

**STATE OF NEW YORK
DEPARTMENT OF LABOR**



PART 197

**REGULATION RELATING TO THE GRANTING OF
FARM LABOR CONTRACTOR CERTIFICATES OF REGISTRATION,
MIIGRANT LABOR REGISTRATION CERTIFICATES,
AND FARM LABOR CAMP COMMISSARY PERMITS**

Effective November 15, 1977

DIVISION OF LABOR STANDARDS

**STATE OFFICE BUILDING CAMPUS
ALBANY, NY 12240**

STATE OF NEW YORK
DEPARTMENT OF LABOR

PHILIP ROSS
INDUSTRIAL COMMISSIONER

ORDER OF PROMULGATION
OF
REGULATION RELATING TO THE GRANTING OF FARM LABOR CONTRACTOR
CERTIFICATES OF REGISTRATION, MIGRANT LABOR REGISTRATION
CERTIFICATES, AND FARM LABOR CAMP COMMISSARY PERMITS

Pursuant to the authority vested in me by Sections 212-a.9 and 212-b.6 of the Labor Law, I, PHILIP ROSS, Industrial Commissioner of the State of New York, promulgate the attached Regulation relating to the granting of Farm Labor Contractor Certificates of Registration, Migrant Labor Registration Certificates and Farm Labor Camp Commissary Permits, as Part 197 of Subchapter I, Chapter II, of Title 12 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This Regulation shall become effective November 15, 1977.

Witness my hand and seal of the Department of Labor this
17th day of October, 1977.


PHILIP ROSS
Industrial Commissioner

Title 12 Division of Labor Standards

Subchapter I
Certification for recruitment and
employment of farm workers

PART 197

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MIGRANT LABOR REGISTRATION CERTIFICATES,
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(Statutory Authority: Labor Law Sec. 212-a,
Subdivision 9 and Sec. 212-b, Subdivision 6)

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Section 197.1 Purpose. This regulation establishes procedures for approval by the Industrial Commissioner of applications for Farm Labor Contractor Certificates, Migrant Labor Certificates and Farm Labor Camp Commissary Permits. It contains standards for notifying members of farm labor crews of the conditions of their employment and patrons of farm labor camp commissaries of the permitted charges for items for sale or lease in the commissary. The regulation also establishes procedures for revocation or denial of certificates and permits.

§197.2 Definitions. As used in this regulation:

(a) "Commissioner" means the Industrial Commissioner of the State of New York.

(b) "Farm Labor Contractor" includes:

(1) Any person who, for a fee, recruits, transports, supplies or hires farm or food processing workers to work for, or under the direction, supervision, or control of, a third person; or

(2) Any person who recruits, transports, supplies, or hires farm or food processing workers and who, for a fee, directs, supervises, or controls all or any part of the work of such workers.

The term "farm labor contractor" shall not include an employment agency licensed in accordance with the provisions of Article 11 of the General Business Law. The term "farm labor contractor" also shall not include a person who is a grower or processor as defined herein who recruits or hires workers for work on his farm or in his plant.

(c) "Fee" includes any money or other valuable consideration paid or promised to be paid to a farm labor contractor for the performance of any of the services enumerated in subdivision (b) of this section.

(d) "Grower or processor" means any person who is the owner, lessee or operator of a farm or food processing plant.

(e) "Person" includes any individual, firm, partnership, cooperative, association or corporation.

(f) "Farm labor camp commissary" means a place where goods are offered for sale or lease, including meals sold to workers, and which is operated in or in connection with a farm labor camp. "Farm labor camp commissary" includes a building, shed or structure, or any part thereof, occupied as a farm labor camp commissary.

(g) "Farm labor camp" means a property consisting of a tract of land and all tents, vehicles, buildings, or other structure pertaining thereto, any part of which may be occupied by persons employed in farm activities who are provided with sleeping facilities, in whole or in part, by the owner, lessee, or operator thereof, with or without stipulated agreement as to the duration of their stay, whether or not they are supplied with meals but who are supplied with services or facilities as are necessary for their use of such property. The term "farm activities" shall include the following activities in connection with vegetables and fruits and the plants, bushes, or trees producing the vegetables or fruits: fitting, planting, cultivating, harvesting, vining, sorting, grading, packing, storing, canning, freezing, dehydrating, bottling and preserving or treating by any method.

