

BUREAU OF LABOR AND INDUSTRIES
Wage and Hour Division

OREGON ADMINISTRATIVE RULES
Chapter 839, Division 015
2008 EDITION

Rules Regulating Farm and Forest Labor Contractors

FARM AND FOREST LABOR
CONTRACTORS

839-015-0000

Notice of Proposed Rule

Prior to the permanent adoption, amendment or repeal of any rule relating to farm and forest labor contractors, the Bureau of Labor and Industries shall give notice of the intended action as required in OAR 839-002-0002.

Stat. Auth.: ORS 183.335, 651.060(4), 658.407(3) & 658.405 - 658.503

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BL 10-1980, f. & ef. 9-19-80; BL 6-1984, f. & ef. 4-27-84, Renumbered from 839-015-0103; BL 3-1990, f. & cert. ef. 3-1-90; BL 2-1996, f. & cert. ef. 1-9-96; BLI 9-2004, f. 7-26-04, cert. ef. 7-27-04

839-015-0004

Definitions

As used in these rules, unless the context requires otherwise:

(1) "Aggregate bond or deposit" means a bond or deposit posted pursuant to ORS 658.415 by a licensed business entity on behalf of itself and any of its owners or employees who engage in farm or forest labor contracting activities to secure payment of wages and advances due from the entity or any of its owners or employees arising from their activities as farm or forest labor contractors, whether incurred on behalf of the entity or any of its owners or employees.

(2) "Agreed remuneration" means compensation of any kind that is agreed upon by a farm or forest labor contractor and another for the services of such contractor.

(3) "Agricultural association" means a nonprofit or cooperative association of farmers, growers or ranchers that is incorporated under applicable state law and that acts as a farm labor contractor solely on behalf of members of the association.

(4) "Application of big game repellent by contract crew" means work performed by workers who are recruited, solicited, supplied or employed by a person who has contracted to supply a crew of workers to apply big game repellent.

(5) "Bureau" means the Bureau of Labor and Industries.

(6) "Commissioner" means the Commissioner of the Bureau of Labor and Industries, or designee.

(7) "Crew leader" means the member of a group of workers who acts as a spokesperson for the group, travels with the group from another state into Oregon, performs the same work along with other members of the group and receives no extra compensation from any person by virtue of acting as a crew leader, aside from any money received from other members of the group for sharing payment of the actual expenses of the group, and provided that the employer pays the members of the group directly and individually for their labor. An immediate family acting as a single unit is not a group, within the meaning of this rule. The spokesperson for such unit is not, therefore, a crew leader. An immediate family includes the father, mother, son, daughter, brother, sister, husband, or wife of the spokesperson for the family. A crew leader may perform the following activities without a license:

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(a) Transporting workers from their local place of residence to their place of employment when the crew leader does not perform this service for a profit; and

(b) Making arrangements for jobs, housing, credit, or any other needs of the members of the group, provided the crew leader receives no compensation for this service; and

(c) Adding members to the group in Oregon, provided the crew leader receives no compensation therefore from the added members or from any other person.

(8) "Farm labor contractor" means:

(a) Any person who, for an agreed remuneration or rate of pay, recruits, solicits, supplies or employs workers to perform labor for another in the production or harvesting of farm products;

(b) Any person who recruits, solicits, supplies or employs workers for an employer who is engaged in the production or harvesting of farm products;

(c) Any person who recruits, solicits, supplies or employs workers to gather wild forest products, as that term is defined in paragraph (23) of this section;

(d) Any person who furnishes board or lodging for workers in connection with the recruiting, soliciting, supplying or employing of workers to be engaged in the production or harvesting of farm products or in the gathering of wild forest products;

(e) Any person who bids or submits contract offers for the production or harvesting of farm products or the gathering of wild forest products; or

(f) Any person who subcontracts with another for the production or harvesting of farm products or the gathering of wild forest products.

(9) "Farmer" means the owner or lessee of land used in the production and harvesting of farm products.

(10) "Farm-worker camp" has the same meaning as that defined in ORS 658.705(7).

(11) "Farm-worker camp operator" has the same meaning as that defined in OAR 839-014-0035(8).

(12) "Forest fire suppression by contract crew" includes work performed by forest fire fighters who are recruited, solicited, supplied or employed by a person who has contracted to supply a crew of forest fire fighters prior to the existence of the fire. (An incidental duty to assist in emergency fire suppression arising from a permit, timber sale contract, or similar agreement whose primary purpose does not relate to fire suppression does not constitute such a prior contract to supply forest fire fighters.)

(13) "Forest labor contractor" means:

(a) Any person who, for an agreed remuneration or rate of pay, recruits, solicits, supplies or employs workers to perform labor for another in the forestation or reforestation of lands; or

(b) Any person who recruits, solicits, supplies or employs workers for an employer who is engaged in the forestation or reforestation of lands; or

(c) Any person who furnishes board and lodging for workers in connection with the recruiting, soliciting, supplying or

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employing of workers to be engaged in the forestation or reforestation of lands;

(d) Any person who bids or submits contract offers for the forestation or reforestation of lands; or

(e) Any person who subcontracts with another for the forestation or reforestation of lands.

(14) "Forestation or reforestation of lands" includes, but is not limited to:

(a) The planting, transplanting, tubing, pre-commercial thinning, and thinning of trees and seedlings; and

(b) The clearing, piling and disposal of brush and slash; and

(c) Other activities related to the forestation or reforestation of lands including, but not limited to, tree shading, pinning, tagging or staking; fire trail construction and maintenance; slash burning and mop up; mulching of tree seedlings; forest fire suppression by contract crew; application of big game repellent by contract crew; herbicide or pesticide application in the forest by contract crew; gopher baiting; gopher trapping and any activity related to the growth of trees and tree seedlings and the disposal of debris from the land.

(15) "Herbicide or pesticide application in the forest by contract crew" means work performed by workers who are recruited, solicited, supplied or employed by a person who has contracted to supply a crew of workers to apply herbicides or pesticides in the forest.

(16) "Individuals engaged in the solicitation or recruitment of persons for day-

haul work" means individuals who solicit or recruit only persons:

(a) Who reside permanently in the local area; and

(b) Who do not, temporarily or otherwise, reside on the farm on which they are working; and

(c) Who are not employed by the individuals; and

(d) Who are transported to the farm each day.

(17) "License" means a farm or forest labor contractor's license issued by the Bureau.

(18) "Perform labor" means the performance of work which is manual or physical in nature (including the use of tools), as distinguished from mental, technical, professional or managerial. Work of a mental, technical, professional or managerial nature includes, but is not limited to:

(a) The operation of aircraft, trucks or heavy equipment that require special permits to operate or labor performed by support crews in connection with such operation;

(b) Stocking surveys;

(c) Timber cruising;

(d) Plantation and timber stand examination;

(e) Surveying;

(f) Secretarial work;

(g) Supervising employees;

(h) Technical or professional work which requires an occupational license (other than the license required by ORS 658.405 to 658.475);

(i) Work requiring an advanced type of knowledge in a field of science, technology or

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learning customarily acquired over a prolonged course of specialized instruction and study;

(j) Forest research and genetic improvement work (including single-tree or sample lot cone collections and the planting of parent or study trees) that services technical forestry advancement rather than direct forestation or reforestation efforts.

(19) "Permanent employee" means an employee of a farmer, nursery owner, processor of farm products, or owner or lessee of land intended to be used for the production of timber whose employment is intended to continue indefinitely. Employees employed on a seasonal, temporary or transient basis are not permanent employees under the section.

(20) "Person" means any individual, sole proprietorship, partnership, corporation, cooperative corporation, association, public or private corporation, government or governmental instrumentality or other business or legal entity.

(21) "Platoon leader" means a temporary supervisor employed by the farmer to supervise employees hired independently by the farmer and placed under the direction of the platoon leader, provided there is no other connection between the platoon leader and the employees.

(22) "Production and harvesting of farm products" includes, but is not limited to, the cultivation and tillage of the soil, the production, cultivation, growing and harvesting of any agricultural commodity, including, but not limited to, cottonwood trees for fiber production and Christmas trees, and

the preparation for and delivery to market of any such commodity.

(23) "To gather wild forest products" or "the gathering of wild forest products" means the gathering of evergreen boughs, yew bark, bear grass, salal or ferns, and nothing else, from public lands for sale or market prior to processing or manufacture. This term does not include the gathering of these products from private lands in any circumstance or from public lands when the person gathering the products, or the person's employer, does not sell the products in an unmanufactured or unprocessed state.

Example: A nursery uses its own employees to gather evergreen boughs which it uses in the manufacture of Christmas wreaths. The nursery is not engaged in farm labor contracting activity and therefore would not be required to obtain a license.

Example: A person contracts with the owner of private land to remove salal from the land for resale to florists. Because the salal is growing on private land, the person is not engaged in "gathering of wild forest products" as that term is used in these rules (although in some circumstances, the person may be harvesting a farm product).

(24) "To induce to travel" means to cause or entice a worker to travel to a specific geographical location or area, by any promise or inducement.

(25) "Worker" means an individual performing labor in the forestation or reforestation of lands, in the gathering of wild forest products or in the production and harvesting of farm products, or any person who is recruited, solicited, supplied or

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employed to perform such labor, notwithstanding whether or not a contract of employment is formed or the labor is actually performed. A "worker" includes, but is not limited to employees and members of a cooperative corporation.

(26) As used in subsections (4), (12), and (15) of this rule, the term "work performed" has the same meaning as the term "perform labor" in subsection (18) of this rule.

Stat. Auth.: ORS 658.407

Stats. Implemented: ORS 658.405 - ORS 658.503

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 16-1988, f. & cert. ef. 12-13-88; BL 3-1990, f. & cert. ef. 3-1-90; BL 2-1996, f. & cert. ef. 1-9-96; BL 5-1996, f. 6-14-96, cert. ef. 7-1-96; BLI 7-2000, f. & cert. ef. 2-23-00

Licensing

839-015-0125

Contractors Must Obtain a License; Indorsement

No person may perform the activities of a farm or forest labor contractor without first obtaining a temporary permit or license issued by the bureau. No person may perform the activities of a forest labor contractor or operate a farmworker camp without first obtaining a special indorsement from the bureau authorizing such performance. Unless otherwise specifically exempt, and except for cooperative corporations, no person may perform the duties of a farm or forest labor contractor or operate a farmworker camp under a license issued to a corporation unless the person is also licensed to perform such duties.

Stat. Auth.: ORS 164, ORS 165, ORS 651, ORS 658 & ORS 962

Stats. Implemented: ORS 658.405 - ORS 658.503

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 3-1990, f. & cert. ef. 3-1-90; BL 2-1996, f. & cert. ef. 1-9-96

839-015-0130

Exemptions from Licensing

The following persons are not required to obtain a farm or forest labor contractor's license:

(1) A farmer or owner or lessee of land intended to be used for the production of timber dealing with workers or worker groups only concerning employment in their own operation.

(2) A nursery owner or operator dealing with workers or worker groups only concerning employment in their own operations.

(3) A processor of farm products dealing with workers or worker groups only concerning employment in their own farm operations.

(4) A permanent employee of a farmer, nursery owner, or processor of farm products, or a permanent employee of an owner or lessee of land intended to be used for the production of timber so long as the employee is engaged solely in activities which would not require the employer to be licensed if the employer were performing the activity.

(5) A person engaged only in the solicitation or recruitment of workers for agricultural day-haul work and not engaged in arranging for board or lodging for migrant workers and not performing as an employer of the workers.

(6) A platoon leader.

(7) A leader, or a leader's agent, of an organization operating as a labor union,

Note: These rules reflect all changes, adoptions and amendments in effect January 1, 2008, and replace all rules printed in Chapter 839, Division 015, prior to that date.

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provided that the only payment received from the workers is in the form of membership dues for which the workers are accorded membership status in the conduct of the affairs of the organization.

(8) An employee of a farm or forest labor contractor except for any employee who:

(a) Recruits, solicits, supplies or employs workers on behalf of the farm or forest labor contractor; or

(b) For an agreed remuneration or rate of pay recruits, solicits, supplies or employs workers to perform labor for any other person in forestation or reforestation of lands or the production or harvesting of farm products; or

(c) Recruits, solicits, supplies or employs workers to gather wild forest products; or

(d) Furnishes board or lodging for such workers (but cooks employed by the contractor are not required to be licensed by reason of this sole activity); or

(e) On his or her own behalf bids or submits prices on contracts offers for those activities or enters into a subcontract with another for any of those activities.

