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***OUTLINE OF COMPLIANCE WITH MSPA:
THE MIGRANT AND SEASONAL
AGRICULTURAL WORKER PROTECTION ACT
AND REGULATIONS***

September 9, 2008

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By: Ann Margaret Pointer

The information contained herein should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult an attorney concerning your own situation and any specific legal questions you may have.

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I. Summary of the Act and the 1995 Amendments

In a practical sense, the Migrant and Seasonal Agricultural Worker Protection Act ("MSPA" or "the Act") can be read as requiring many growers to become actively involved as the employers in fact of all migrants as well as local field harvest workers and some grading shed and packing house workers. MSPA incorporates legal definitions by reference and without clear explanation of their meaning. For example, the term "employ" has simply been given the meaning of that word under the Fair Labor Standards Act ("FLSA"), which is "to suffer or permit to work."

DOL regulations, typically followed by the federal courts, encourage finding that both workers and their crewleaders who are economically dependent upon the farmer in connection with whose operations they work are employees of the farmer.

The concept of "joint employment" has been developed by the courts and the U.S. Department of Labor ("DOL") under both laws. Under this doctrine, more than one employer or person can be held responsible for compliance with FLSA and MSPA with respect to a worker who is deemed to be working for both employers at the same time. Even where the crewleader is not deemed to be an employee of the grower, in many instances the courts find they are both responsible for MSPA compliance with respect to workers.

A new district court case that is illustrative of how courts examine the employer/joint employer issue is Luna v. Del Monte Fresh Produce (Southeast), Inc., CA No. 1:06-CV-2000-JEC (N.D. Ga. March 19, 2008), which applied the 1997 DOL joint

employer regulations and earlier decisions of the Eleventh Circuit to find that the operating Del Monte entity that had contracted with the crewleader was actually the employer under both the FLSA and MSPA. (A copy is attached as Exhibit C.).

In Charles v. Burton, 169 F.3d 1322 (11th Cir. 1999), which the Del Monte case relied on, there was a finding that the farmers, as a matter of law, were joint employers with the crewleader of the workers. In the Charles case, the farmers only had indirect supervision and control over the workers by such actions as deciding when and in what fields the workers would work, by the several times a day monitoring of the progress of harvesting, and similar actions, even though the crewleader decided how much to pay the workers and when to pay them. The farmers were not involved in providing worker compensation coverage or in ensuring that FICA payments were made, and the farmers had no other payroll involvement. Additionally, because the farmers had failed to ensure that the crewleader had a valid certificate authorizing him to transport the workers, the farmers could be liable for the workers' actual damages caused by an accident which resulted in the deaths of several workers. There would have been insurance to cover medical expenses and lost wages if the crewleader had been licensed to provide transportation because having insurance is a prerequisite to obtaining such a license.

There is potential personal liability under the FLSA and MSPA. Under the FLSA, the term "employer" is statutorily defined to include "any person acting directly or indirectly in the interest of an employer in relation to an employee" 29 U.S.C. §202(d). Thus, owners of incorporated businesses and even some supervisors may be held personally liable for FLSA and MSPA violations.

Therefore, while at first blush MSPA may seem to require only that growers who contract out harvesting or other functions assure that the contractor they have retained is licensed for the particular services the growers have asked or "caused" him to perform and to maintain records that the contractor gives them, many growers' actual responsibilities under MSPA are far broader. Frequently, the courts hold growers responsible if the contractors fail to meet disclosure, pay, safety and other MSPA requirements. Statutory damage penalties for some types of violations are now at the \$10,000 per plaintiff level even where there is worker compensation coverage for the workers' bodily injuries. While the main points of MSPA are detailed below, here in brief outline are some of the areas covered by the law.

First, a farm labor contractor ("FLC") must be registered before he engages in any solicitation or recruitment of workers or any other covered activity under the law. Any of his employees who are going to engage in farm labor contracting activities — recruiting, soliciting, hiring, employing, furnishing or transporting — must be registered. They must be registered for all of the farm labor contracting activities in which they can reasonably be expected to engage. Special licensing requirements apply to transporting, driving, and housing workers.

