

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DIVISION OF WORKFORCE REGULATION AND SAFETY

**RULES AND REGULATIONS RELATING TO  
EXEMPTIONS FOR WORK ON HOLIDAYS AND SUNDAYS**

**Public Notice of Proposed Rule-Making**

The Division of Workforce Regulation within the Rhode Island Department of Labor and Training, under the authority granted by Chapter 3 of Title 25 of the General Laws of Rhode Island, 1956, as amended, adopts, amends, modifies and rejects general and special rules and regulations under Chapter 35 of Title 42 of the General Laws of Rhode Island, as amended, and proposes the following amendments:

The proposed amendment adds Regulation 13, which exempts all employers that operate in the fresh prepared foods industry that prepare and distribute packaged food options for sale in retail outlets, such as grocery stores and convenience stores, and who must operate twenty-four (24) hours a day and seven (7) days a week in order to produce fresh, short shelf-life products, from paying employees Sunday and holiday premium pay.

The proposed amendment will be available for public examination on the Rhode Island Department of Labor and Training's website at the following address: <http://www.dlt.ri.gov/>, in person at the Rhode Island Department of Labor & Training, 1511 Pontiac Avenue, Cranston, RI 02920 between the hours of 9:00 a.m. and 3:00 p.m., requested by mail addressed to Joseph Degnan, Assistant Director, Department of Labor and Training, 1511 Pontiac Avenue, Cranston, RI 02920, or by calling 401-462-8000.

In the development of the proposed rule, consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small businesses. Based on available information, no significant economic impact was identified nor are there any alternative approaches, duplications or overlaps with other state regulations.

All interested parties are invited to submit written or oral comments concerning the proposed amendment within thirty (30) days of the date of publication of this notice. The comments should be addressed to Joseph Degnan, Assistant Director, Department of Labor and Training, 1511 Pontiac Avenue, Cranston, RI 02920, or 401-462-8000.

A public hearing, in accordance with Rhode Island General Law, Section 42-35-3, to consider the proposed amendments shall be held on Monday, July 13<sup>th</sup>, 2015 from 2:00 pm to 3:00 pm at the RI Department of Labor and Training, Building 73-1, 1511 Pontiac Avenue, Cranston, RI 02920 at which time and place all persons interested therein will be heard. The place of the public hearing is accessible to the handicapped. If communication assistance (readers/ interpreters/captioners) is needed, or any other accommodation to ensure equal participation, please call 401-462-8000 or RI Relay 711 at least three (3) business days prior to the meeting so arrangements can be made to provide such assistance at no cost to the person requesting.

Date Notice Was Posted: June 12, 2015

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**RULES AND REGULATIONS RELATING TO  
EXEMPTIONS FOR WORK ON HOLIDAYS AND SUNDAYS**

Concise Summary of Proposed Non-Technical Amendments to  
Rules and Regulations Relating to Exemptions for Work on Holidays and Sundays

In accordance with the Administrative Procedures Act, Section 42-35-3(a)(1) of the General Laws of Rhode Island, following is a concise summary of proposed non-technical amendment:

**Regulation 13)**

The amendment exempts all employers that operate in the fresh prepared foods industry that prepare and distribute packaged food options for sale in retail outlets, such as grocery stores and convenience stores, and who must operate twenty-four (24) hours a day and seven (7) days a week in order to produce fresh, short shelf-life products, from paying employees Sunday and holiday premium pay.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DIVISION OF WORKFORCE REGULATION AND SAFETY

**RULES AND REGULATIONS RELATING TO PREMIUM PAY  
EXEMPTIONS FOR WORK ON HOLIDAYS AND SUNDAYS**

As Amended: June 2015

1. Pursuant to R.I.G.L. §25-3-6 and R.I.G.L. §25-3-7 the Director may exempt any class of employers, either because of the nature of their operations or their size, from the requirement that work performed by employees on Sundays and holidays must be paid for at least one and one-half (1 1/2) times the normal rate of pay for the work performed.
2. Any Rhode Island employer, as defined by § 25-3-1 (4) , may petition the Director for an exemption by filing with the Director a written statement containing the following: (a) a description of the class of employers which the petitioner seeks to exempt from holiday and Sunday premium wage laws; (b) a description of the employer classes' operational requirements necessitating Sunday and holiday staffing; (c) the approximate number of petitioner's employees who typically work on Sundays and holidays and who would be affected by the exemption; and (d) a statement of the economic necessity, as defined by §25-3-1, justifying the exemption.
3. Upon receipt of a petition for exemption pursuant to R.I.G.L. §25-3-7, the Director shall either grant the request for an exemption for a particular employer class and notify the petitioner of the Department's intent to promulgate regulations for that class pursuant to R.I.G.L. §42-35-1 et seq. or shall notify the petitioner that the request has been denied.
4. An employer whose petition for exemption has been denied, may, within ten (10) days from the date of the Director's notice of denial of the petition, request an appeal hearing before the Director or the Director's designee to present evidence or other information concerning the request; the Director shall then review the information provided and may either grant the petition or deny the petition.
5. When applicable, if a collective bargaining agreement provides for the payment of any premium wage on Sundays or holidays to certain employees who are otherwise exempted by these rules from receiving premium wages on Sundays or holidays, the employer shall pay the premium wage as required by the collective bargaining agreement.
6. Manufactures of monoclonal antibodies using mammalian cells requiring continuous operations and maintenance for the production of such monoclonal antibodies are exempt from paying employees Sunday and holiday premium pay