(9) A crew leader provided that if the crew leader engages in any activity or receives any compensation with respect to any worker which exceed the permitted activities or compensation allowed by the definition in OAR 839-015-0004(7)(a), the crew leader is not exempt with respect to any activities or workers.

(10) A person who is primarily a supplier of on-farm equipment (sheep shearer, potato digger, or other farm machinery) or

cottonwood tree harvesting machines unless the person also supplies temporary workers other than workers engaged in driving or maintaining the equipment.

(11) The advertising media.

(12) Employees of the Employment Department who are acting within the scope of their employment.

(13) A person performing work of a mental, technical, professional or managerial nature as defined in OAR 839-015-0004(18).

(14) An individual who performs work, other than recruiting, soliciting, supplying or employing workers to perform labor for another, or recruiting, soliciting, supplying or employing workers to gather wild forest products, alone or with only the assistance of the individuals named in section (15) of this rule.

(15) The spouse, son, daughter, brother, sister, mother or father of the individuals named in sections (14) and (16) of this rule.

(16) Individuals who perform labor in connection with an agreement for the exchange of labor or services with each other, provided that the work is performed on land owned or leased by the individuals, and provided further that the labor or services involved are performed solely by said individuals, their immediate families as specified in section (15) of this rule, or their permanent employees.

(17) An educational institution which is recognized as such by the Oregon Department of Education.

(18) An individual who collects tree seed cones or an individual who buys tree seed cones from other individuals. This section

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applies to individuals only and not to persons who are otherwise defined as farm or forest labor contractors.

(19) Persons who recruit, solicit, supply or employ workers to perform labor under a contract or agreement solely for the following activities, provided that the person performs no other activities which would require licensing:

- (a) Stream or creek debris removal;
- (b) Provision of security services;
- (c) Any activity which does not have

the primary purpose of forestation or reforestation of lands, the gathering of wild forest products or of production or harvesting of farm products.

(20) Persons engaged in logging operations who would only otherwise be farm or forest labor contractors because they engage in reforestation activities that are incidental to contracts the primary purpose of which is the sale of timber, provided that they perform such incidental reforestation work using their own employees. If the incidental reforestation activities are carried out using a subcontractor, the subcontractor is required to be licensed.

Stat. Auth.: ORS 658.407

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 16-1988, f. & cert. ef. 12-13-88; BL 3-1990, f. & cert. ef. 3-1-90; BL 2-1996, f. & cert. ef. 1-9-96; BL 5-1996, f. 6-14-96, cert. ef. 7-1-96; BLI 7-2000, f. & cert. ef. 2-23-00; BLI 3-2006, f. 2-16-06, cert. ef. 3-1-06

839-015-0135

Issuance of License

(1) A license may be issued only as follows:

(a) To an individual proposing to operate as a sole proprietor under the individual's own name or under the individual's own name and an assumed business name registered with the Corporation Division;

(b) To an individual proposing to operate as a partner in a partnership or a limited liability partnership under the individual's own name or under the individuals' own names and the assumed partnership business name registered with the Office of the Secretary of State;

(c) To the majority shareholder or majority shareholders of a corporation or member(s) owning a majority of a limited liability company that is authorized to do business in Oregon by the Office of the Secretary of State and to the corporation or limited liability company. Under this form of licensing, except as provided in subsection (3), the licensed majority shareholder or majority shareholders and the licensed corporation or the majority member(s) of a limited liability company and the licensed limited liability company are jointly and severally liable for all violations of the corporation or limited liability company and its agents when acting as a farm labor contractor;

(d) To a cooperative corporation authorized to do business in Oregon by the Office of the Secretary of State;

(e) To a private nonprofit corporation authorized to do business in Oregon by the Office of the Secretary of State and designated by the Internal Revenue Service as

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exempt under section 501 (c)(3) of the Internal Revenue Code, provided:

(A)(i) The purpose of the corporation is to provide education or training; and

(ii) Workers recruited, solicited, supplied or employed by the corporation are recruited, solicited, supplied or employed only for the purpose of educating or training the workers in the forestation or reforestation of lands or in the production or harvesting of farm products; or

(B) For at least five years before the corporation files an application for a farm labor contractor license, the corporation has been:

(i) Authorized to do business in Oregon by the Office of Secretary of State;

(ii) Primarily engaged in recruiting, soliciting, supplying or employing workers; and

(iii) Designated by the Internal Revenue Service as exempt under section 501 (c)(3) of the Internal Revenue Code;

(f) To an agricultural association that is authorized to do business in Oregon by the Office of the Secretary of State;

(g) To an employee of a forest or farm labor contractor who is proposing to or is carrying out activities which would require the employee to obtain a license as a farm or forest labor contractor.

(2) No license may be issued to an individual proposing to do business as a partner in a partnership unless all of the proposed partners are licensed.

(3) The majority shareholder or majority shareholders of a corporation or member(s) owning a majority of a limited

liability company are not required to be licensed under this section if the corporation or limited liability company:

(a)(A) Publicly trades its shares of stock on a stock exchange regulated by the United States Securities and Exchange Commission; or

(B) Has 10 or more shareholders or members and demonstrates to the satisfaction of the commissioner that the corporation or limited liability company is adequately capitalized; and

(C) No individual shareholder or member owns, or no two shareholders or members collectively own a majority of the corporation or limited liability company; and

(b) Is authorized to do business in Oregon by the Office of the Secretary of State.

Stat. Auth.: ORS 164, ORS 165, ORS 651, ORS 658 & ORS 962

Stats. Implemented: ORS 658.405 - ORS 658.503

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 3-1990, f. & cert. ef. 3-1-90; BL 2-1996, f. & cert. ef. 1-9-96; BLI 7-2000, f. & cert. ef. 2-23-00; BLI 12-2001, f. 8-31-01, cert. ef. 9-1-01

839-015-0140

Licensing Requirements

To be eligible for a license, an applicant therefore must:

(1) Be of good character, competence and reliability.

(2) Be a person who has not, within the preceding three years, had an Oregon farm and forest labor contractor's license application denied.

(3) Be a person who has not, within the preceding three years, in Oregon or in any other jurisdiction, had a farm or forest labor

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contractor's license or indorsement denied, revoked or suspended.

(4) Not have persons financially interested in any capacity in the applicant's business as a farm or forest labor contractor who were denied an Oregon farm or forest labor contractor's license within the preceding three years or who had such license denied, revoked, or suspended within the preceding three years in Oregon or any other jurisdiction. A refusal to renew a license or grant a temporary permit because the applicant or any person financially interested in the applicant's business as a farm or forest labor contractor has been denied a license or had a license revoked in Oregon or any other jurisdiction within the preceding three years is considered the same as the revocation of the license or permit on the date of its expiration.

(5) Not have any unsatisfied final judgments of the court or final orders issued by any government agency which require the payment of unpaid wages to employees or the payment of any advances made to the contractor by farmers or owners or lessees of land intended to be used for the production of timber.

(6) Pay the appropriate license fee.

(7) Except as provided in OAR 839-015-0141(2), show proof of financial ability to promptly pay the wages of employees and advances made by farmers or owners or lessees of land intended for the production of timber in the form of a corporate surety bond or deposit with the commissioner.

(8) File a completed application form.

(9) Except as provided in OAR 839-015-0141(2), certify on the application that

there is insurance on vehicles used to transport workers in an amount sufficient to comply with the Oregon Financial Responsibility Law (ORS 486.011 to 486.680).

(10) Except as provided in OAR 839-015-0141(2), show proof that worker's compensation insurance will be provided on each individual as required in ORS 658.415(2)(b) and ORS 658.440(1)(j). If the applicant is relying on workers' compensation insurance coverage from a jurisdiction other than Oregon, the workers' compensation insurance coverage must satisfy Oregon's coverage requirements under ORS chapter 656.

(11) In the case of a corporation, be authorized to do business in Oregon.

Stat. Auth.: ORS 651 & ORS 658

Stats. Implemented: ORS 658.405 - ORS 658.503

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 2-1996, f. & cert. ef. 1-9-96; BLI _____, f. _____, cert. ef 1-1-08

839-015-0141

Licensing Requirements for Employees of Contractor/Indorsements

(1) The employee of a farm or forest labor contractor who is licensed under ORS 658.405 to 658.503 may be licensed as a farm or forest labor contractor subject to an employee indorsement if the employee continuously meets all of the following conditions:

(a) The employee's employer has filed with the Commissioner of the Bureau of Labor and Industries a signed statement, in a form required by the commissioner, agreeing to sponsor the application and to notify the

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commissioner promptly upon termination of the employment of the employee;

(b) The employee engages in activities that would require licensing as a farm or forest labor contractor solely on behalf of the employer;

(c) The employee does not personally employ any workers and is not responsible for paying any workers;

(d) The employer maintains proof of financial responsibility pursuant to ORS 658.415(3);

(e) The employer's license remains in good standing; and

(f) The employee meets all of the conditions for licensing as a farm or forest labor contractor provided for in OAR 839-015-0140.

(2) A farm or forest labor contractor subject to an employee indorsement acting in compliance with section (1) of this rule need not comply with OAR 839-015-0140(7), (9) and (10) insofar as the employer has complied with these provisions.

(3) The license of a farm or forest labor contractor subject to the employee indorsement shall state on its face the conditions contained in this rule and shall state further that the bearer of the license is licensed to act only as conditioned by this rule.

(4) The license of a farm or forest labor contractor subject to an employee indorsement shall terminate immediately upon the termination of the employment relationship with the employer who sponsored the employee's application. The employee

shall submit the license to the bureau forthwith.

(5) A license subject to an employee indorsement may be terminated either by the employee or by the sponsoring employer by notifying the bureau in writing that either wishes to terminate the license or that the conditions specified in section (1) of this rule are no longer met.

(6) The license subject to an employee indorsement terminates upon receipt by the bureau of notice referred to in section (5). The employer's joint and several liability for actions taken by the employee under color of the employee's license pursuant to Ch. 73, Sec. 3(6), 1995 Oregon Laws, extends to any actions taken by the employee before the original license is surrendered to the bureau.

Stat. Auth.: OR Laws Ch. 73, Sec 3, 1995
Stats. Implemented: ORS 658.405 - ORS 658.503
Hist.: BL 2-1996, f. & cert. ef. 1-9-96

839-015-0142

Use of Certain Agents Prohibited/Evidence of Sham or Subterfuge

(1) The Bureau may refuse to license or renew the license of any person who proposes to use any individual, partnership, association, corporation or other entity as such person's agent for the performance of any activity specified in ORS 658.405(4), when the proposed agent has, within the preceding three years, violated any section of ORS 658.405 to 658.485.

(2) The Bureau may refuse to license or renew the license of any applicant where there is evidence of sham or subterfuge in the identity of the applying entity. The Bureau

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will regard as prima facie evidence of sham or subterfuge mere changes in business form in anticipation of or subsequent to denial, suspension, revocation or refusal to renew a license, where a relative by blood or marriage, or a person presently employed in an occupation, other than an occupation with a licensed farm or forest labor contractor, makes application, including a renewal application, for a license and one or more of the following factors are present:

(a) A lack of adequate consideration or value given for the former business or its property;

(b) The use of the same real property, fixtures or equipment or use of a business name similar to that of the former business;

(c) A time period of less than one year elapsed between the former entity's receipt of notice of the Bureau's intent to deny, suspend, revoke or refuse to renew its license or application and the license application by the new business;

(d) A person financially interested in any capacity in the former business has a financial interest in any capacity in the new business;

(e) Assets or capital of the former business are commingled with assets or capital of the new business;

(f) The amount of capitalization is inadequate to meet current obligations of the new business; or

(g) The formalities of a partnership or a corporation are disregarded by the new business when such business is a partnership or corporation.

(3) When the factors outlined in section (2) of this rule are present, it shall be the burden of the applicant to provide evidence to the Bureau clearly indicating that such business form is not sham or subterfuge.

Stat. Auth.: ORS 651 & ORS 658.415(14)
Stats. Implemented: ORS 658.425(3) & ORS 658.440(3)(a)
Hist.: BL 16-1988, f. & cert. ef. 12-13-88; BLI 7-2000, f. & cert. ef. 2-23-00

839-015-0145

Character, Competence and Reliability

The character, competence and reliability contemplated by ORS 658.405 to 658.475 and these rules includes, but is not limited to, consideration of:

(1) A person's record of conduct in relations with workers, farmers and others with whom the person conducts business.

(2) A person's reliability in adhering to the terms and conditions of any contract or agreement between the person and those with whom the person conducts business.

(3) A person's timeliness in paying all debts owed, including advances and wages.

(4) Whether a person has unsatisfied judgments or felony convictions.

