



Joint Interim Committee On The First Special Session of 2020
Testimony on Sections 37-39 of HB 4212

June 24, 2020

Co-Chair Courtney, Co-Chair Kotek, members of the Committee,

Thank you for the opportunity to provide testimony today on Sections 37-39 of HB 4212. This language is the same as what existed in Sections 45-47 of LC 45 and LC 68, which were pulled from the agenda on June 22, and never heard before the committee. For this reason, we respectfully request that the Joint Committee amend HB 4212 and remove these sections prior to voting on HB 4212.

First and foremost, employee health and safety has been of the utmost importance to our organizations and the agricultural industry since the beginning of COVID-19. Our organizations have worked with Oregon OSHA, Oregon Health Authority, the Oregon Department of Agriculture, and the Governor’s Office to help produce and implement guidance and binding standards for our industry during COVID-19. Because of these exhaustive efforts, we do not believe additional regulation is warranted, and have strong concerns about the concept of establishing an additional infectious disease standard that will likely result in permanent and duplicative regulations based in this new standard.

Oregon’s farmers, ranchers, and agri-businesses have already committed to mitigating the transmission of COVID-19 in the workplace, and have invested in highly expensive and burdensome infrastructure upgrades to comply with OR-OSHA’s temporary rules for agriculture in light of the pandemic. Adopting an infectious disease standard for agricultural workers would be redundant, and as discussed below, could cause more harm than good for Oregon’s COVID-19 mitigation efforts.

Additionally, the broad definition of “agricultural worker” that HB 4212 utilizes includes employees of forestation and reforestation operations. This means that that the likely burdensome and counterproductive effects of this concept would extend well beyond traditional agricultural operations, and would even implicate essential activities of the state’s timber industry.

In May, the United States Department of Labor denied a Petition filed by AFL-CIO demanding an emergency national infectious disease standard.¹ US-DOL determined that not only would it be “inappropriate” and “damaging to pandemic response effort” to adopt such a standard, but the best approach for responding to the pandemic is to enforce existing OSHA requirements that address infectious disease hazards, while also issuing detailed, industry-specific guidance that can be quickly amended and adjusted as its understanding of the virus grows.² This is the same regulatory approach US-DOL used during SARS, MERS, H1N1 and Ebola.

On June 11, the U.S. Court of Appeals for the District of Columbia Circuit rejected an AFL-CIO lawsuit calling on the US-DOL and OSHA to issue an emergency temporary infectious disease standard amid the evolving COVID-19 pandemic.³ According to the U.S. Court of Appeals:

In light of the unprecedented nature of the COVID-19 pandemic, as well as the regulatory tools that OSHA has at its disposal to ensure that employers are maintaining hazard-free work environments, OSHA reasonably determined that an ETS [emergency temporary standard] is not necessary at this time.

OSHA denied a similar petition by unions during the 2005 avian flu pandemic, and chose to not complete rulemaking prompted by a 2009 Petition from AFL-CIO. It is important to note that the 2009 rule concept only found a recognized risk of occupational exposure to infectious agents for workers generally providing direct patient care in medical and healthcare settings.⁴ All other workplaces, including farms, ranches, and agricultural processing facilities, were not identified by OSHA as needing an infectious disease standard and not even considered to be covered by the proposed rule.

Based on this information, there is no justifiable reason why OR-OSHA should be required to deviate from our country’s established response to pandemic and infectious disease scenarios.

As was the case on the national level, requiring OR-OSHA to adopt temporary rules establishing an emergency temporary infectious disease standard would be inappropriate and damaging to COVID-19 response. The science around COVID-19 is constantly evolving, which is why US-DOL, OSHA, and the federal courts have recognized that existing rules and industry-specific guidance are the best approach to keeping our workplaces safe during the pandemic. In line with this strategy, the Oregon Health Authority (OHA) has also adopted highly detailed and industry-specific guidance for a number of workplaces, including agricultural businesses. These guidance documents can all be found in one centralized location on the OHA website, and are easily amendable as we learn more about COVID-19. The last thing that employers need is potentially conflicting, unworkable, or ineffective standards from different agencies during these already uncertain times.

OR-OSHA has also already adopted temporary rules for agriculture to respond to COVID-19. These rules are rooted in existing OR-OSHA authority, and require extensive changes to in-field sanitation, employer provided housing, and transportation requirements. The temporary rules are in place until late October. Importantly, these rules have cost many farms and ranches tens of thousands of dollars to comply with and have required substantial financial assistance, \$16 million, from the state. If made permanent, the costs of these control measures would undoubtedly inundate Oregon’s family farms, which directly puts Oregon’s

¹ <https://www.safetyandhealthmagazine.com/articles/19945-osh-denies-afl-cio-petition-calling-for-an-emergency-standard-on-infectious-diseases>

² https://drive.google.com/file/d/1rxlZnTDUwQxINHJFCQy_bXEmufURd1AR/view (page 3)

³ <https://www.bloomberglaw.com/public/desktop/document/InreAFLCIODocketNo2001158DCCirMay182020CourtDocket/4?1591894225>

⁴ <https://www.osha.gov/dsg/id/OSHA-2010-0003-0239.pdf> (page 1)

food supply at risk. Any rules that are adopted for COVID-19 must be made temporary and the impacts to small businesses have to be fully considered. Providing OR-OSHA new, expanded authority is both unnecessary and could be damaging to Oregon agriculture.

Based upon these existing requirements and COVID-19 guidance documents issued by Oregon's public health agency, adopting an infectious disease standard and associated control measures would be unwarranted, superfluous, and would force OR-OSHA to deviate from our nation's response to the pandemic.

We urge the Committee to amend HB 4212 and remove Sections 37-39 prior to voting on HB 4212.