when those employees work directly on the production, maintenance and quality control testing of monoclonal antibodies using mammalian cells.

7. Fueling operators at Rhode Island Airport Corporation airports providing operation, quality assurance and maintenance services for the storage, receipt and distribution of aviation fuels and other related airline industry fuels and fluids, such as Glycol de-icing fluids, shall be exempt from paying employees Sunday and holiday premium pay. Exempt employees must provide oversight of daily fueling procedures, performance of quality checks, fuel related record keeping, direct receipt and testing of fuels, fuel inventory functions, environmental functions or dispersal services for commercial aviation fuel or related fuels and fluids or provide mandatory maintenance in line with Federal Aviation Administration (FAA) or Rhode Island Airport Authority protocols concerning aviation industry fuels and fluids or related fuels and fluids.
8. Employers of Federally Certified Maintenance Technicians that repair or inspect aircraft and specific ground service equipment at T.F. Green airport, and who are certified by the Federal Aviation Administration shall be exempt from paying employees Sunday and holiday premium pay.
9. Motorist service facilities located on, or approximate to, major interstate highways that operate twenty-four (24) hours a day, seven (7) days a week and provide gasoline and/or diesel fuel sales and vehicle servicing in combination with restaurant operations, convenience stores, or other travel amenities shall be exempt from paying employees Sunday and holiday premium pay.
10. All churches and other houses of worship that employ employees whose work is performed on the day of worship, during the worship service, and that work is solely related to the operation of conducting religious worship services shall be exempt from paying employees Sunday and holiday premium pay. The exemption from premium pay shall be limited to and applicable to work that is performed on the day of worship, during the worship service, and that work is solely related to the operation of conducting religious worship services. Such employees include, but are not limited to, choir directors who direct the choir during worship services, worship technologists who manage and operate light, sound, and audiovisual systems during worship services, youth directors who provide youth supervision and youth programs during religious services, and building and custodian maintenance staff who maintain the facilities during worship services.
11. All non-profit educational institutions of higher education located within Rhode Island, and other educational institutions that operate twenty-four (24) hours a day, seven (7) days a week and provide housing and food service, shall be exempt from paying employees Sunday and holiday premium pay.
12. Private security guard businesses licensed under R.I.G.L. § 5-5.1-1 et seq., shall be exempt from paying employees Sunday and holiday premium pay.

13. All employers that operate in the fresh prepared foods industry preparing and distributing packaged food options for sale in retail outlets, such as grocery stores and convenience stores, and who must operate twenty-four (24) hours a day and seven (7) days a week in order to produce fresh, short shelf-life products, shall be exempt from paying employees Sunday and holiday premium pay.



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
**OFFICE OF REGULATORY REFORM**  
 OFFICE OF MANAGEMENT & BUDGET  
 DEPARTMENT OF ADMINISTRATION

One Capitol Hill  
 Providence, RI 02908-5890  
 Office: (401) 574-8430  
 www.omb.ri.gov

## Executive Order 15-07: Submission Form

AGENCY AND REGULATION INFORMATION			
<b>1. Title of Regulation</b>	RULES AND REGULATIONS RELATING TO EXEMPTIONS FOR WORK ON HOLIDAYS AND SUNDAYS		
<b>2. Agency Name</b>	RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING	<b>3. Date Submitted (mm/dd/yy)</b>	05/29/15
<b>4. Agency Contact Name</b>	SEAN M. FONTES	<b>5. Telephone (include Area Code)</b>	(401) 462-8861
<b>6. Email</b>	sean.fontes@dlt.ri.gov		
<b>7. Rulemaking Action</b>	<input checked="" type="checkbox"/> Amendment <input type="checkbox"/> Adoption <input type="checkbox"/> Repeal <input type="checkbox"/> Emergency Rulemaking		
<b>8. State Statutory Authority</b>	CHAPTER 25-3		
<b>9. Federal or other Statutory Authority (please describe)</b>			
<b>10. Is there a legal deadline for this action?</b>	<input checked="" type="checkbox"/> None <input type="checkbox"/> Statutory deadline: _____ <input type="checkbox"/> Court-ordered deadline: _____ Describe:		
<b>11. Current ERLID #</b>	<u>7944</u> OR <input type="checkbox"/> No current ERLID # assigned		