(5) Whether a person has been refused a bond.

(6) Whether a person has provided workers' compensation coverage for each worker or paid worker's compensation insurance premium payments when due.

(7) Whether a person has violated any provision of ORS 658.405 to 658.503 or these rules.

(8) Whether a person has employed an agent who has had a farm or forest labor contractor license denied, suspended, revoked

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or not renewed or who has otherwise violated any provisions of ORS 658.405 to 658.503 or these rules.

(9) Whether a person has notified the bureau of any change in the circumstances under which a license was issued.

(10) Whether a person has failed to comply with federal, state or local laws or ordinances relating to the payment of wages, income taxes, social security taxes, unemployment compensation tax, or any tax, fee or assessment of any sort.

(11) Whether a person, when required by law, has failed or refused to seek food, water, shelter, or medical attention, or to provide any other necessary goods or services required for the safety and health of workers.

(12) Whether a person has repeatedly failed to file or furnish all forms and other information required by ORS 658.405 to 658.503 and these rules.

(13) Whether a person has made a willful misrepresentation, false statement or concealment in the application for a license.

(14) Whether a person has willfully made or caused to be made to any person any false, fraudulent or misleading representation, or publish or circulate any false, fraudulent or misleading information concerning the terms, conditions, or existence of employment at any place or by any person.

(15) Whether a person failed to maintain the bond or cash deposit as required by ORS 658.405 to 658.503.

Stat. Auth.: ORS 651 & 658

Stats. Implemented ORS 659.405 - 658.503

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 16-1988, f. & cert. ef. 12-13-88; BL 2-1996, f. & cert. ef. 1-9-96; BLI 12-2001, f. 8-

31-01, cert. ef. 9-1-01; BLI 3-2006, f. 2-16-06, cert. ef. 3-1-06

839-015-0150

Procedure for Obtaining a Temporary Permit

(1) A Farm or Forest Labor Contractor may obtain a temporary permit by filing an application with any office of the Bureau. Forms for this purpose may be obtained from the office in which the application is filed.

(2) Temporary permits may be issued only under the following conditions:

(a) The application is complete on its face;

(b) Satisfactory evidence of insurance is certified to on the application;

(c) The applicant or any person financially interested in any manner in the applicant's operations as a Farm or Forest Labor Contractor has not had an application denied or license revoked or suspended within the preceding three years. A refusal to renew a license or grant a temporary permit because the applicant therefore or any person financially interested in the applicant's business as a Farm or Forest Labor Contractor has been denied a license or had a license revoked in Oregon or any other jurisdiction within the preceding three years, is considered the same as the revocation of the license or permit on the date of its expiration;

(d) Proof of financial ability to pay employees wages and advances from farmers or owners or lessees of land intended to be used for the production of timber is submitted with the application and is complete on its face;

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(e) The appropriate fee is paid at the time the application is submitted.

(3) A temporary permit is valid for not more than 60 days. The permit immediately expires if the license application is rejected or a license issued.

(4) The farm-forest labor contractor examination must be scheduled and taken within 45 days of the date a letter of authorization is issued by the License Unit. Failure to take and pass the examination prior to the expiration date of the temporary permit will result in denial of the license application.

(5) Only one temporary permit shall be issued in a 12-month consecutive period.

Stat. Auth.: ORS 164, ORS 165, ORS 651, ORS 658.407(3) & ORS 962

Stats. Implemented: ORS 658.425(1) - (3)

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 3-1990, f. & cert. ef. 3-1-90; BLI 7-2000, f. & cert. ef. 2-23-00; BLI 12-2001, f. 8-31-01, cert. ef. 9-1-01

839-015-0155

Procedure for Obtaining a License

Application for a license may be made as follows:

(1) File a completed application on forms supplied by the Bureau. In the case of a partnership, each partner must complete and file a separate application form.

(2) A farm or forest labor contractor may apply for a license on behalf of an employee, providing that all of the requirements of OAR 839-015-0141 are met.

(3) Pay the appropriate fees at the time the application is filed. Where the applicant is engaged in the production or harvesting of farm products, a \$100 fee is required. Where the applicant is engaged in the forestation or

reforestation of lands (or engaged in both the forestation and reforestation of lands and the production or harvesting of farm products), a \$250 fee is required. In the case of a partnership, each partner must pay the appropriate fee.

(4) File with the application proof of financial ability to pay wages and advances in the amount required by OAR 839-015-0210 on forms supplied by the bureau. Except as provided in OAR 839-015-0157, in the case of a partnership, each partner must file such proof. Such proof may be a corporate surety bond, a cash deposit or a deposit the equivalent of cash.

(5) File any assumed business name and corporate name with the Office of the Secretary of State and submit proof of such filing with the application.

(6) If a corporation, show proof of being authorized to do business in Oregon.

(7) All forms, documents and other required information shall be filed with Bureau of Labor and Industries, Wage and Hour Division, Farm Labor Unit, 3865 Wolverine Street, NE, Bldg. E-1, Salem, OR 97305.

Stat. Auth.: ORS 651.060(4), 658.407(3), 658.415(14) & 658.820

Stats. Implemented: ORS 658.405 - 658.830

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 16-1988, f. & cert. ef. 12-13-88; BL 3-1990, f. & cert. ef. 3-1-90; BL 11-1993(Temp), f. 10-29-93, cert. ef. 11-3-93; BL 1-1994, f. & cert. ef. 5-3-94; BL 2-1996, f. & cert. ef. 1-9-96; BLI 12-1999, f. 9-28-99, cert. ef. 10-23-99; BLI 28-2005, f. 12-29-05, cert. ef. 1-1-06

839-015-0157

Procedure for Obtaining Reduction in the Amount of Required Aggregate Bonding

Note: These rules reflect all changes, adoptions and amendments in effect January 1, 2008, and replace all rules printed in Chapter 839, Division 015, prior to that date.

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When More than One Individual is Required to Be Licensed in One Entity

(1) Farm or forest labor contractors desiring to apply for a reduction in the required bond or deposit may do so by submitting an application to the Bureau of Labor and Industries.

(2) Applications shall be in writing and on forms provided by the bureau. All completed applications must be mailed or delivered to the Bureau of Labor and Industries, Wage and Hour Division, Farm Labor Unit, 3865 Wolverine Street, NE, Bldg. E-1, Salem, OR 97305.

(3) No such application shall be considered unless the commissioner determines that:

(a) The application pertains to a single business entity; and

(b) More than one natural person is an owner or employee of the business entity; and

(c) Such persons engage in activities requiring a farm labor contractor's license; and

(d) Such persons engage in such activities solely for the business entity.

(4) In the case of a corporate surety bond, applications must be accompanied by a statement from the licensee's bonding agent or agents certifying the length of time the licensee has been bonded by the agent and that there have been no valid claims against the licensee's bond during that time. If the license utilized more than one bonding agent, a statement is required from each agent.

(5) No application may be granted unless the business entity has operated for at

least one year without a valid claim in this or any other state against the bond or deposit.

(6) When the commissioner is satisfied that the business entity has presented adequate proof that it has operated for at least one year without a valid claim against its bond or deposit, and when the commissioner determines that the conditions set out in sections (3) and (5) of this rule are met, the commissioner may grant an application for a reduction in the aggregate amount of the required bond or deposit.

(7) In determining whether to grant the application, the commissioner shall consider the following circumstances:

(a) All matters contained in the application;

(b) The number of licensees;

(c) The type of business entity;

(d) The history of each licensee in complying with any law;

(e) Whether the licensees are dealing directly or indirectly with employees;

(f) The number of employees employed by the business entity;

(g) The character, competence or reliability of the licensees, as those terms are used in these rules;

(h) Other information bearing on the circumstances of the application.

(8) When the commissioner determines to grant an application for lower aggregate bonding requirements for a business entity and its owners pursuant to sections (5) and (6) of this rule, the application will be granted to permit a total aggregate bond or deposit in the amount required by OAR 839-015-0210 for

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one licensee with a corresponding number of employees:

(9) When the commissioner grants an application for lower aggregate bonding requirements for a business entity and its owners, the required amount of aggregate bond or deposit may be divided among the licensees as they may agree, so long as each is obligated; in the absence of an agreement, the required amount shall be divided equally among them.

(10) Notwithstanding section (8) of this rule, when the commissioner determines to grant an application for lower aggregate bonding requirements for a business entity and its owners pursuant to section (6) of this rule, the entity must post an aggregate bond or deposit in the minimum amount specified in ORS 658.415 or 658.735, whichever is greater.

(11) The commissioner may specify conditions, if any, on the approval of the application.

(12) If the commissioner rejects the application, the reasons for the rejection will be specified.

(13) The commissioner may, for good cause shown, revoke the licensee's authorization to post a reduced bond or deposit. "Good cause" includes but is not limited to the following situations:

(a) A valid claim is filed against the bond or deposit of the business entity or licensee who is an owner or employee;

(b) The business entity ceases operating the business for which the bond or deposit was accepted;

(c) Failure to pay wages to the employees when due;

(d) Failure to pay advances made to or on behalf of the licensee by growers or producers of agricultural products or by owners or lessees of land intended to be used for the production of timber;

(e) The business entity, its licensees, its agents or employees during the course of their employment, cause damage to any person by reason of willful misrepresentation, fraud, deceit or other unlawful act or omission;

(f) The business entity, including any licensee, agent or employee, acting in the course of employment, has engaged in forest or farm labor contracting activities on behalf of anyone other than the business entity.

Stat. Auth.: ORS 658.407(3), 658.415(14) & 658.820

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BL 3-1990, f. & cert. ef. 3-1-90; BL 11-1993(Temp), f. 10-29-93, cert. ef. 11-3-93; BL 1-1994, f. & cert. ef. 5-3-94; BL 2-1996, f. & cert. ef. 1-9-96; BLI 28-2005, f. 12-29-05, cert. ef. 1-1-06

839-015-0160

Procedure for Obtaining a Duplicate License

In the event a license is lost or stolen, the licensee shall submit a written request for a duplicate license. The licensee shall state the reasons for the request and the circumstances of the loss or theft. The new license will indicate the word "DUPLICATE" on the license above the number. The written request shall be made to the Bureau of Labor and Industries, Wage and Hour Division, Farm Labor Unit, 3865 Wolverine Street, NE, Bldg. E-1, Salem, OR 97305.

Stat. Auth.: ORS 164, 165, 651, 658 & 962

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Stats. Implemented: ORS 658.405 - 658.503
Hist.: BL 6-1984, f. & ef. 4-27-84; BL 16-1988, f. & cert. ef. 12-13-88; BL 3-1990, f. & cert. ef. 3-1-90; BL 2-1996, f. & cert. ef. 1-9-96; BLI 28-2005, f. 12-29-05, cert. ef. 1-1-06

839-015-0165

Procedure for Issuing or Renewing License

(1) Each license shall be issued on the date all application requirements are met. Except as provided in section (2) of this rule, licenses are valid for one year.

(2) The expiration date of the license will be one year later, on the last day of the month in which the license was issued.

(3) Applications for renewal shall be made 30 days prior to the expiration date by filing a renewal application, paying the appropriate fees, and filing proof of financial ability to pay wages and certain advances.

(4) Each renewal application shall be accompanied by the work agreement between the contractor and the workers which is required by OAR 839-015-0360. The completed renewal application, renewal fee, and other information required in section (2) of this rule must be post-marked or received by the Licensing Unit at least 30 days prior to the expiration date of the license.

(5) Applications, fees and other forms and documents must be filed with the Bureau of Labor and Industries, Wage and Hour Division, Farm Labor Unit, 3865 Wolverine Street, NE, Bldg. E-1, Salem, OR 97305.

Stat. Auth.: ORS 164, 165, 651, 658 & 962
Stats. Implemented: ORS 658.405 - 658.503
Hist.: BL 6-1984, f. & ef. 4-27-84; BL 16-1988, f. & cert. ef. 12-13-88; BL 3-1990, f. & cert. ef. 3-1-90; BL 2-1996, f. & cert. ef. 1-9-96; BLI 28-2005, f. 12-29-05, cert. ef. 1-1-06

Examinations

839-015-0170

Scope

(1) The License Unit shall provide written examinations as the Commissioner deems necessary.

(2) The License Unit shall provide all materials required for the examinations except hand-held calculators that may be used by the applicant.

(3) All examinations shall be "closed book."

(4) A written examination shall not exceed three hours.