(h) "Goods" includes all goods, wares, merchandise, food or any article or thing.

§ 197.3 Applications for permits and certificates.

(a) Application for farm labor contractor certificate of registration. No person shall act as a farm labor contractor unless he holds a valid certificate of registration issued by the commissioner. Any individual seeking to obtain a farm labor contractor certificate of registration shall submit an application on a form prescribed by the commissioner. The application shall be filed with the Industrial Commissioner, or the designee of the Industrial Commissioner at Building 12, State Office

Building Campus, Albany, New York 12240. Each application for a farm labor contractor certificate of registration shall be accompanied by completed fingerprint cards supplied by the commissioner.

(b) Application for permit to operate a farm labor camp commissary. No person shall operate a farm labor camp commissary, or cause or allow the operation of a farm labor camp commissary, without a valid permit from the Industrial Commissioner. Any individual seeking to obtain a permit to operate a farm labor camp commissary shall submit an application on a form prescribed by the commissioner. The application shall be filed with the Industrial Commissioner, or the designee of the Industrial Commissioner at Building 12, State Office Building Campus, Albany, New York 12240.

(c) Application for migrant labor registration certificate. Every grower or processor who, without utilizing the services of a farm labor contractor; brings into the State or is responsible for bringing into the State five or more out-of-State migrant farm or food processing workers shall in each instance, prior to the importation of such workers, obtain a certificate of registration issued by the commissioner. Application shall be made on a form prescribed by the commissioner. Application shall be filed with the Industrial Commissioner, or the designee of the Industrial Commissioner, at Building 12, State Office Building Campus, Albany, New York, New York 12240.

§197.4 Issuance, denial and revocation of permits and certificates.

(a) Based on information contained in the application and on the results of investigation and hearing, if a hearing is held, the Commissioner shall issue or deny an application for a Farm Labor Contractor Certificate, a Farm Labor Camp Commissary Permit, or a Migrant Labor Certificate.

(b) The commissioner may revoke, suspend or refuse to issue or renew a certificate or permit: (1) if he finds that the applicant or permit or certificate holder has violated the Labor Law, or has been convicted of any crime or offense related to his activity under the certificate or permit, or involves an unreasonable risk to the safety or welfare of employees or the public, or has made misrepresentations or false statements in his application, or has given false or misleading information to workers who are recruited or hired, or is not a person of good character or responsibility, or is not in fact the real party in interest in any such application or certificate of registration; (2) upon notification by the State Department of Health that the applicant or permit or certificate holder has failed to comply with the State Sanitary Code for Migrant Labor Camps (10 NYCRR15).

(c) The commissioner shall not refuse to issue nor shall he suspend or revoke a certificate or permit unless an opportunity to be heard as provided in Section 197.11 of this Part 197 has been given to the applicant or permit or certificate holder; provided, however, that pending the determination of such hearing the Commissioner may temporarily suspend a certificate or permit if in his opinion, its suspension for such period is necessary to effectuate the purposes of the Labor Law and this regulation.

(d) The Commissioner or his authorized representative shall have the right to inquire by investigation or hearing into the circumstances surrounding the use of the permit or certificate in order that a determination can be made as to the issuance, or denial of a certificate or permit. The investigation and hearing may include but shall not be limited to questioning of the applicant and other probable parties of interest. Failure by the applicant to fully disclose other parties of interest shall be sufficient cause for denial of the application

(e) If a certificate or permit is denied or revoked, the applicant may not submit an application for a new certificate or permit until 24 months have elapsed from the date of the denial or revocation, provided that for good cause shown the Commissioner may reduce the disqualification period. A previously denied applicant must submit any new application at least 90 days prior to the date when the applicant plans to perform services in New York State.

(f) A Farm Labor Contractor Certificate, Migrant Labor Certificate or Farm Labor Camp Commissary Permit shall be valid from the date of issuance until the following March 31, unless earlier revoked as provided in subdivision (b) of this section. A certificate or permit may not be assigned or transferred.

§ 197.5 Five-day supplemental application.

