLI should incorporate this exemption into its rules.

Finally, we continue to look forward to guidance on how the exemption in Section 4a(2), the "managerial exemption" is to be defined. As you are aware, many farms have farm managers who supervise employees, perform management-level work year-round, and make decisions of significance that affect the business's bottom line. These employees are paid high salaries, and many have corresponding degrees in agriculture or farm management. We believe the managerial exemption should mirror existing state and federal "white collar exemptions" already in rule. We look forward to explanations of how this exemption will apply.

Above all, as BOLI continues to implement HB 4002, we encourage you to place education and outreach at the forefront. Agriculture is a complex industry, and implementation will be complex and challenging at the individual farm level. Education and outreach will be critical in a successful implementation and must be fully up and running by fall.

Please let me know if you have any questions.

Sincerely,



Mary Anne Cooper
VP of Government & Legal Affairs
Oregon Farm Bureau Federation



Service Employees International Union – Oregon State Council
6401 SE Foster ▪ Portland, OR 97206

July 19, 2022

Dear Oregon Bureau of Labor and Industries,

Thank you for the opportunity to submit testimony in **support of BOLI amending its administrative rules by repealing OAR 839-020-0135** and including farmworkers in the existing overtime and piece-rate rules.

My name is Alberto Gallegos, and I am writing on behalf of the Service Employees International Union (SEIU), Oregon. SEIU Oregon is composed of SEIU Local 503 and SEIU Local 49, which together represent over 85,000 people. Local 49 represents private sector janitors, property service workers, light manufacturing, and healthcare workers; while Local 503 represents homecare workers, private nonprofit workers, in-home childcare providers, nursing home workers, and state and local government employees.

Earlier this year, the Oregon legislature passed House Bill 4002 to phase in overtime pay for agricultural workers. Although our union does not represent farmworkers, we supported this bill because we understand that when we lift up one group of workers, we are, in fact, lifting up all workers in our state. We believe that every worker deserves to be paid fairly for their work and have healthy working conditions no matter what work they do, where they come from, the color of their skin, the language they speak, and if they're in a union or not.

We strongly believe that farmworkers deserve dignity, respect, and labor rights. For too long they have been denied rights other workers have been afforded. They are often underpaid and exploited for their cheap labor. Most are not able to adequately support themselves or their families; and they often live in AND work in unacceptable conditions which has a negative impact on their physical and mental health.

Thankfully, the Oregon legislature passed HB 4002, and now it is up to BOLI to implement the law by updating its rules to include farmworkers in overtime provisions.

The repealing of this rule is plain and simple because there is already an existing overtime rule. Once the rules have been amended to include farmworkers, their enforcement must begin immediately and in an effective way to prevent any cases of wage theft.

Sincerely,

Alberto Gallegos
Political and Government Relations Organizer
SEIU, Oregon State Council



July 20, 2022

Dear Oregon Bureau of Labor and Industries,

I am writing on behalf of Sierra Club, which represents over 19,000 members and over 32,000 supporters in the state of Oregon. We work side by side with our partners like PCUN to advocate for an Oregon where all residents have access to clean air, clean water, and a stable climate, regardless of their race, country of origin, or language that they prefer to speak.

Earlier this year, the Oregon legislature passed House Bill 4002 to phase in overtime pay for agricultural workers. Now it is up to BOLI to implement the law by updating its rules to include farmworkers in overtime provisions.

I write to you in support of BOLI amending its administrative rules by repealing OAR 839-020-0135 and including farmworkers in the existing overtime and piece-rate rules.

We strongly believe that farmworkers deserve dignity, respect, and labor rights. For too long they have been denied rights other workers have been afforded. In our work we have unfortunately seen that communities of color, immigrants, and people who prefer to speak Spanish or a language other than English, are the communities who experience the worst environmental pollution in Oregon. We firmly believe that all people deserve clean air, clean water, and also full dignity and respect and valuation for their labor

The repealing of this rule is plain and simple because there is already an existing overtime rule. Once the rules have been amended to include farmworkers, their enforcement must begin immediately and in an effective way to prevent any cases of wage theft.

Sincerely,

Laura Stevens
Acting Organizing Manager
Sierra Club

July 15th, 2022

Dear Oregon Bureau of Labor and Industries,

My name is Kristina Beggen, I live in Eugene and I am writing on behalf of the Stand Up to Factory Farms coalition.

Earlier this year, the Oregon legislature passed House Bill 4002 to phase in overtime pay for agricultural workers. Now it is up to BOLI to implement the law by updating its rules to include farmworkers in overtime provisions.

I write to you in support of BOLI amending its administrative rules by repealing OAR 839-020-0135 and including farmworkers in the existing overtime and piece-rate rules.

As a coalition, we strongly believe that farmworkers deserve dignity, respect, and the same labor rights all other workers receive. This includes overtime pay. Dairies are strenuous workplaces and earning overtime pay will help ease burdens for dairy workers.

The repealing of this rule is plain and simple because there is already an existing overtime rule. Once the rules have been amended to include farmworkers, their enforcement must begin immediately and in an effective way to prevent any cases of wage theft.

Sincerely,

Kristina Beggen
Organizer
Stand Up to Factory Farms



July 20, 2022

Dear Oregon Bureau of Labor and Industries,

On behalf of Virginia Garcia Memorial Health Center, I am writing to you in support of BOLI amending its administrative rules by repealing OAR 839-020-0135 and including farmworkers in the existing overtime and piece-rate rules.