Stat. Auth.: ORS 164, ORS 165, ORS 651, ORS 658 & ORS 962

Stats. Implemented: ORS 658.405 - ORS 658.503
Hist.: BL 3-1990, f. & cert. ef. 3-1-90; BL 2-1996, f. & cert. ef. 1-9-96

839-015-0175

Examination Requirements

(1) Applicants shall schedule an appointment with Bureau staff or designated proctors throughout the state to take an examination after receipt of a letter of authorization from the License Unit.

(2) Once an applicant is authorized for examination, the applicant has 30 days in which to schedule an appointment to take the examination. The applicant shall take the examination within 45 days of the date of authorization.

(3) Applicants must submit a written request to reschedule or change the site of an examination after the 45-day period referred to in section (2) of this rule.

(4) Except for hand-held calculators and Oregon certified court interpreters, no applicant may use any other aids or notes or

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receive help from another person during an examination, except to the extent required to reasonably accommodate a disability under state or federal law. Violation of this rule shall result in the examination being invalidated and treated as failed.

(5) Requests for a certified court interpreter shall be made to the License Unit in writing by the applicant no fewer than 15 calendar days in advance of the date of the scheduled examination.

(6) The Bureau shall arrange for an Oregon certified court interpreter to interpret the examination and the applicant's examination responses upon receiving a written request for an interpreter by the applicant.

Stat. Auth.: ORS 164, ORS 165, ORS 651, ORS 658 & ORS 962

Stats. Implemented: ORS 658.405 - ORS 658.503

Hist.: BL 3-1990, f. & cert. ef. 3-1-90; BL 2-1996, f. & cert. ef. 1-9-96; BLI 7-2000, f. & cert. ef. 2-23-00

839-015-0178

Grading of Examinations/Notice of Score

(1) The passing score for each examination shall be 75 percent.

(2) The License Unit shall notify applicants by mail of their examination scores.

Stat. Auth.: ORS 164, ORS 165, ORS 651, ORS 658 & ORS 962

Stats. Implemented: ORS 658.405 - ORS 658.503

Hist.: BL 3-1990, f. & cert. ef. 3-1-90; BL 2-1996, f. & cert. ef. 1-9-96

839-015-0180

Review of Examinations

(1) Applicants failing to pass an examination may schedule an appointment

with the License Unit to review the examination at a site designated by the License Unit.

(2) Requests to review failed examinations shall be scheduled within 30 days from notification of score.

(3) Applicants shall show picture identification before examination review.

(4) Applicants reviewing failed examinations shall not retain notes taken during the review.

(5) Examinations may be reviewed only by the applicant and/or any person the applicant has authorized, in writing, to review such examinations.

Stat. Auth.: ORS 164, ORS 165, ORS 651, ORS 658 & ORS 962

Stats. Implemented: ORS 658.405 - ORS 658.503

Hist.: BL 3-1990, f. & cert. ef. 3-1-90; BL 2-1996, f. & cert. ef. 1-9-96

839-015-0185

Re-Examination

(1) Applicants who fail an examination shall wait the following time periods before retaking the examination:

(a) First failure: seven days;

(b) Second failure: 14 days;

(c) Third failure: 30 days;

(d) Any subsequent failures: 60 days.

(2) Re-examination shall not be scheduled sooner than seven days after review of a failed examination.

Stat. Auth.: ORS 164, ORS 165, ORS 651, ORS 658.412 & ORS 962

Stats. Implemented: ORS 658.412

Hist.: BL 3-1990, f. & cert. ef. 3-1-90; BL 6-1990(Temp), f. 4-18-90, cert. ef. 4-17-90; BL 9-1990, f. 5-25-90, cert. ef. 6-1-90

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839-015-0190

Substitution of Oregon Examination

(1) The Commissioner may recognize national or state examinations for licensing if taken and passed within the last 12 months.

(2) Specific examinations that may be recognized in lieu of the Oregon examinations are: Farm Labor Contractor examination for the State of California.

(3) Independent verification of the test results from the testing authority is required.

Stat. Auth.: ORS 164, ORS 165, ORS 651, ORS 658.412 & ORS 962

Stats. Implemented: ORS 658.412

Hist.: BL 3-1990, f. & cert. ef. 3-1-90

839-015-0195

Alternative Methods of Examination

(1) An Applicant for whom English is a second language may bring an interpreter to the examination to translate the examination questions. An interpreter may not assist an applicant in answering any question, but may translate the answers.

(2) Alternative methods of examination will be provided upon written request.

Stat. Auth.: ORS 164, ORS 165, ORS 651, ORS 658.412 & ORS 962

Stats. Implemented: ORS 658.412

Hist.: BL 3-1990, f. & cert. ef. 3-1-90

**Proof of Financial Ability to Pay Wages
and Advances**

839-015-0200

Proof Required/Forms to Be Used

(1) Every applicant for a farm or forest labor contractor's license must, unless otherwise exempt, show proof of financial

ability to promptly pay the wages of employees and any advances made to or on behalf of the contractor by farmers or owners or lessees of land intended to be used for the production of timber. Such proof must accompany the applicant's application and be on forms supplied by the bureau.

(2) The proof of financial ability to promptly pay the wages and advances referred to in section (1) of this rule shall be a properly executed corporate surety bond as evidenced by the completion of Form WH-157 or a deposit in cash or negotiable securities acceptable to the commissioner.

(3) The forms are available upon request from: Bureau of Labor and Industries, Wage and Hour Division, Farm Labor Unit, 3865 Wolverine Street, NE, Bldg. E-1, Salem, OR 97305.

Stat. Auth.: ORS 658.407(3), 658.415(14) & 658.820

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 16-1988, f. & cert. ef. 12-13-88; BL 3-1990, f. & cert. ef. 3-1-90; BL 11-1993(Temp), f. 10-29-93, cert. ef. 11-3-93; BL 1-1994, f. & cert. ef. 5-3-94; BL 2-1996, f. & cert. ef. 1-9-96; BLI 28-2005, f. 12-29-05, cert. ef. 1-1-06

839-015-0210

Amount of Bond or Deposit to Be Filed

(1) Except as provided in section (3) of this rule, the amount of the bond or deposit referred to in OAR 839-015-0157 and 839-015-0200 shall be based on the maximum number of employees employed at any one time during the license year. The bond or deposit shall be:

(a) \$10,000 if the contractor employs no more than 20 employees; or

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(b) \$30,000, or such lesser sum as may be authorized by the commissioner pursuant to ORS 658.416 and OAR 839-015-0230. The bond and any financial instrument shall be in the principal sum of the amount required by this rule. The amount of the bond or deposit must be continually maintained as long as the contractor is required to be licensed under ORS 658.405 to 658.475.

(2) When a licensee or holder of a temporary permit employs more than the maximum number of employees covered by the bond or deposit in section (1)(a) of this rule, the licensee or permit holder shall immediately increase the amount of the bond or deposit to the amount required by section (1)(b) of this rule. The licensee or permit holder shall also immediately notify the License Unit of the Wage and Hour Division.

(3) Notwithstanding the provisions of ORS 658.415(3), (4), (8), (9), and (16), an agricultural association or private nonprofit corporation described in ORS 658.410(2)(f)(B) shall submit and continually maintain, until excused, a corporate surety bond of a company licensed to do such business in Oregon, a cash deposit or a deposit the equivalent of cash. This bond or deposit shall be in the amount of \$30,000 and in a form approved by and payable to the Commissioner of the Bureau of Labor and Industries.

(4) When an applicant for a license has been required to satisfy a court-ordered judgment or a final order issued by a governmental agency, the commissioner or the commissioner's designee may require the applicant to provide a bond or deposit of up to

three times the amount required by section (1) of this rule as a condition of licensure. In such case, the commissioner or commissioner's designee will determine the actual amount of the bond or deposit by considering the following factors:

(a) The amount of the judgment or order that was satisfied;

(b) The magnitude and seriousness of the violation or violations which lead to the judgment or order;

(c) The past history of the applicant in taking all necessary measures to prevent or correct violations of statutes or rules;

(d) Prior violations, if any, of statutes or rules;

(e) Other matters which indicate to the commissioner or commissioner's designee that the applicant is not likely to violate ORS 658.415(3) in the future.

Stat. Auth.: ORS 658.407(3), ORS 658.415(14) & ORS 658.820

Stats. Implemented: ORS 658.405 - ORS 658.503

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 3-1990, f. & cert. ef. 3-1-90; BL 11-1993(Temp), f. 10-29-93, cert. ef. 11-3-93; BL 1-1994, f. & cert. ef. 5-3-94; BL 2-1996, f. & cert. ef. 1-9-96; BLI 7-2000, f. & cert. ef. 2-23-00; BLI 12-2001, f. 8-31-01, cert. ef. 9-1-01

839-015-0220

Deposit in Cash or Negotiable Securities

As used in ORS 658.415(3) and in these rules "a deposit in cash or negotiable securities" means a single financial instrument which yields no less than the amount required pursuant to OAR 839-015-0210 in cash immediately upon demand. If the deposit is one which is subject to a penalty for early withdrawal, then the deposit must be in an amount sufficient to satisfy the penalty and

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still yield no less than the amount required under OAR 839-015-0210 in cash.

Stat. Auth.: ORS 658.407(3), ORS 658.415(4) & ORS 658.820

Stats. Implemented: ORS 658.415(3)

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 3-1990, f. & cert. ef. 3-1-90; BL 11-1993(Temp), f. 10-29-93, cert. ef. 11-3-93; BL 1-1994, f. & cert. ef. 5-3-94

839-015-0230

Procedure for Obtaining Reduction in the Amount of Bond or Deposit Required

(1) In addition to the application for aggregate bond reduction provided in OAR 839-015-0157, farm and forest labor contractors who have been licensed for at least two consecutive years may apply for a reduction in the bond or deposit required by ORS 658.415(3). Applications shall be in writing and on forms provided by the bureau. All completed applications should be mailed or delivered to the Bureau of Labor and Industries, Wage and Hour Division, Farm Labor Unit, 3865 Wolverine Street, NE, Bldg. E-1, Salem, OR 97305.

(2) Farm and forest labor contractors may apply for a reduction in the bond or deposit required at any time after the contractor has been licensed for no less than two consecutive years or at the time a farm or forest labor contractor license renewal application is made, pursuant to ORS 658.435(2).

(3) The contractor must have prior approval from the Bureau of Labor and Industries before submitting a reduced bond or deposit.

(4) No application for a reduction in the bond or deposit will be considered by the

commissioner in the case of a farm or forest labor contractor license renewal application unless such completed application is received with a completed license renewal application at least 30 days prior to the expiration of the license.

(5) Applicants for a reduction in the bond or deposit will be notified in writing of the commissioner's disposition of the application by the License Unit of the bureau within 15 days of receipt of a completed application for a reduction.

(6) If application for a reduction in the bond or deposit is made less than 30 days prior to the expiration date of the farm labor contractor's license, the contractor must submit the bond or deposit required pursuant to ORS 658.415(3) without reduction along with the contractor's completed application for a bond or deposit reduction.

(7) If an application for a reduction in the bond or deposit is approved by the commissioner after the contractor has submitted an unreduced bond, an amended bond for the reduced amount approved will be accepted by the commissioner after approval of the reduced bond.

(8) If an application for a reduction in the bond or deposit is approved by the commissioner after the contractor has submitted an unreduced cash deposit, the commissioner will initiate a refund of the appropriate amount to the contractor within five working days after approval of the reduced deposit.

(9) If an application for a reduction in the bond or deposit is approved by the commissioner after the contractor has

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submitted an instrument the equivalent of cash, the contractor will be allowed to replace such instrument with an instrument in the approved lesser amount.

(10) No application for reduction in the required bond or deposit shall be approved unless the commissioner determines that:

(a) The applicant has operated as an Oregon licensed farm labor contractor without an employee indorsement for at least two years in compliance with ORS 658.405 to 658.503 and with any other laws pertaining to the conduct of farm labor contractors; and

(b) The applicant employs 21 or more employees; and

(c) No valid claims for unpaid wages have been made against the applicant during the qualifying period of time for a bond or deposit reduction.

(11) If the commissioner rejects the application, every reason for the rejection will be specified.

(12) The commissioner may, for good cause shown, revoke the licensee's authorization to post a reduced bond or deposit. "Good cause" includes, but is not limited to, the following situations:

(a) A valid claim is filed against the bond or deposit of the licensee;

(b) Failure to pay wages to employees when due;

(c) Failure to pay advances made to or on behalf of the licensee by growers or producers of agricultural products or by owners of lessees of land intended to be used for the production of timber;

(d) The licensee or its agents cause damage to any person by reason of willful

misrepresentation, fraud, deceit or other unlawful act or omission;

(e) The licensee or its agents engage in farm or forest labor contracting activities on behalf of anyone other than the business entity.