The Act also covers technical disclosures about the job that must be made to workers in writing in a language in which they are fluent even if there is no crewleader involved. Relocating workers who cannot return to their permanent residences every day must be provided these written disclosures when they are recruited for the job — not just when they arrive at the farmer's place of business if they have been contacted about the potential for employment.

Covered workers must be provided with copies of required payroll information for each pay period. MSPA requires compliance with the Fair Labor Standards Act. This means compliance with the minimum wage requirements, payment of overtime if it is applicable, and compliance with the child labor provisions. It also means that workers must be paid for all hours suffered or permitted to work and that deductions that cut into the minimum wage must meet the FLSA restrictions. Deductions must also be disclosed to workers in the required written disclosures at the time of recruitment for migrant workers and certain local workers and when they are paid and deductions are actually made. (Note that some states have additional statutory requirements governing wage payments and deductions.) Crewleaders and growers may not require workers to purchase goods or services from them.

Transportation requirements for covered workers, whether or not a farm labor contractor is involved, center on driver safety, vehicle safety and insurance, depending on the number of seats in the vehicle to be used, and the distance over which workers will be transported.

When the Department of Labor issued amended regulations in May 1996, it took the opportunity to explain how it will treat "carpooling" situations where neither the farmer nor the crewleader has anything whatsoever to do with arrangements between individual workers and an unregistered person who uses his own vehicle to transport

workers. There are a number of conditions which must be met in order for DOL to recognize the practice as a "carpool" rather than as a MSPA-covered transportation arrangement. First of all, the arrangement must be a voluntary one, which the grower and/or crewleader may permit and encourage but not direct or request. According to DOL, the crewleader or grower (including a grower's supervisor) steps over the permissible line when he helps to organize carpools. The workers themselves must pay the driver any cost reimbursement amount they work out. It is permissible for a grower to provide individual workers a travel advance to cover travel expenses to the worksite without creating MSPA coverage, but where the money is advanced, the worker must remain free to decide whether to carpool with other workers. If the driver in a voluntary "carpool" situation is to avoid becoming a farm labor contractor within the meaning of MSPA, he must collect from his fellow workers no more than an amount that reasonably reflects the actual costs of the shared transportation. Paying "any valuable consideration in excess of the actual costs" means the transportation provider will be considered to be a farm labor contractor. In its commentary, DOL says that carpool drivers who wish to avoid FLC status must be able to prove how the charges they made were calculated and that the charges were reasonable and directly related to the transportation provided to the carpool participants. DOL suggested that carpool drivers could look to its regulations for ascertaining the "reasonable cost" of meals or lodging furnished to employees. These regulations require extensive record-keeping. An alternative also suggested by DOL probably is a more workable solution. That is for carpool drivers to use the same reimbursement rate allowed to federal government employees who use their personal vehicles on government business. As of August 1, 2008, federal employees are reimbursed at the rate of 58.5 cents per mile. The mileage reimbursement is presumed to cover gas, wear and tear and other actual costs of operation. The carpool driver would calculate his "trip rate" by multiplying the miles to and from the worksite by 58.5 cents and then dividing by the total number of persons riding to and from work in the vehicle. Presumably, since the total payment is supposed to reimburse only for actual costs, the driver himself should be counted among the persons using the vehicle.

Also, DOL clarified its position as to so-called raitero arrangements. If raiteros are involved in transportation of workers, the growers (and their supervisory

employees) must avoid any involvement with them to avoid the grower being held to have "caused transportation" by the raitero.

The Court of Appeals for the Eleventh Circuit appears to have ruled that any housing provided to migrant or seasonal workers by growers that is under the control of growers is subject to the MSPA housing regulations by adopting a DOL MSPA regulation that says that a permanent residence for a seasonal worker cannot be grower-provided housing. The logic then is that since the worker who is residing in grower-provided housing is not in his permanent residence, he is a "migrant agricultural worker." Caro-Galvin v. Curtis Richardson, Inc., 993 F.2d 1500 (11th Cir. 1993). Compliance with the standards must be maintained during occupancy if the housing is owned or controlled by an agricultural employer or farm labor contractor.