AGENCY CERTIFICATIONS			
<b>12. Regulatory Flexibility Analysis/Small Business Regulatory Fairness in Administrative Procedures</b>			
By signature in item 13, the agency Rules Coordinator or authorized designee deems that this regulation:			
<input type="checkbox"/> DOES have impact on small business <input checked="" type="checkbox"/> DOES NOT have impact on small business,			
and that if such small business impact exists, the agency has completed the additional documentation for further Regulatory Flexibility Analysis, in order to consider, without limitation, all methods of reducing the impact of this regulation on small business.			
<b>Executive Order 15-07</b>			
By signature in item 13, the agency Rules Coordinator or authorized designee certifies that the agency has complied with the requirements of E.O 15-07 and any applicable policy directives.			
<b>13. Signature of Rules Coordinator or Authorized Designee</b>	<i>Sean Fontes</i>	<b>14. Date (mm/dd/yy)</b>	05/29/15
	I understand that my typed name shall have the same force and effect as my written signature.		
<b>15. Position</b>	EXECUTIVE COUNSEL		

## EXECUTIVE SUMMARY OF REGULATION

### 16. Briefly summarize the purpose of this regulation.

The proposed amended rule exempts all employers that operate in the fresh prepared foods industry that prepare and distribute packaged food options for sale in retail outlets, such as grocery stores and convenience stores, and who must operate twenty-four (24) hours a day and seven (7) days a week in order to produce fresh, short shelf-life products, from paying employees Sunday and holiday premium pay.

### 17. Briefly summarize the societal costs and benefits of this regulation on Rhode Island.

The costs and benefits incurred and acquired by this regulation will affect one employer and 190 employees. This regulation exempts one employer who operates in the fresh prepared foods industry that prepares and distributes packaged food options for sale in retail outlets, such as grocery stores and convenience stores, and who must operate twenty-four (24) hours a day and seven (7) days a week in order to produce fresh, short shelf-life products from paying employees Sunday and holiday premium pay. These numbers make up the current and expected number of employers and employees in the coming year.

This regulation exempts one additional class of employers from the requirement of paying employees time and a half for work on Sundays and holidays. Currently there are only nine classes of employers with this exemption.

This regulation benefits the one existing employer by allowing the employer to save on business costs and allowing the employer to bring approximately 400 jobs to Rhode Island immediately and approximately 1000 jobs in the near future, when the employer reaches full capacity. The cost is that approximately 190 employees will not have the benefit of premium pay for work on Sundays and holidays.

Lastly, any additional costs will have a zero net effect due to transfer costs, keeping resources in Rhode Island. The cost transfer will go from Rhode Island employees to Rhode Island employers and Rhode Island revenue in the form of taxes.



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## Executive Order 15-07: Submission Guidance

Contact ORR with any further questions on EO 15-07 requirements.

AGENCY AND REGULATION INFORMATION	
<b>Item 1: Title of Regulation</b>	<ul style="list-style-type: none"> <li>For amendments or repeals, provide the exact title as in the SOS database.</li> <li>For adoptions, choose a title not easily confused with another regulation.</li> </ul>
<b>Item 2: Agency Name</b>	<ul style="list-style-type: none"> <li>Provide the full name of the agency.</li> </ul>
<b>Item 3: Date</b>	<ul style="list-style-type: none"> <li>Provide the date submitted to ORR.</li> </ul>
<b>Items 4-6: Agency Contact</b>	<ul style="list-style-type: none"> <li>Provide name, telephone, and email.</li> </ul>
<b>Item 7: Rulemaking Action</b>	<ul style="list-style-type: none"> <li>Choose one of Amendment, Adoption, or Repeal (including repeal of a regulation that will be replaced by a new regulation), AND</li> <li>If applicable, choose Emergency Rulemaking in addition to Amendment/Adoption/Repeal.</li> </ul>
<b>Item 8: State Statutory Authority</b>	<ul style="list-style-type: none"> <li>Cite the agency's enabling RIGL statute that authorizes the agency to promulgate the regulation.</li> </ul>
<b>Item 9: Federal or other Statutory Authority</b>	<ul style="list-style-type: none"> <li>Cite any federal or other legal authority that influences this regulation, and describe that influence.</li> <li>Provide all information necessary so that ORR can easily locate and identify the authority (particularly for federal codes or other complex sources).</li> </ul>
<b>Item 10: Legal Deadline</b>	<ul style="list-style-type: none"> <li>Provide any legal deadline for this action. Select Statutory or Court-Ordered, and provide whatever description needed to convey any legal time constraints that the agency must meet.</li> </ul>
<b>Item 11: Current ERLID Number</b>	<ul style="list-style-type: none"> <li>Provide the current (at time of submission) ERLID identification number.</li> <li>If none, check "No current ERLID #."</li> </ul>