(f) Actions of the licensee demonstrate the licensee's character, reliability or competence make the licensee unfit to act as a contractor pursuant to OAR 839-015-0520(3).

(13) If the commissioner determines that the criteria in section (2) have been met by the applicant, the commissioner may reduce the amount of the bond or deposit that would otherwise be required pursuant to ORS 658.415(3) to an amount determined by the commissioner, but not less than the following:

(a) If the commissioner finds that the contractor has so operated for a period of at least five years, \$20,000; or

(b) If the commissioner finds that the contractor has so operated for a period of at least four years, \$22,500; or

(c) If the commissioner finds that the contractor has so operated for at least three years, \$25,000; or

(d) If the commissioner finds that the contractor has so operated for at least two years, \$27,500.

(14) If the applicant provided one or more corporate surety bonds as proof of financial responsibility during any of the qualifying period of time for which application for reduction is being made, the applicant must submit with the application a statement from the licensee's bonding agent or agents certifying the length of time the licensee has been bonded by the agent and

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that there have been no valid claims filed against the licensee's bond(s) during the qualifying period of time covered by the application. If the licensee utilized more than one bonding agent, a statement is required from each agent for the period of time covered by the application.

Stat. Auth.: OL Ch. 73, Sec. 4, 1995
Stats. Implemented: ORS 658.405 - 658.503
Hist.: BL 2-1996, f. & cert. ef. 1-9-96; BLI 12-2001, f. 8-31-01, cert. ef. 9-1-01; BLI 28-2005, f. 12-29-05, cert. ef. 1-1-06

License Protests

839-015-0250

Protesting the Issuance of a License

Any individual may protest the issuance of a Farm or Forest Labor Contractor's license to any applicant for such license. The protest may be made at any time after the license is actually issued as well as at any time prior to the issuance of the license.

Stat. Auth.: ORS 651 & ORS 658.415(14)
Stats. Implemented: ORS 658.420(3)
Hist.: BL 6-1984, f. & ef. 4-27-84

839-015-0260

Procedure for Filing Protest

(1) Any individual desiring to protest the issuance of a farm and forest labor contractor license must file the protest in writing with the Bureau of Labor and Industries, Wage and Hour Division, Farm Labor Unit, 3865 Wolverine Street, NE, Bldg. E-1, Salem, OR 97305.

(2) The written protest must contain the following information:

(a) Name, address and phone number of the individual filing the protest;

- (b) Date of the protest;
- (c) Name of licensee or license applicant against whom the protest is being made;
- (d) A complete statement of the facts, circumstances and other reasons for the protest. The statement should include alleged violations, approximate dates of alleged violations, names of witnesses, if any, and any documents which support the allegations;
- (e) The signature of the individual making the protest.

Stat. Auth.: ORS 164, 165, 651, 658 & 962
Stats. Implemented: ORS 658.405 - 658.503
Hist.: BL 6-1984, f. & ef. 4-27-84; BL 3-1990, f. & cert. ef. 3-1-90; BL 2-1996, f. & cert. ef. 1-9-96; BLI 12-2001, f. 8-31-01, cert. ef. 9-1-01; BLI 28-2005, f. 12-29-05, cert. ef. 1-1-06

Forms Prescribed by the Commissioner

839-015-0300

"Wage Certification" Form

(1) Every farm and forest labor contractor must, unless otherwise exempt, submit a certified true copy of all payroll records to the Wage and Hour Division when the contractor or the contractor's agent pays employees directly as follows:

(a) The first report is due no later than 35 days from the time the contractor begins work on each contract and must include whatever payrolls the contractor has paid out at the time of the report;

(b) The second report is due no later than 35 days following the end of the first 35 day period on each contract and must include whatever payrolls have been issued as of the time of the report;

Note: These rules reflect all changes, adoptions and amendments in effect January 1, 2008, and replace all rules printed in Chapter 839, Division 015, prior to that date.

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(c) If the contract lasts more than 70 days, succeeding wage certification reports must include whatever payrolls the contractor has paid out at the time of the report, with the reports due at successive 35 day intervals, e.g. 105 days, 140 days from the time the contractor begins work on the contract.

(2) The certified true copy of payroll records may be submitted on Form WH-141. This form is available to any interested person. Any person may copy this form or use a similar form provided such form contains all the elements of Form WH-141.

(3) The wages paid to the officers of the corporation may be omitted from the Form WH-141 or the other records submitted under this rule.

(4) The certified true copy of payroll records shall be submitted to: Bureau of Labor and Industries, Wage and Hour Division, Farm Labor Unit, 3865 Wolverine Street, NE, Bldg. E-1, Salem, OR 97305.

(5) Contractors who have recruited, solicited or supplied workers from the state of Oregon who are employed on farm or forestation/reforestation contracts located outside the State of Oregon must comply with the provisions of this rule.

(6) For purposes of forest fire suppression by contract crew, the term "contract" as used in this rule means the acceptance of each dispatch order to a fire incident by a contractor supplying a contract crew to perform such work.

(7) The acceptance of a dispatch order for each separate crew will be deemed to constitute a separate and distinct contract such that the failure of a contractor to submit

certified payrolls for each crew as required by this rule is a separate violation.

Stat. Auth.: ORS 658.417(3)
Stats. Implemented: ORS 658.417(3)
Hist.: BL 7-1983(Temp), f. & ef. 8-5-83; BL 6-1984, f. & ef. 4-27-84; BL 16-1988, f. & cert. ef. 12-13-88; BL 2-1996, f. & cert. ef. 1-9-96; BL 5-1996, f. 6-14-96, cert. ef. 7-1-96; BLI 12-2001, f. 8-31-01, cert. ef. 9-1-01; BLI 28-2005, f. 12-29-05, cert. ef. 1-1-06; BLI 3-2006, f. 2-16-06, cert. ef. 3-1-06

839-015-0310
Statement of Worker's Rights and Remedies

(1) Every Farm and Forest Labor Contractor must furnish each worker with a written statement of the worker's rights and remedies under the Worker's Compensation Law, the Farm and Forest Labor Contractor Law, and Federal Service Contracts Act, The Federal and Oregon Minimum Wage Laws, Oregon Wage Collection Laws, Unemployment Compensation Laws, and Civil Rights laws. The form must be written in English and in the language used by the contractor to communicate with the workers.

(2) The form must be given to the workers at the time they are hired, recruited or solicited by the contractor or at the time they are supplied to another by the contractor, whichever occurs first.

(3) The Commissioner has prepared Form WH-151 for use by contractors in complying with this rule. The form is in English and Spanish and is available at any office of the Bureau of Labor and Industries.

Stat. Auth.: ORS 651 & ORS 658.407(3)
Stats. Implemented: ORS 658.440(1)(f)(I)
Hist.: BL 6-1984, f. & ef. 4-27-84

Note: These rules reflect all changes, adoptions and amendments in effect January 1, 2008, and replace all rules printed in Chapter 839, Division 015, prior to that date.

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839-015-0320

Form of License

In addition to the information required by ORS 658.430, the license form will contain such other information as the commissioner deems appropriate, including, but not limited to:

(1) The indorsement required by ORS 658.417, 658.715 and by OR Laws, Chap. 73, Sec. 3, 1995, where appropriate.

(2) A statement indicating whether the licensee is authorized to act as a farm labor contractor or whether the licensee is authorized to act as both a farm labor contractor and a forest labor contractor or whether the licensee is authorized to act as a farmworker camp operator.

Stat. Auth.: ORS 164, ORS 165, ORS 651, ORS 658 & ORS 962

Stats. Implemented: ORS 658.405 - ORS 658.503

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 3-1990, f. & cert. ef. 3-1-90; BL 2-1996, f. & cert. ef. 1-9-96

Other Required Forms

839-015-0350

Work Agreements Between Farm Labor Contractor and Farmers

(1) Farm Labor Contractors are required to file information relating to their agreements with farmers with the Bureau.

(2) The Commissioner has developed Form WH-152 that may be used to comply with this rule. Farm Labor Contractors may use any form for filing the information so long as it contains all the elements of Form WH-152.

(3) Farm Labor Contractors must file this information with the Bureau by April 30

of each year. Amended or updated information may be filed at any time. All information must be filed with the Bureau of Labor and Industries, Wage and Hour Division, Farm Labor Unit, 3865 Wolverine Street, NE, Bldg. E-1, Salem, OR 97305.

Stat. Auth.: ORS 164, 165, 651, 658.407(3) & 962

Stats. Implemented: ORS 658.440(1)(e)

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 3-1990, f. & cert. ef. 3-1-90; BLI 7-2000, f. & cert. ef. 2-23-00; BLI 28-2005, f. 12-29-05, cert. ef. 1-1-06

839-015-0360

Work Agreements Between Farm and Forest Labor Contractors and Their Workers

(1) Farm and forest labor contractors are required to file information relating to work agreements between the farm and forest labor contractors and their workers with the bureau.

(2) The commissioner has developed Form WH-153 that, in conjunction with Form WH-151, Statement of Workers Rights and Remedies, may be used to comply with this rule. Farm and forest labor contractors may use any form for filing the information so long as it contains all the elements of Form WH-153 and Form WH-151.

(3) Farm and forest labor contractors must file the form or forms used to comply with this rule with the bureau at the same time that the contractors apply for a license renewal.

(4) Farm and forest labor contractors are required to furnish their workers with a written statement disclosing the terms and conditions of employment, including all the elements contained in Form WH-151 and if

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they employ workers, to execute a written agreement with their workers prior to the starting of work. The written agreement must provide for all the elements contained in Form WH-153. A copy of the agreement and the disclosure statement must be furnished to the workers in English and in any other language used to communicate with the workers. The disclosing statement must be provided to the workers at the time they are hired, recruited or solicited or at the time they are supplied to another by that contractor, whichever occurs first. A copy of the agreement must be furnished to workers prior to the workers starting work.

(5) Written notification of any changes in the terms and conditions of employment must be provided any time any of the elements listed in the original statement change.

(6) Except as provided in sections (7) and (8) of this rule, if it is not feasible to provide written notice at the time changes to the terms and conditions of employment are made, written notice of such changes may be made as soon as practicable.

(7) Written notice of pay decreases must be provided either prior to or at the time such decrease is implemented.

(8) In the case of the notice required by ORS 658.440(1)(f) (G) of the name(s) and address(es) of the owner(s) of operations where workers are employed, so long as notice is provided no later than the next regularly scheduled payday following a change in the location of work, in addition to the notice provided in (10)(a) or (b), notice may be provided:

(a) To the Bureau of Labor and Industries in writing; or

(b) On any documents issued to workers such as picking tickets or itemized deduction statements provided to workers.

(9) Nothing in the written agreement relieves the contractor or any person for whom the contractor is acting of compliance with any representation made by the contractor in recruiting the workers.

(10) For purposes of these rules, "written" notice of changes in the terms and conditions of employment includes, but is not limited to the following:

(a) Issuance of an amended disclosure statement/agreement (with the information required in Form WH-153) including the specific change(s) in terms and conditions of employment; or

(b) Issuance of a written notice of any specific change(s) in the terms and conditions of employment.

Stat. Auth.: ORS 164, ORS 165, ORS 651, ORS 658 & ORS 962

Stats. Implemented: ORS 658.405 - ORS 658.503

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 3-1990, f. & cert. ef. 3-1-90; BL 6-1996, f. & cert. ef. 1-9-96; BLI 7-2000, f. & cert. ef. 2-23-00

839-015-0370

Statement of Earnings; Statement of Prevailing Wage

(1) Farm and forest labor contractors are required to furnish each worker, each time the worker receives a compensation payment from the contractor, a written itemized statement of earnings. The written itemized statement must include:

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(a) The total gross payment being made;

(b) The amount and purpose of each deduction from the gross payment;

(c) The total number of hours worked during the time covered by the gross payment;

(d) The rate of pay;

(e) If the worker is paid on a piece rate, the number of pieces done and the rate of pay per piece done;

(f) The net amount paid after any deductions;

(g) The employer's name, address and telephone number;

(h) The pay period for which the payment is made.

(2) If the worker is being paid for work done under any law which requires the payment of a prevailing rate of wage (such as the Federal Service Contract Act, Davis-Bacon Act or state prevailing wage law), farm and forest labor contractors must furnish the worker with a written statement specifying the amount of the prevailing wage rate required to be paid.

(3) The commissioner has prepared Form WH-154 which contains all the elements required by, and can be used to comply with, this rule. Farm and forest labor contractors may use any form for furnishing this information to workers so long as it contains all the elements of Form WH-154.