A recent decision by a three-judge panel of the Court of Appeals for the Eleventh Circuit that worker advocates have asked the full Court of Appeals to review and overturn held that the substantive obligations to comply with either the OSHA or ETA housing standards that DOL adopted as MSPA requirements apply only to those who actually own or control the housing facilities. Outside of Alabama, Florida, and Georgia, persons who provide housing to migrant workers should study the issues carefully before relying on this new decision, which as noted, is still under attack from worker advocates. A Federal District Court in Texas instead adopted the requirements of DOL's MSPA regulations and held employers and crewleaders who have arranged for worker housing responsible for its compliance with the Federal regulations.

By contrast, however, the Eleventh Circuit distinguished between control over the housing as compared to control over the people living in the facility. Renteria-Marin v. Ag-Mart Produce, Inc., CA No. 07-14898 (11th Cir. August 8, 2008). The Court rejected the Plaintiffs' claim that an agricultural producer and its crewleaders who made arrangements for workers to live in the motels had a duty to ensure "that the facility or real property complies with the substantive Federal and State safety and health standards applicable to that housing because under the words of the statutory section, that obligation only applies to those who . . . own or control" the facility. Employing the workers and even paying for part of the rent was held not enough to "control" the facility.

Nonetheless, the three-judge panel in Renteria held that because the defendant provided housing to covered workers, it was legally required to have posted the

occupancy terms and conditions associated with using the housing, that is, the completed WH-521 form.

These MSPA requirements can be enforced either by the Department of Labor ("DOL"), which imposes civil money penalties, or by private attorneys, including Legal Services. Unless there is worker compensation applicability and coverage for a death or bodily injury, workers may seek either actual or statutory damages in an amount up to \$500 per violation per person as well as attorneys' fees for FLSA violations and other penalties. Where there is worker compensation coverage and applicability, the worker is limited to the worker comp remedy for the injury; however, in certain circumstances, he may also sue for statutory damages in an amount up to \$10,000 and for equitable relief. Frequently, workers sue growers contending that the growers are their employers and are legally and financially responsible if the contractors have failed to meet the MSPA requirements. Some courts have allowed non-working children to sue under MSPA based on claims that they were injured, for example in housing, because the housing was not in compliance with applicable MSPA regulations. Some courts have allowed plaintiffs to incorporate an obligation to comply with non-MSPA legal requirements as implied obligations under MSPA. Some states impose requirements in addition to those outlined in this memorandum.

II. Definitions

A. Agricultural Employer: any person who owns or operates a farm, ranch, processing establishment, cannery, gin, packing shed, or nursery, or who produces or conditions seed.

B. Agricultural Employment: employment in any service or activity included within the provisions of Section 3(f) of the FLSA or Section 3121(g) of the Internal Revenue Code and the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state. Under FLSA Section 3(f), agriculture includes farming (planting, cultivating) as well as packing by a farmer of produce he has grown. Under FLSA, packing for others is not exempt from overtime, but it is covered by MSPA. Buying a field, harvesting it and packing the field's harvest does not meet the farming test so as to make the packer a farmer under FLSA.

C. Day-Haul Operation: assembly of workers at a pick-up point waiting to be hired and employed, transportation of such workers to agricultural employment and the return of such workers to a drop-off point on the same day. Hiring workers on a daily basis, transporting them to your farm or packing house, and returning them to a common place is covered.

D. Employ: includes any activity in which a person is suffered or permitted to work.

E. Farm Labor Contracting Activity: any recruiting, soliciting, hiring, employing, furnishing or transporting any migrant or seasonal worker.

F. Farm Labor Contractor: any person, other than an agricultural employer or association or an employee of an agricultural employer or association, who for any money or other valuable consideration paid or promised to be paid, performs any farm labor contracting activity. DOL is now taking the position that employers' agents who assist them in applying for H-2A workers and who engage in any of these listed activities are farm labor contractors if they are not otherwise exempt from registration.

