

12-28

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on [ 12/27/07 ] by the  
Bureau of Labor and Industries, Wage and Hour Division  
Date prior to or same as filing date  
839-015

Agency and Division  
Administrative Rules Chapter Number  
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to become effective [ January 1, 2008 ]. Rulemaking Notice was published in the [Oct and Dec, 2007] Oregon Bulletin.\*\*  
Date upon filing or later Month and Year

**RULE CAPTION**

Amends and clarifies rules relating to Farm Labor Contractors

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

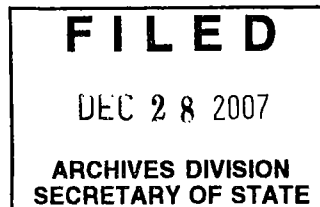
List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:** 839-015-0509

**AMEND:** 839-015-0140; 839-015-0508

Stat. Auth.: ORS 658.407



Other Auth.: SB 202 (2007 Legislature)

Stats. Implemented: ORS 658.405 to 658.503

**RULE SUMMARY**

The new rule adopted (OAR 839-015-0509) clarifies under what circumstances a person will be considered to have violated the provisions of ORS 658.437(2) relating to the duties of persons to whom workers are provided by a farm labor contractor. The rules that have been amended (839-015-0140 and 839-015-0508) conform existing rules pertaining to farm labor contractors to the provisions of SB 202 (2007 Legislature), which require farm labor contractors (in addition to forest labor contractors) to provide proof of required workers' compensation insurance as a condition of licensure. The rules also clarify that if a farm labor contractor applicant relies on workers' compensation coverage from a jurisdiction other than Oregon, the coverage must satisfy Oregon's coverage requirements under ORS chapter 656 (relating to Workers' Compensation). The rule amendments additionally amend the violations for which civil penalties may be assessed against farm labor contractors to include failing to provide workers' compensation insurance coverage in violation of the law. Finally, the rule amendments clarify the current violation to examine a contractor's license or temporary permit as required by a person using the contractor to include determining that the license has not expired and that the photo on the license appears to be of the individual acting as a farm labor contractor.

Dan Gardner

December 27, 2007

Authorized Signer

Printed name

Date

\*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. \*\*The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday.

ARC 930-2005

DLI 40-2007

**BUREAU OF LABOR AND INDUSTRIES  
DIVISION 15  
RULES REGULATING FARM AND FOREST LABOR CONTRACTORS**

**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 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.

**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 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 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).

### **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.

G:\whd\rules\839-015 final rules (January, 2007)