Stat. Auth.: ORS 651 & ORS 658
Stats. Implemented: ORS 658.405 - ORS 658.503
Hist.: BL 6-1984, f. & ef. 4-27-84; BL 2-1996, f. & cert. ef. 1-9-96; BLI 12-2001, f. 8-31-01, cert. ef. 9-1-01

Records

839-015-0400

Required Records

(1) All farm and forest labor contractors shall make and maintain for a period of three years records necessary to determine their compliance with ORS 658.405 to 658.475 and these rules.

(2) Records necessary to determine compliance with ORS 658.405 to 658.475 and these rules include, but are not limited to records of:

(a) The name and address of each worker (address includes both the permanent and local addresses of the worker);

(b) The name and address of each subcontractor;

(c) The work classification of each employee;

(d) The rate of monetary wages and fringe benefits, if any, paid to each employee;

(e) The total compensation paid to each employee during each pay period and the date it was paid;

(f) The dates of each employee's employment;

(g) The daily and weekly hours worked by each employee;

(h) Any deductions taken from the employee's total compensation and an explanation thereof;

(i) The actual net wages paid to each employee during each pay period;

(j) The agreements required to be furnished to each worker pursuant to OAR 839-015-0360;

Note: These rules reflect all changes, adoptions and amendments in effect January 1, 2008, and replace all rules printed in Chapter 839, Division 015, prior to that date.

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(k) The agreements between the contractor and any subcontractors;

(l) The statement of worker's rights and remedies as required by OAR 839-015-0310;

(m) The statement of earnings and the statement of prevailing wage given to each employee as required by OAR 839-015-0370;

(n) The agreements between the contractor and farmers;

(o) The contracts between the contractor and the owner or lessee of land intended to be used for the production of timber;

(p) Any advances and payments thereon made to the contractor by a farmer or owner or lessee of land intended to be used for the production of timber;

(q) Any payroll or other records pertaining to the contractor's business as a Farm or Forest Labor Contractor and the manner in which the contractor conducts such business;

(r) The type and number of any identification the worker produced as evidence of his/her legal presence and legal employability in the United States.

Stat. Auth.: ORS 164, ORS 165, ORS 651, ORS 658.407(3) & ORS 962

Stats. Implemented: ORS 658.405 - ORS 658.503

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 3-1990, f. & cert. ef. 3-1-90; BLI 12-2001, f. 8-31-01, cert. ef. 9-1-01

839-015-0410

Records Availability

Farm and Forest Labor Contractors will make available to representatives of the Wage and Hour Division records necessary to determine compliance with ORS 658.405 to 658.475 and these rules. Records will be

made available upon request of such representatives.

Stat. Auth.: ORS 651 & ORS 658.407(3)

Stats. Implemented: ORS 658.405 - ORS 658.503

Hist.: BL 6-1984, f. & ef. 4-27-84

Posting Requirements

839-015-0450

Notice of Compliance with Bond Requirements

(1) Every farm and forest labor contractor is required to post a notice of compliance with bond requirements in English and in any language used by the contractor to communicate with the contractor's workers. The notice must be posted in a conspicuous place on the job site where the contractor's employees are working and must be easily accessible to them.

(2) The notice shall state that the contractor has complied with ORS 658.415 by obtaining a corporate surety bond or by making a deposit with the commissioner. The notice shall also indicate the amount of the surety bond or deposit and the expiration date of the bond or deposit, and that the surety bond or deposits are conditioned on the payment of wages and advances made by farmers or owners or lessees of land intended to be used for the production of timber.

(3) The notice shall contain the name and Oregon address of the surety on the bond, if applicable, or the address of the bureau when a deposit is made with the commissioner.

(4) The commissioner has prepared a notice (WH-155) in English and Spanish

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which complies with this rule. Contractors may use any form or notice so long as it contains all the elements of Form WH-155.

Stat. Auth.: ORS 164, ORS 165, ORS 651, ORS 658 & ORS 962

Stats. Implemented: ORS 658.405 - ORS 658.503

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 3-1990, f. & cert. ef. 3-1-90; BL 2-1996, f. & cert. ef. 1-9-96

Enforcement

839-015-0500

Action Against the Bond or Deposit

(1) Any person not paid wages owed to him/her by a farm or forest labor contractor or any farmer or owner or lessee of land intended to be used for the production of timber not paid advances due them by the farm or forest labor contractor has a right of action against the surety on the bond or deposit with the commissioner. The individual may exercise this right or may assign this right to another.

(2) The action on the bond or on the deposit held by the commissioner may not be joined in a suit or action on the bond or against the commissioner brought for any other claim.

(3) Any person seeking to recover on the bond or from the deposit with the commissioner must first establish the licensee's liability. The liability may be established in any of the following ways:

- (a) A judgment of the court;
- (b) A final administrative order issued pursuant to statute or rule;
- (c) The acknowledgment of the contractor of such liability;

(d) Other satisfactory evidence of liability as may be shown which establishes the liability.

(4) Claims against the bond or deposit will not be paid unless, within six months of the end of the period during which the bond or deposit applies, the claimant or claimant's assignee gives notice of the claim by certified mail to the surety or the commissioner. Notice of claim shall be sufficient if it states that a wage claim is being made by the worker against the contractor, and it is not a defense to payment on the bond or deposit that the amount of the wage claim is not specified in the notice, or that the ultimate amount of wages found to be due is greater than the amount specified in the notice.

(5) Any claim or notice of claim filed pursuant to a claimant's right of action must be filed as follows:

(a) If the filing is against a surety bond, the claim or notice must be filed with the surety. The name and address of the surety may be obtained from the Bureau of Labor and Industries, Wage and Hour Division, Farm Labor Unit, 3865 Wolverine Street, NE, Bldg. E-1, Salem, OR 97305;

(b) If the filing is against a deposit held by the commissioner, the claim or notice must be filed with the Bureau of Labor and Industries, Wage and Hour Division, Farm Labor Unit, 3865 Wolverine Street, NE, Bldg. E-1, Salem, OR 97305.

(6) Except as provided in section (8) of this rule, the commissioner and the surety shall make payments on the bond or deposit in the following priority:

- (a) Payments on wage claims;

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(b) Payments on advances made to or on behalf of the contractor by a farmer or an owner or lessee of land intended to be used for the production of timber;

(c) If there are insufficient funds to pay all wage claims in full, such claims will be paid in part;

(d) If there are insufficient funds to pay advances in full after all wage claims are paid, such advances will be paid in part.

(7) Except as provided in section (8) of this rule, in order to insure that all wage claims will be accorded priority treatment as required by ORS 658.415(9)(a), the commissioner may delay any payments for advances claimed, until the expiration of the time within which wage claims may be submitted. The commissioner may make conditional payment based upon adequate security that subsequent wage claims will be paid.

(8) Any person who suffers any loss of wages from the employer of the person or any other loss due to activities of an agricultural association or private nonprofit corporation as a farm labor contractor shall have a right of action against the surety upon the bond or against the deposit with the commissioner. The right of action is assignable and may not be included in any action against the agricultural association or private nonprofit corporation but shall be exercised independently after first procuring adequate proof of liability as provided in section (3) of this rule.

(9) A member of any agricultural association that is required to be licensed under ORS 658.410 shall be jointly and

severally liable for any damages, attorney fees, or costs awarded to any person for actions taken by the association in its capacity as a farm labor contractor if such actions were required, authorized, approved or ratified by the member.

(10) The surety company or the commissioner shall make prompt and periodic payments on the agricultural association's or private nonprofit corporation's liability up to the extent of the total sum of the bond or deposit. Payments shall be made in the following manner:

(A) Payment based upon priority of wage claims over other liabilities;

(B) Payment in full of all sums due to each person who presents adequate proof of the claim; and

(C) If there are insufficient funds to pay in full the person next entitled to payment in full, payment in part to the person.

Stat. Auth.: ORS 164, 165, 651, 658 & 962

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 3-1990, f. & cert. ef. 3-1-90; BL 2-1996, f. & cert. ef. 1-9-96; BLI 7-2000, f. & cert. ef. 2-23-00; BLI 12-2001, f. 8-31-01, cert. ef. 9-1-01; BLI 28-2005, f. 12-29-05, cert. ef. 1-1-06

**Payment by Contractor of Certain Travel,
Food and Lodging Expenses of Worker**

839-015-0502

**Travel of Workers Prior to the Availability
of Employment/Provision of Food and
Lodging**

(1) When a worker is recruited or solicited for work and the worker is required to travel from one place to another before there is work available, the farm or forest

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labor contractor shall furnish to the worker, at no cost to the worker, food and lodging until the work begins. The contractor shall provide, without cost to the worker, the following:

(a) Lodging facilities which comply with the provisions ORS Chapter 654 and the rules adopted thereunder; and

(b) An adequate supply of food to feed the worker at least twice in a 24 hour period.

(2) The lodging facilities and adequate supply of food referred to in section (1) of this rule shall be provided by the contractor to the worker at no cost to the worker for as long as the worker must wait for work to become available.

(3) The worker may not be charged the cost of food and lodging provided pursuant to section (1) of this rule before or after the worker starts work.

(4) As used in this rule an "adequate supply of food" means an amount and variety of food sufficient to meet commonly accepted daily nutritional requirements for adults, minors, males or females, as the case may be.

Stat. Auth.: ORS 164, ORS 165, ORS 651, ORS 658 & ORS 962

Stats. Implemented: ORS 658.405 - ORS 658.503

Hist.: BL 3-1990, f. & cert. ef. 3-1-90; BL 2-1996, f. & cert. ef. 1-9-96

839-015-0503

Travel of Workers to Alternative Work Sites/Payment of Certain Transportation Costs

When a worker arrives at a place of employment pursuant to OAR 839-015-0502(1), and work is not available to that worker within 30 days of the date the work was represented to begin, the contractor shall:

(1) Refund to the worker, all sums paid to the contractor by the worker.

(2) Provide to the worker cash or a negotiable instrument in an amount sufficient to pay for one of the following circumstances:

(a) The cost of transportation, including the cost of meals and lodging while in transit, to return the worker to the place where the worker left as a result of the recruitment or solicitation; or

(b) At the option of the worker, the cost of transportation, including meals and lodging while in transit to any other worksite selected by the worker, but no greater amount need be paid than the amount specified in subsection (a) of this section.

Stat. Auth.: ORS 164, ORS 165, ORS 651, ORS 658.440(2)(c) & ORS 962

Stats. Implemented: ORS 658.440(2)(c)

Hist.: BL 3-1990, f. & cert. ef. 3-1-90

839-015-0504

Application of OAR 839-015-0502 and 839-015-0503 Limited

(1) OAR 839-015-0502 and 839-015-0503 do not apply to workers who, pursuant to OAR 839-015-0502(1), arrive at a place of employment before the date instructed by the contractor or agreed to by the worker and the contractor. The provisions of such rules are applicable only on and after the date agreed upon, when no work is available on that date.

(2) OAR 839-015-0502 and 839-015-0503 do not apply to workers who have been provided housing or employment and who have not otherwise been recruited or solicited by the contractor or the contractor's agent prior to the arrival of the worker at the place of housing or employment.

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Stat. Auth.: ORS 164, ORS 165, ORS 651, ORS 658.440(2)(c) & ORS 962

Stats. Implemented: ORS 658.440(2)(c)

Hist.: BL 3-1990, f. & cert. ef. 3-1-90

Civil Penalties for Farm and Forest Labor Contractor Violations

839-015-0505

Definitions

As used in OAR 839-015-0505 to 839-015-0530:

(1) "Knowingly" or "willfully" means action undertaken with actual knowledge of a thing to be done or omitted or action undertaken by a person who should have known the thing to be done or omitted. A person "should have known the thing to be done or omitted" if the person has knowledge of facts or circumstances which, with reasonably diligent inquiry, would place the person on notice of the thing to be done or omitted to be done. A person acts knowingly or willfully if the person has the means to inform himself or herself but elects not to do so. For purposes of this rule, the farm labor contractor, forest labor contractor or any person acting as a farm or forest labor contractor is presumed to know the affairs of their business operations relating to farm or forest labor contracting.

(2) "Violation" means a transgression of any statute or rule, or any part thereof and includes both acts and omissions.

Stat. Auth.: ORS 651 & ORS 658

Stats. Implemented: ORS 658.405 - ORS 658.503

Hist.: BL 11-1988(Temp), f. & cert. ef. 6-17-88; BL 16-1988, f. & cert. ef. 12-13-88; BL 2-1996, f. & cert. ef. 1-9-96; BLI 12-2001, f. 8-31-01, cert. ef. 9-1-01

839-015-0507

Violations Separate and Distinct

Each violation is a separate and distinct offense. In the case of continuing violations, each day's continuance is a separate and distinct violation.

