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

CHAPTER 839  
BUREAU OF LABOR AND INDUSTRIES

**FILED**

01/09/2025 10:54 AM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Amends rule to eliminate process related to reconsideration of prevailing wage determination.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 02/28/2025 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.*

*A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.*

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**NEED FOR THE RULE(S)**

ORS 279C.817 requires the Bureau to determine, upon request, whether a construction project is a public works project on which payment of the prevailing rate of wage is required. The statute authorizes the requestor, or any person who is adversely affected or aggrieved, to request a contested case to challenge the Bureau's determination. In addition to this process, the Bureau has established a mechanism by rule which allows a requestor or certain public agencies to request that the Bureau reconsider its determination.

This reconsideration process is, however, duplicative. To the extent that a requestor disagrees with the Bureau's legal conclusion, they may request a contested case to challenge that decision. To the extent that factual developments render a previous determination moot, a requestor may submit a new request for a determination with accurate factual information included. In neither instance is a formal process for reconsideration necessary and the Bureau believes that the resources used to process requests for reconsideration can be better used to support Oregon workers and Oregon businesses. These rule amendments are necessary to eliminate this formal reconsideration process.

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

ORS chapter 279C is available here: [https://www.oregonlegislature.gov/bills\\_laws/ors/ors279c.html](https://www.oregonlegislature.gov/bills_laws/ors/ors279c.html)

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

Eliminating the formal reconsideration process is unlikely to affect racial equity in this state. Requestors will retain the ability to seek a subsequent determination based on a change in the factual circumstances of the project. Requestors will also retain the ability to present legal arguments to the Bureau and, ultimately, to challenge the Bureau's legal conclusion via a contested case. For these reasons, the Bureau does not anticipate that these rule amendments will affect racial equity in this state.

FISCAL AND ECONOMIC IMPACT:

These rules are intended to preserve the scarce resources available to the Bureau, without impairing the ability to receive updated factual information or to consider legal arguments advanced by requestors. Because alternative avenues to exchange factual and legal information will continue to exist, the Bureau does not anticipate that these rules will create a fiscal or economic impact. It may ultimately be that these rule amendments lead to a positive fiscal or economic impact. Historically, the Bureau has received very few meritorious requests for reconsideration. These rule amendments may result in reaching finality of the Bureau's initial administrative decision more quickly, reducing any construction-related delays or expenses associated with non-meritorious requests for reconsideration.

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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).*

These rules amendments apply to state agencies, units of local governments and members of the public who are involved in the construction of public works projects. Public agencies, which includes state agencies and units of local governments, as well as any other interested person, which can include developers, contractors, labor organizations or individual workers, among others, may request that the Bureau determine whether a project is a public works project and subject to the prevailing wage. Any entity or individual that does request a determination, as well as any affected public agencies, may request reconsideration under current administrative rule. If any of these entities or individuals seek a determination from the Bureau, they may be economically affected by these rule amendments.

According to the U.S. Small Business Administration, there are nearly 400,000 small businesses operating in Oregon, approximately 13,000 of which are in the construction industry and have between 1-19 employees. The Bureau therefor estimates that approximately 15,000 construction-related businesses with 50 or fewer employees are potentially subject to these rule amendments, to the extent they seek a determination under ORS 279C.817 and subsequently seek to have the Bureau reconsider that determination.

As described above, requestors will retain the ability to request a new determination based on a change in facts, and to submit legal arguments to the Bureau. As a consequence, these rules are unlikely to impose any reporting, recordkeeping or administrative activities or costs necessary to comply with these rules. For similar reasons, the Bureau does not anticipate an increase in the cost of professional services, equipment supplies, labor or increased administration.

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

These rule amendments were considered by the Prevailing Wage Advisory Committee described in ORS 279C.820, which includes a representative of small and large businesses. In addition, small businesses and members of the public are invited to comment on these rules. The Bureau will also post notice of this rulemaking on its webpage and in the Oregon Bulletin, while also disseminating this notice to the Bureau's mailing

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WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

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AMEND: 839-025-0005

RULE SUMMARY: Amends rule to eliminate process related to reconsideration of prevailing wage determination.

CHANGES TO RULE:

Purpose and Procedure for Determination Requests ¶¶

(1) A request for a determination as to whether a project or proposed project is a public works under ORS 279C.817, must meet the following requirements before it will be considered by the Bureau:¶¶

(a) The request must be in writing and describe all relevant details of the project or proposed project.¶¶

(b) A copy of the request must be sent to any public agency known to be associated with the project at the time it is submitted to the Bureau. The request must identify the public agencies receiving a copy of the request.¶¶

(c) In addition to the written request, the requester must provide all documents, records, and other information necessary to enable the Bureau to make the determination. This information includes, but is not limited to, copies of advertisements, project plans and specifications, development and disposition agreements, contracts, project financing information, loan agreements, and any other relevant information related to the project or proposed project. When the requester is not a public agency and information necessary for a determination is in the custody or control of a public agency, it is the requester's responsibility to obtain the information from the public agency and provide it with the request.¶¶

(2) The requester has a continuing duty to provide the Bureau with all relevant documents, records and other information until a determination is made. If any information submitted in connection with a request is modified or superseded in any material respect after the request is made, the requester must promptly submit the updated information to the Bureau.¶¶

(3) The Bureau will inform the requester if additional documents, records, or other information is necessary to enable the Bureau to make the determination.¶¶

(4) If the Bureau informs a requester that the Bureau has not received all the documents, records, or other information necessary to make a determination, the request will remain pending for 90 calendar days. If the Bureau does not receive the information the Bureau deems necessary to make a determination while the request is pending, the requester may be required to submit a new request in order to obtain a determination.¶¶

(5) If a requester fails or refuses to provide documents, records, or other information necessary to enable the Bureau to make the determination and the Bureau has reasonable grounds to believe such documents, records, or other information exist, the Bureau may inform the requester that the Bureau is unable to issue a determination.¶¶

(6) The Bureau's determination will be issued to the requester, with copies mailed to any public agencies identified on the request.¶¶

(7) The determination will include notice of the right of the requester, and of any person adversely affected or aggrieved by the determination, to a hearing in accordance with ORS 183.413 to 183.470 and OAR Ch. 839, div. 50.¶¶

~~(8)(a) After the Bureau issues a determination, the requester or any public agency served with a copy of the determination may request that the Bureau reconsider the determination.¶¶~~

~~(b) A request for reconsideration must be received within 15 calendar days of the date the determination was mailed. Requests must be submitted to the Bureau. A request for reconsideration does not toll the time period for requesting a contested case hearing on the determination.¶¶~~

~~(c) The reconsideration request must be in writing and include the reason or reasons for the request and any documents in support of the request.¶¶~~

~~(d) The Bureau will accept or reject the request within 15 business days of receipt of the request by the Bureau. If the Bureau does not accept the request within 15 business days, it is deemed denied.~~

Statutory/Other Authority: ORS 279C.808, ORS 279C.817, ORS 651.060

Statutes/Other Implemented: ORS 279C.817