AGENCY CERTIFICATIONS	
<p><b><u>Item 12: Regulatory Flexibility/Small Business Regulatory Fairness in Administration Procedures</u></b></p> <p>RIGL § 42-35.1 requires Regulatory Flexibility Analysis for all rulemaking actions. Agencies must confirm that they have considered, without limitation, all methods of reducing the impact of this regulation on small businesses.</p> <p>To complete this regulation's Regulatory Flexibility Analysis, <b>first consult the "ORR Small Business Impact Model: Three Types of Impact" on page 4</b>, then check the appropriate box based on this impact model.</p> <ul style="list-style-type: none"> <li>If you believe the regulation <b>DOES have any type of small business impact</b>, check that box. Complete the "Regulatory Flexibility Analysis" form (use previous form; contact ORR if needed) to confirm that you have considered all methods of minimizing impact on small businesses.</li> <li>If you believe the regulation <b>has NO IMPACT on any small business</b>, check that box. This completes your Regulatory Flexibility Analysis at this time. However, please note that ORR may contact you for further detail if it identifies potential small business impact.</li> </ul>	
<b>Items 13-15: Certification Signature, Date, and Position</b>	<ul style="list-style-type: none"> <li>Confirm (with your agency head or legal counsel, if needed) that the agency has complied with all requirements of EO 15-07 and any applicable policy directives, as well as the Regulatory Flexibility Analysis described above. Contact ORR if you have any questions on requirements.</li> <li>Enter your name, title, and the date. Your typed signature will have the same force and effect as a written signature.</li> </ul>

### **ORR Small Business Impact Model: Three Types Of Impact**

If the Proposed Regulation has any of these types of impact, further Regulatory Flexibility Analysis is required (it is not necessary to identify the type of impact). Use the previous forms provided by Small Business Ombudsman, or contact ORR.

**DIRECT IMPACT:** Regulations that a small business must adhere to in order to operate. Examples:

- Those requiring that small business do or not do something
- Those requiring small business to be held accountable for understanding something

**DECISION-BASED IMPACT:** Regulations that are triggered by a business decision. Examples:

- Those addressing incentive programs (e.g. grants; tax credits)
- Those governing legal proceedings (e.g. hearings; petitions; appeals; penalties)
- Those where small business chooses to interact with the state (e.g. bidding for state contracts; participating in state-funded programs; requesting public records)

**INDIRECT IMPACT:** Regulations whose impacts reach small businesses indirectly. Examples:

- Those that impact small business via municipalities or other government agencies
- Those that impact small business via individuals
- Those that impact small business via industries statutorily not considered small business

### **EXECUTIVE SUMMARY OF THE REGULATION**

**Item 16:  
Regulatory  
Purpose**

**Briefly summarize the purpose of this regulation.**

This section should, at a minimum, include:

- The regulatory action
- The normative goal (intended societal outcome) of the regulatory change
- The impacts of the regulation on each category of affected entities
- The timeframe over which the regulatory impacts will occur

**Item 17:  
Regulatory  
Impact**

**Briefly summarize the societal costs and benefits of this regulation on Rhode Island.**

“Societal Impact” refers to the net costs and benefits of the regulation to the State. ORR will issue full guidance and training on how to conduct appropriate cost-benefit analyses for Rhode Island.

In the interim, agencies should (to the extent possible) quantify all costs and benefits of the regulatory action to entities within the state’s borders, and generate a net present value of the regulation.

In doing so, agencies should keep in mind the following principles:

- All costs and benefits must be measured against a specific baseline – the agency’s best assessment of the state of the world in the absence of the regulation’s effects.
- The costs must include both direct costs and opportunity costs of the proposed action.
- The intergenerational discount rate for future social costs and benefits is 3.0%.
- The intergenerational discount rate for future capital costs is 7.0% (unless the agency can justify an alternative rate).
- The value of a statistical life should, unless otherwise approved by ORR, be \$9.1 million per life saved.

These principles are to help guide agencies in their economic analysis. For the purposes of this document, please include the summary of the analysis based on these principles.