Stat. Auth.: ORS 651 & ORS 658.407(3)

Stats. Implemented: ORS 658.405 - ORS 658.503

Hist.: BL 11-1988(Temp), f. & cert. ef. 6-17-88; BL 16-1988, f. & cert. ef. 12-13-88

839-015-0508

Violations for Which a Civil Penalty May Be Imposed

(1) Pursuant to ORS 658.453, the commissioner may impose a civil penalty for each of the following violations:

(a) Recruiting, soliciting, supplying or employing workers without a license to act as a farm or forest labor contractor in violation of ORS 658.410;

(b) Failing to carry a farm labor contractor's license at all times while acting as a farm labor contractor and exhibit it upon request to any person with whom the contractor intends to deal in the capacity of a farm labor contractor, in violation of ORS 658.440(1)(a);

(c) Failing to post a notice in English and in any other language used to communicate with workers that the contractor has a bond or deposit and where claims can be made against the bond or deposit in violation of ORS 658.415(15);

(d) Failing to file a change of address notice with the U.S. Post Office and the bureau in violation of ORS 658.440(1)(b);

(e) Failing to pay or distribute when due any money or other valuables entrusted to

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the contractor in violation of ORS 658.440(1)(c);

(f) Failing to comply with contracts or agreements entered into as a contractor in violation of ORS 658.440(1)(d);

(g) Failing to furnish each worker, at the time of hiring, recruiting, soliciting or supplying, whichever occurs first, a written statement that contains the terms and conditions described in ORS 658.440(1)(f);

(h) Failing to execute a written agreement between the worker and the farm labor contractor containing the terms and conditions described in ORS 658.440(1)(f), at the time of hiring and prior to the worker performing any work for the farm labor contractor;

(i) Failing to furnish each worker with an itemized deduction statement and statement as to the rate of wage to be paid and other information in violation of ORS 658.440(1)(h);

(j) Making misrepresentations, false statements or willful concealments on the license applications in violation of ORS 658.440(3)(a);

(k) Willfully making or causing to be made any false, fraudulent or misleading information concerning the terms, conditions or existence of employment in violation of ORS 658.440(3)(b);

(l) Soliciting or inducing or causing to be solicited or induced a violation of an existing employment contract in violation of ORS 658.440(3)(c);

(m) Knowingly employing an alien not legally employable or present in the United States in violation of ORS 658.440(3)(d);

(n) Assisting an unlicensed person to act as a contractor in violation of ORS 658.440(3)(e);

(o) Inducing in any manner whatsoever an employee or subcontractor to give up any part of the employee's or subcontractor's compensation to which they are entitled under an employment contract or under federal or state wage laws in violation ORS 658.440(3)(f);

(p) Soliciting, inducing, or causing to be solicited or induced, the travel of a worker from one place to another by representing to a worker that employment for the worker is available at the destination when employment for the worker is not available within 30 days after the date work was represented as being available, is in violation of ORS 658.440(3)(g);

(q) Discharging or in any other manner discriminating against employees in violation of ORS 658.452;

(r) Failing to provide lodging and food when required by ORS 658.440(2)(c) and these rules;

(s) Failing to carry the license in violation of ORS 658.440(1)(a);

(t) Failing to exhibit the license in violation of ORS 658.440(1)(a);

(u) Failing to provide certified true copies of payroll records in violation of ORS 658.440(1)(i).

(v) Failing to provide workers' compensation insurance in violation of ORS 658.440(1)(j).

(2) In the case of forest labor contractors, in addition to any other penalties, a civil penalty may be imposed for failing to

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obtain a special indorsement from the bureau to act as a forest labor contractor in violation of ORS 658.417(1).

(3) The commissioner may impose a civil penalty on a person to whom workers are to be provided, when the person or the person's agent allows work to be performed on any contract or agreement with an unlicensed farm labor contractor without first complying with the provisions of ORS 658.437(2).

Stat. Auth.: ORS 164, 165, 651, 658 & 962
Stats. Implemented: ORS 658.405 - 658.503
Hist.: BL 11-1988(Temp), f. & cert. ef. 6-17-88; BL 16-1988, f. & cert. ef. 12-13-88; BL 3-1990, f. & cert. ef. 3-1-90; BL 2-1996, f. & cert. ef. 1-9-96; BLI 12-2001, f. 8-31-01, cert. ef. 9-1-01; BLI 28-2005, f. 12-29-05, cert. ef. 1-1-06; BLI _____, f. _____, cert. ef 1-1-08

839-015-0509
Inspection of Farm Labor Contractor's License or Temporary Permit

A person to whom an unlicensed farm labor contractor provides workers violates ORS 658.437(2) when the person or person's agent did not, prior to allowing work to be performed on any contract or agreement with the contractor:

(1) Inspect the contractor's apparently valid farm or forest labor contractor's license or temporary permit that has not expired and identify the contractor providing the workers as the same individual whose photo appears on the license or temporary permit; and

(2) Retain a copy of the license or temporary permit provided to the person or the person's agent by the contractor.

Stat. Auth.: ORS 658.407
Stats. Implemented: ORS 658.405 - 658.503

Hist.: BLI _____, f. _____, cert. ef 1-1-08

839-015-0510
Criteria for Determining a Civil Penalty

(1) The commissioner may consider the following mitigating and aggravating circumstances when determining the amount of any civil penalty to be imposed, and shall cite those the commissioner finds to be appropriate:

(a) The history of the contractor or other person in taking all necessary measures to prevent or correct violations of statutes or rules;

(b) Prior violations, if any, of statutes or rules;

(c) The magnitude and seriousness of the violation;

(d) Whether the contractor or other person knew or should have known of the violation.

(2) It shall be the responsibility of the contractor or other person to provide the commissioner any mitigating evidence concerning the amount of the civil penalty to be imposed.

(3) In arriving at the actual amount of the civil penalty, the commissioner shall consider the amount of money or valuables, if any, taken from employees or subcontractors by the contractor or other person in violation of any statute or rule.

(4) Notwithstanding any other section of this rule, the commissioner shall consider all mitigating circumstances presented by the contractor or other person for the purpose of reducing the amount of the civil penalty to be imposed.

Stat. Auth.: ORS 651 & ORS 658

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Stats. Implemented: ORS 658.405 - ORS 658.503
Hist.: BL 6-1984, f. & ef. 4-27-84; BL 11-1988(Temp), f. & cert. ef. 6-17-88; BL 16-1988, f. & cert. ef. 12-13-88; BL 2-1996, f. & cert. ef. 1-9-96

839-015-0512

Schedule of Civil Penalties

(1) The civil penalty for any one violation shall not exceed \$2,000. The actual amount of the civil penalty will depend on all the facts and on any mitigating and aggravating circumstances.

(2) For purposes of this rule, "repeated violations" means violations of a provision of law or rule which have been violated on more than one contract within two years of the date of the most recent violation.

(3) When the Commissioner determines to impose a civil penalty for acting as a farm or forest labor contractor without a valid license, the minimum civil penalty shall be as follows:

(a) \$500 for the first violation;

(b) \$1,000 for the first repeated violation;

(c) \$2,000 for the second and each subsequent repeated violation.

(4) The civil penalty for all other violations shall be set in accordance with the determinations and considerations referred to in OAR 839-015-0510.

(5) The civil penalties set out in this rule are in addition to any other penalty assessed by law or rule.

Stat. Auth.: ORS 658.407

Stats. Implemented: ORS 658.453

Hist.: BL 11-1988(Temp), f. & cert. ef. 6-17-88; BL 16-1988, f. & cert. ef. 12-13-88; BL 5-1996, f. 6-14-96, cert. ef. 7-1-96; BLI 12-2001, f. 8-31-01, cert. ef. 9-1-01

839-015-0520

Denying, Suspending, Revoking or Refusing to Renew License

(1) The following violations are considered to be of such magnitude and seriousness that the Commissioner may propose to deny or refuse to renew a license application or to suspend or revoke a license:

(a) Making a misrepresentation, false statement or certification or willfully concealing information on the license application;

(b) Causing an existing contract of employment to be violated;

(c) Knowingly employing an alien not legally present or legally employable in the United States;

(d) Assisting an unlicensed person to act as a farm or forest labor contractor;

(e) In any way inducing an employee or subcontractor of the contractor to give up any part of the compensation to which the employee or subcontractor is entitled under a contract or under federal or state wage laws;

(f) Discharging or discriminating in any way against an employee in violation of ORS 658.452;

(g) Intentionally altering a license or permit, or using the license or permit of another;

(h) Knowingly permitting another to use the licensee's license or permit; or

(i) Acting as a farm or forest labor contractor without a license.

(2) When the applicant for a license or a licensee demonstrates that the applicant's or licensee's character, reliability or competence makes the applicant or licensee unfit to act as

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a farm or forest labor contractor, the Wage and Hour Division shall propose that the license application be denied or license of the licensee be suspended, revoked or not renewed.

(3) The following actions of a farm or forest labor contractor license applicant or licensee or an agent of the license applicant or licensee demonstrate that the applicant's or the licensee's character, reliability or competence make the applicant or licensee unfit to act as a farm or forest labor contractor:

(a) Violations of any section of ORS 658.405 to 658.485;

(b) Conviction of a felony in connection with the applicant's or licensee's business operations as a farm or forest labor contractor;

(c) Willful violation of the terms and conditions of any work agreement or contract;

(d) Failure to comply with federal, state or local laws or ordinances relating to the payment of wages, income taxes, social security taxes, unemployment compensation tax or any tax, fee or assessment of any sort;

(e) Knowing failure or refusal to seek food, water, shelter, or medical attention, or to provide any other necessary goods or services required by law for the safety and health of workers;

(f) Repeated failure to file or furnish all forms and other information required by ORS 658.405 to 658.503 or these rules;

(g) Failure to report any change in the circumstances under which the license was issued, including the failure to notify the Bureau of any change in the permanent or

temporary address of the applicant or licensee;

(h) Willful misrepresentation, false statement or concealment in the application for a license;

(i) Willfully making or causing to be made to any person any false, fraudulent or misleading representation, or publishing or circulating any false, fraudulent or misleading information concerning the terms, conditions or existence of employment at any place or by any person;

(j) Failure to provide workers compensation coverage for each worker or to make worker's compensation insurance premium payments when due;

(k) Employing or using an agent who has had a farm or forest labor contractor license denied, suspended, revoked or not renewed or who has otherwise violated ORS 658.405 to 658.503;

(l) Failure to maintain the bond or cash deposit as required by ORS 658.405 to 658.503 or these rules;

(m) A course of misconduct in relations with workers, farmers and others with whom the person conducts business;

(n) Failure to pay all debts owed, including advances and wages, in a timely manner;

(o) Failure to promptly satisfy any or all judgments levied against the applicant/licensee;

(p) Conduct of the applicant/licensee resulting in the inability to obtain a bond.

(4) When a farm or forest labor contractor's license application is denied or a license is revoked or when the commissioner

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refuses to renew a license, the commissioner will not issue the applicant or licensee a license for a period of three (3) years from the date of the denial, refusal to renew or revocation of the license.

(5) Notwithstanding section (4) of this rule, the commissioner, for good cause shown, may issue a license to a contractor whose application has been previously denied or whose license was not renewed or was revoked before the expiration of three years, provided:

(a) The contractor submits a petition explaining each and every reason why the contractor should be licensed; and

(b) The contractor files a completed application with the petition and pays the appropriate fees.

(6) As used in section (5) of this rule, "good cause" means an excusable mistake or a circumstance beyond a person's control.

(7) The commissioner shall grant or deny the petition referred to in section (5) of this rule and in so doing shall consider the following factors:

(a) The magnitude and seriousness of the violation or violations which led to the denial, refusal to renew or revocation of the license;

(b) The petitioner's past history in taking all necessary measures to prevent or correct violations of statutes or rules;

(c) The petitioner's other prior violations of the statute or rules, if any;

(d) Other matters which indicate to the commissioner that the petitioner is not likely to violate ORS 658.405 to 658.475 and these rules in the future.

(8) Nothing in this rule shall preclude the commissioner from imposing a civil penalty in lieu of denying or refusing to renew a license application or in lieu of suspension or revocation of a license.