Notwithstanding any other provision in this regulation, a grower or processor may utilize the services of a registered farm labor contractor for not more than five days, provided that within 24 hours after the beginning of such utilization he countersigns the application supplied by the Commissioner for such farm labor contractor and immediately thereafter transmits said application to the Commissioner.

§ 197.6 Permit to operate farm labor camp commissary.

(a) A permit to operate a farm labor camp commissary must be conspicuously posted in the commissary.

(b) A permit holder shall also post and keep posted in a conspicuous place in the commissary on a form supplied by the Commissioner, the current prices of all goods sold or leased, and the prices charged shall not exceed the prices listed on the poster.

§ 197.7 Possession of certificates.

A certificate holder shall keep the certificate of registration

in his immediate possession and shall display the certificate upon the request of the Commissioner or his duly authorized representative.

§ 197.8 Copies of approved certificate applications.

Copies of approved applications for farm labor contractor certificates of registration and migrant labor registration certificates or summaries thereof shall be supplied to the registrant by the Industrial Commissioner. The registrant shall give a copy to each worker, preferably at the time of recruitment, but in no event later than the time of arrival in this state if the worker comes from outside of the state, or the time of commencement of work if the worker does not come from outside of the state. A copy shall also be kept posted at all times in a conspicuous place in any camp in which such workers are housed.

§ 197.9 Payroll records, wage statement and commissary record requirements.

(a) Every farm labor contractor and every grower or processor who does not utilize the services of a farm labor contractor shall keep payroll records for each worker of wage rates, wages earned, number of hours worked and, and if the worker is paid on a piecework basis the number of units produced, all withholding from wages, and the net wages paid.

Every farm labor contractor and every grower or processor who does not utilize the services of a farm labor contractor shall give to each worker with every payment of wages, a written statement showing the worker's wage rate, wages earned, number of hours worked, and if the worker is paid on a piecework basis the number of units produced, all withholdings from wages, and the net wages paid.

If a farm labor contractor fails to comply with the provisions of this section the Commissioner shall notify the grower or processor who utilizes the services of such farm labor contractor, and responsibility for compliance shall thereafter be imposed on such grower or processor with the same force and effect as though the grower or processor were primarily responsible for compliance.

(b) Every commissary operator shall maintain a listing of the charges made by the commissary operator to each farm worker. The records shall show the charges for meals and lodging provided to the worker by the commissary operator and deductions made from the wages of the worker for the benefit of the commissary operator. The records shall list the name of the grower or processor by whom the worker was employed.

(c) Such payroll records and commissary records shall be kept in the manner prescribed by the Commissioner and shall be available for inspection by the Commissioner or his duly authorized representative, at any reasonable time. The records shall be maintained for a period of at least three years.

§ 197.10 Interview of workers.

The Commissioner or his duly authorized representative may interview farm or food processing workers at any reasonable time and at any location where work is being performed or will be performed or where a farm labor camp or farm labor camp commissary is maintained.

§ 197.11 Hearings.

Where it appears that, pursuant to the provisions of Section 197.4 of this Part, sufficient cause exists for the denial of any application for, the revocation or suspension of or refusal to renew any permit or certificate covered by this Part the Commissioner shall send a notice to the applicant or permit or certificate holder stating the proposed adverse action to be taken, the ground or grounds on which such action is based, and that the Commissioner's proposed action shall become final unless within 10 calendar days of the receipt of the notice the party who may be aggrieved by the proposed action files with the Commissioner a written request for a hearing.

Reasonable notice of the hearing containing the date, time, place and purpose of the hearing shall be given by registered or certified mail to all parties to the hearing.

The hearing shall be conducted by an employee of the Department of Labor designated by the Commissioner to be the Hearing Officer who shall not be bound by statutory rules of evidence or by technical or formal rules of procedure. A record shall be made of the sworn testimony. Every party to the proceeding shall have the right to counsel and a full opportunity to be heard, including such cross-examination as may be appropriate in the circumstances. The Hearing Officer as soon after conclusion of the hearing as is possible, on the basis of the record made in the proceeding, shall submit his report and recommendation to the Commissioner, who shall thereafter issue his order and determination promptly.