Virginia Garcia is the largest non-profit community health center in Oregon serving Washington and Yamhill counties. We provide high quality, comprehensive, and culturally appropriate health care in 17 clinics, serving 52,000 patients with a special emphasis on migrant and seasonal farmworkers. We employ more than 600 individuals. We work every day to address and remove the barriers that prevent our patients from receiving the care they need such as the financial barriers our agricultural worker patients experience.

We strongly believe that farmworkers deserve dignity, respect, and equal labor rights. For too long they have been denied rights other workers have been afforded. We know our migrant and seasonal farmworkers are struggling; we hear and see the extreme conditions they endure and know their rights have long been overlooked. We also know the toll this take on their physical, mental, emotional, and long-term health.

Virginia Garcia has been a persistent advocate for HB 4002. Earlier this year, the Oregon legislature passed House Bill 4002 to phase in overtime pay for agricultural workers. Now it is up to BOLI to implement the law by updating its rules to include farmworkers in overtime provisions by repealing OAR 839-020-0135 and including farmworkers in the existing overtime and piece-rate rules.

Thank you for the opportunity to submit testimony on behalf of amending this rule to include farmworkers. In light of both the economic and health challenges faced by agricultural workers, we respectfully urge you to begin enforcement immediately.

Sincerely,

A handwritten signature in black ink, appearing to read "Gil Muñoz", with a stylized flourish at the end.

Gil Muñoz, M.P.A

Chief Executive Officer

Virginia Garcia Memorial Health Center

Dear Oregon Bureau of Labor and Industries, My name is Jaime Rodriguez, and I live in Woodburn. I am writing as President of the American Federation of Teachers - Oregon (AFT-Oregon). We are a labor federation representing over 17,000 teachers and workers across our state's universities, community colleges, K-12, and childcare. The Oregon legislature passed House Bill 4002 this Spring to phase in overtime pay for farmworkers. Our labor federation was a huge supporter of this effort, now it is up to BOLI to implement the law by updating its rules to include farmworkers in overtime provisions. I write to you in support of BOLI amending its administrative rules by repealing OAR 839-020-0135 and including farmworkers in the existing overtime and piece-rate rules. Both, our leadership and membership all strongly believe that farmworkers deserve dignity, respect, and labor rights. For far too long they have been denied overtime pay rights other workers have been afforded. I am the son of farmworker parents, and have seen firsthand how our communities have been impacted by the lack of decent working conditions and overtime rights. Oregon can and must do better. This is an opportunity to do that. The repealing of this rule is common sense. There is already an existing overtime rule for Oregon workers. Let's include farmworkers. Once these rules have been amended to include farmworkers, their enforcement must begin immediately and in an effective way to prevent any cases of wage theft. Respectfully submitted, Jaime Rodriguez President AFT-Oregon



July 20th, 2022

To: Oregon Bureau of Labor and Industries

From: Savina Fierro, Executive Director of Cannabis Workers Coalition

Re: Farmworker Overtime Rulemaking

Dear Oregon Bureau of Labor and Industries,

My name is Savina Fierro, and I live in the Cully neighborhood of Portland and I am writing on behalf of the Cannabis Workers Coalition, a grassroots nonprofit advocating for fair labor rights in cannabis and hemp.

Earlier this year, the Oregon legislature passed House Bill 4002 to phase in overtime pay for agricultural workers. Now it is up to BOLI to implement the law by updating its rules to include farmworkers in overtime provisions.

I write to you in support of BOLI amending its administrative rules by repealing OAR 839-020-0135 and including farmworkers in the existing overtime and piece-rate rules.

We strongly believe that farmworkers deserve dignity, respect, and labor rights. For too long they have been denied rights other workers have been afforded. For our organization, this is two fold when discussing workers in the cannabis industry, which was intended to undo the harm caused by the War on Drugs.

The repealing of this rule is plain and simple because there is already an existing overtime rule. Once the rules have been amended to include farmworkers, their enforcement must begin immediately and in an effective way to prevent any cases of wage theft.

Sincerely,

Savina Fierro

Executive Director

Cannabis Workers Coalition



Oregon moms and caregivers fighting for gender, economic, and racial justice.

August 9, 2022

Dear Oregon Bureau of Labor and Industries,

My name is Lisa Kwon and I am submitting a public comment on behalf of Family Forward Oregon. Our organization is committed to advancing policies that support families and help them succeed, both in the workplace and at home. We work to ensure that Oregon is a place where all families can be economically secure and have the time they need to take care of each other.

Earlier this year, Family Forward supported House Bill 4002 to phase in overtime pay for agricultural workers. Through the pandemic, catastrophic fire seasons, and hazardous air quality, farmworkers in Oregon kept working to keep food on our tables. Farmworkers are essential workers, deserving of overtime pay. We believe that equal is equal, regardless of type of employment.

Family Forward is in support of BOLI amending its administrative rules by repealing OAR 839-020-0135 and including farmworkers in the existing overtime and piece-rate rules. The repealing of this rule is plain and simple because there is already an existing overtime rule. Once the rules have been amended to include farmworkers, we believe that their enforcement must begin immediately and in an effective way to prevent any cases of wage theft.

Farmworkers deserve dignity, respect, and labor rights— for too long, they have been denied rights other workers have been afforded. Thank you for the opportunity to submit public comment.

Sincerely,

Lisa Kwon
Policy Manager
Family Forward Oregon