Stat. Auth.: ORS 651 & ORS 658

Stats. Implemented: ORS 658.405 - ORS 658.503

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 11-1988(Temp), f. & cert. ef. 6-17-88; BL 16-1988, f. & cert. ef. 12-13-88; BL 2-1996, f. & cert. ef. 1-9-96; BLI 12-2001, f. 8-31-01, cert. ef. 9-1-01

Emergency Suspension of License

839-015-0525

Immediate Suspension or Refusal to Renew a License; Notice of Opportunity for Hearing; Service

(1) If the Bureau finds there is a serious danger to the public health or safety, it may immediately suspend or it may refuse to renew a license. For purposes of this rule, such a decision is referred to as an emergency suspension order. An emergency suspension order is a written order which is not a final order under ORS Chapter 183. An emergency suspension order is not an order in a contested case and may be issued without notice or an opportunity for a hearing as required for contested cases under ORS Chapter 183.

(2)(a) Except where the danger to the public health or safety is so imminent that opportunity for the licensee to object under section (3) of this rule is not practicable as determined by the Bureau, the Bureau shall provide the licensee with notice and opportunity to object prior to issuing the emergency suspension order. For purposes of

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this rule, this notice is referred to as a presuspension notice;

(b) The presuspension notice shall:

(A) Specify the acts of the licensee and the evidence available to the Bureau which would be grounds for revocation, suspension or refusal to renew the license under the Bureau's usual procedures;

(B) Specify the reasons why the acts of the licensee seriously endanger the public health or safety;

(C) Identify a person in the Bureau authorized to issue the emergency suspension order or to make recommendations regarding the issuance of the emergency suspension order.

(c) The Bureau may provide the presuspension notice to the licensee in writing, orally by telephone or in person, or by any other means available to the Bureau;

(d) Where the presuspension notice is given orally, the Bureau subsequently shall provide the licensee with a written copy of the notice.

(3) Following the presuspension notice, the Bureau shall provide the licensee an immediate opportunity to object to the Bureau's specifications provided in the presuspension notice before a person authorized to issue the emergency suspension order or to make recommendations regarding the issuance of the emergency suspension order.

(4)(a) When the Bureau issues the emergency suspension order, the Bureau shall serve the order on the licensee either personally or by registered or certified mail; and

(b) The order shall include the following statements:

(A) Those required under ORS 183.415(2) and (3);

(B) That the licensee has the right to demand a hearing to be held as soon as practicable to contest the emergency suspension order;

(C) That if the demand is not received by the agency within 90 days of the date of notice of the emergency suspension order the licensee shall have waived its right to a hearing under ORS Chapter 183;

(D) The effective date of the emergency suspension order;

(E) The specifications noted in subsection (2)(b) of this rule;

(F) That with the agreement of the licensee and the Bureau the hearing opportunity on the emergency suspension order may be combined with any other Bureau proceeding affecting the license. The procedures for a combined proceeding shall be those applicable to the other proceeding affecting the license.

(5)(a) If timely requested by the licensee pursuant to subsection (4)(b) of this rule, the Bureau shall hold a hearing on the emergency suspension order as soon as practicable; and

(b) At the hearing, the Bureau shall consider the facts and circumstances including, but not limited to:

(A) Whether at the time of issuance of the order there was probable cause to believe from the evidence available to the Bureau that there were grounds for revocations, suspension or refusal to renew the license under the Bureau's usual procedures;

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(B) Whether the acts or omissions of the licensee pose a serious danger to the public's health or safety;

(C) Whether circumstances at the time of the hearing justify confirmation, alteration or revocation of the order;

(D) Whether the Bureau followed the appropriate procedures in issuing the emergency suspension order.

Stat. Auth.: ORS 164, ORS 165, ORS 651, ORS 658 & ORS 962

Stats. Implemented:

Hist.: BL 16-1988, f. & cert. ef. 12-13-88; BL 3-1990, f. & cert. ef. 3-1-90

839-015-0530

Knowing Employment of an Alien Not Legally Present or Legally Employable in the United States

(1) A contractor knowingly employs an alien who is not legally present or legally employable in the United States, in violation of ORS 658.440(3)(d), if the contractor:

(a) Actually knows that the alien is not legally present and/or not legally employable in the United States; or

(b) Would know that fact if the contractor made efforts to ascertain the alien's status in the United States which were reasonably diligent under the circumstances as the contractor knows them.

(2) Efforts to ascertain an alien's status in the United States which are reasonably diligent under the circumstances as a contractor knows them include but are not limited to the following actions by the contractor:

(a) Making clear to all applicants, hirees and workers that they cannot work for

the contractor unless they are legally present and legally employable in the United States;

(b) Taking one of the following actions:

(A) Requiring that every hiree produce documentary proof that he/she is legally present and legally employable in the United States before he/she begins work; or

(B) Asking all applicants for employment if they are U.S. citizens and requiring that any applicant who has indicated that she/he is not a U.S. citizen, and whom the contractor intends to hire, produce such proof.

(c) Familiarizing itself with pertinent U.S. Immigration and Naturalization Service (INS) regulations and procedures, the types of documentary proof listed in section (4) of this rule, and the other types of documentary identification of aliens issued by INS; and

(d) Making additional efforts to better discourage and detect the presence of aliens not legally present and/or not legally employable in the United States in the contractor's workforce, if the contractor knows or should know that the contractor's past efforts to accomplish that objective have been unsuccessful.

(3) A contractor should be suspicious that an applicant, hiree or worker is not legally present and/or not legally employable in the United States if, for example:

(a) The documentation of that individual's status in the United States:

(A) Does not evidence the individual's legal presence and legal employability in the United States;

(B) Appears on its face to be counterfeit;

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(C) Includes information which does not match the individual offering the documentation; or

(D) In the case of documentation of alien status, does not match the INS specimens of the documentary identification which INS issues for aliens;

(b) The applicant, hiree or worker has given the contractor contradictory information relating to his/her status in the United States or information on that subject which conflicts with pertinent INS regulations and procedures;

(c) The contractor knows or should know that the applicant, hiree or worker has been apprehended by INS as an alien not legally present or legally employable in the United States and/or, because of that status, returned to the alien's country of citizenship; or

(d) The contractor is aware of information indicating that the applicant, hiree or worker is an alien not legally present or legally employable in the United States.

(4) Documentary proof that an individual is legally present and legally employable in the United States includes:

(a) Acceptable evidence of United States' citizenship:

(A) Birth certificate showing place of birth within the United States, its territories or possessions;

(B) Certificate of citizenship;

(C) Certificate of naturalization;

(D) U.S. identification card (INS Form I-179 or I-197);

(E) Passport issued by the United States identifying the individual as a citizen of the United States;

(F) Consular report of birth (State Department Form FS-40);

(G) Baptismal certificate under seal of a church or other religious body which practices infant baptism showing the individual's date and place of birth within the United States, its territories or possessions;

(H) A document under seal of a religious body which does not practice infant baptism showing the individual's date and place of birth within the United States, its territories or possessions;

(I) Tribal enrollment card in an American Indian tribe recognized by the Bureau of Indian Affairs;

(J) Other written advice from INS attesting that the individual is a citizen of the United States;

(K) A copy of a declaration, signed by the person under penalty of prosecution for violation of **Title 18 U.S.C. 1001**, and witnessed by the signature of the appropriate official of the U.S. Employment Service, affixed in the presence of the applicant, filed with the U.S. Employment Service or any of its affiliated offices, attesting that such individual is a citizen of the United States, was born at the place stated and on the date set forth thereon, and reciting the following additional information:

(i) Social security number of such individual (voluntary); and

(ii) Names and addresses of three adult citizens of the United States who can be

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contacted to verify the individual's citizenship.

(L) A certificate issued by the U.S. Department of Labor, Bureau of Employment Security, or the Commonwealth of Puerto Rico which attests that, based upon examination of any of the documents prescribed by paragraphs (a)(A) through (L) of this section, the individual named and identified by the picture on that certificate was born within the United States (including its territories and possessions) at the place and on the date specified thereon and which sets forth such individual's home address (street and number, city, state, and zip code) and social security number.

(b) INS Form I-151 or I-551, Alien Registration Receipt Card;

(c) INS Form I-94 (with or without a passport) bearing an employment authorization consisting of the words "Employment Authorized";

(d) INS Form I-94 (with or without a passport) bearing the designation of H-2, as endorsed on the front or back of the form, authorizing an individual to engage only in agricultural employment during the period of such individual's authorized stay in the United States;

(e) INS forms I-688 and I-688A;

(f) Any other written document from INS indicating that the individual is an alien authorized by INS to accept such employment in the United States; or

(g) U.S. Armed Forces Discharge Papers.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 164, ORS 165, ORS 651, ORS 658.407(3) & ORS 962

Stats. Implemented: ORS 658.440(3)(d)

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 3-1990, f. & cert. ef. 3-1-90; BLI 12-2001, f. 8-31-01, cert. ef. 9-1-01

Private Right of Action

839-015-0600

Procedure for Filing Civil Action under ORS 658.453(4)

(1) Any worker who wishes to file a civil action pursuant to ORS 658.453(4) must file a complaint with the commissioner.

(2) The complaint shall be in writing, and shall contain the name or names of the persons or entities against whom the complaint is being filed. A copy of the proposed complaint to be filed with the court should, if available, be attached to the complaint filed with the commissioner. The worker filing the complaint with the commissioner should also state whether the worker intends to pursue a private civil court action.

(3) The complaint shall be considered filed with the commissioner on the date that it is mailed to the following address: Bureau of Labor and Industries; Wage and Hour Division, 800 NE Oregon Street #1045, Portland, OR 97232.

(4) The complaint that is filed with the commissioner should be filed prior to the filing in court of a civil complaint pursuant to ORS 658.453(4). However, if the complaint filed with the commissioner is not filed prior to the filing of a complaint in court but is done so before the entry of a final judgment, it shall be considered to be filed timely for purposes of ORS 658.453(4).

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Stat. Auth.: ORS 651 & 658
Stats. Implemented: ORS 658.405 - 658.503
Hist.: BL 16-1988, f. & cert. ef. 12-13-88; BL 2-1996, f. & cert. ef. 1-9-96; BLI 28-2005, f. 12-29-05, cert. ef. 1-1-06

839-015-0605

Knowingly Using the Services of an Unlicensed Contractor

(1) Pursuant to ORS 658.465(1), any person who knowingly uses the services of an unlicensed farm or forest labor contractor is personally, jointly and severally liable with the person acting as a farm or forest labor contractor to the same extent and same manner as provided in ORS 658.453(4).

(2) A person knowingly uses the services of an unlicensed farm or forest labor contractor in violation of ORS 658.465(1), if the person:

(a) Uses the services of a person acting as a farm or forest labor contractor and the person actually knows that the contractor does not have a valid license to act as a farm or forest labor contractor;

(b) Uses the services of an unlicensed farm or forest labor contractor without having first completed one of the following steps:

(A) Inspected an apparently valid farm or forest labor contractor's license which has not expired, which appears to be issued to the contractor, and which bears a forestry endorsement, if required;

(B) Confirmed that the name of the contractor appears on the current list of farm and forest labor contractors distributed by the Bureau of Labor and Industries as holding a valid license for the services which are contemplated by the user; or

(C) Obtained telephonic confirmation from the Bureau of Labor and Industries that the contractor is properly licensed to engage in the activities contemplated, and recorded the time, date, and name of the staff person of the Bureau who has provided the information.

Stat. Auth.: ORS 651 & ORS 658.407(3)
Stats. Implemented: ORS 658.465(1)
Hist.: BL 16-1988, f. & cert. ef. 12-13-88; BLI 12-2001, f. 8-31-01, cert. ef. 9-1-01

839-015-0610

Actions Under ORS 658.475 for Injunctive or Declaratory Relief and Damages

(1) Any person who wishes to file a civil action pursuant to ORS 658.475 is not required to file a complaint with the commissioner. However, if a person filing such action desires to notify the commissioner, he/she may do so by sending a copy of the complaint that the person filed with the court to: Bureau of Labor & Industries, Wage and Hour Division, 800 NE Oregon Street #1045, Portland, OR 97232.

(2) The damages provided for in ORS 658.475 are in addition to damages provided for in any other statute including, but not limited to, ORS 658.453(4).

(3) The commissioner or any other person, including workers, may bring a civil action under ORS 658.475.

Stat. Auth.: ORS 651 & 658
Stats. Implemented: ORS 658.405 - 658.503
Hist.: BL 16-1988, f. & cert. ef. 12-13-88; BL 2-1996, f. & cert. ef. 1-9-96; BLI 28-2005, f. 12-29-05, cert. ef. 1-1-06

Note: These rules reflect all changes, adoptions and amendments in effect January 1, 2008, and replace all rules printed in Chapter 839, Division 015, prior to that date.