G. Joint Employment: situation in which a single person is regarded under law as an employee of two or more persons at the same time, i.e., of the crewleader and the grower. The U.S. Department of Labor and several Federal Courts of Appeal say that

determination of whether a "joint employment" situation exists depends on the "economic realities" of the relationship in its entirety. The issue is not determined solely by common-law concepts. In a number of Farm Labor Contractor Registration Act (now expired) and MSPA cases, growers have been held the employer of their crewleaders' workers based on the extent to which the services rendered are an integral part of the grower's business, the permanency of the crewleader and grower's relationship, the opportunities existing for the crewleader to have a profit or loss, the initiative, judgment or foresight exercised by the crewleader, the amount of investment by the crewleader in the operation, and the grower's degree of control over the crewleader in the situation. Even if the crewleader himself is an independent contractor vis-à-vis the grower, the workers involved may be the employees of both. Factors examined by the courts on this issue include: who decides the pay rates and the methods of payment of the workers; the degree of supervision of the workers by the grower (directly or indirectly); whether the grower hires, fires or effectively recommends these personnel actions and whether the grower modifies the workers' employment conditions; who prepares the payroll; who pays or is responsible for payment of the employee taxes or workers' compensation; and the nature and degree of control over the workers exercised by the grower.

Whether or not the grower has the power to affect these terms and conditions of employment is deemed a factor favoring a finding that the grower is an employer, even if the grower does not in fact exercise that power. Courts have also examined whether the crewleader is making enough money to be able to pay the workers in compliance with the law, whether the crewleader is economically dependent on the grower, whether the crewleader simultaneously provides services for multiple growers, and whether the grower pays or advances the crewleader transportation money, insurance premium money, etc. The fact that the crewleader is licensed as a crewleader is irrelevant. Joint employment establishes joint responsibility for maintenance of payroll records, payment of wages, disclosure of employment information and posting of notices, and it may be a basis for claiming that the farmer is responsible for housing, transportation or other violations of which the grower may not even be aware. Joint employment imposes a strong incentive on growers to control crewleaders' actions with respect to their cashing checks for a fee, lending money to workers at interest, selling food, alcohol or cigarettes to workers at a profit, etc.

H. Migrant Agricultural Worker: an individual who is employed in agricultural employment of a seasonal or other temporary nature and who is required to be absent overnight from his permanent place of residence who comes to the U.S. on a visa. While the definition excludes H-2A workers, the definition does not exclude U.S. workers who are employed by the same employers. This definition includes packing house workers who must be absent overnight from their permanent residence.

I. Seasonal Agricultural Worker: an individual who is employed in agricultural employment of a seasonal or other temporary nature and is not required to be absent overnight from his permanent place of residence. This definition has been interpreted to cover year-round nursery workers because particular crop activities are seasonal. Additionally, in Caro-Galvin v. Richardson, the Eleventh Circuit ruled that agricultural workers who live year-round in grower-provided housing are migrant workers, not seasonal workers, thus making their grower-owned or grower-controlled housing subject to the housing regulations.

1. Includes local individuals employed in canning, packing, or processing operations only when transported or caused to be transported to or from the place of employment by means of a day-haul operation.

2. Includes all "local" field workers performing work related to planting, cultivating or harvesting who are not supervisors or equipment operators or local residents employed on a year-round basis to perform a variety of tasks and who are not primarily employed to do field work.

III. Most Frequent Exemptions to MSPA Coverage

A. Grower Exemptions

1. Family Business Exemption: Any individual who engages in farm labor contracting on behalf of a farm, packing shed, etc., owned and operated exclusively by such individual or an immediate family member if such activities are performed only for such operation and exclusively by such individual or an immediate family member without regard to whether such individual has incorporated or is otherwise organized for business purposes.

2. Small Business Exemption: Any person other than a farm labor contractor who did not use more than 500 man-days in any calendar quarter of the

preceding year of agricultural labor, including labor furnished by a crewleader if joint employment exists. A man-day is any day during which an employee does farm work for at least one hour. Man-days worked by a farmer, partners or immediate family are not included.

B. Contractor

A farm labor contractor is exempt if he engages in farm labor contracting activities solely within a 25-mile intrastate radius of his permanent place of residence and does not do this in any day in more than 13 weeks per year. Telephone calls beyond the 25-mile radius disqualify the individual. All farm labor contracting activities for all agricultural employers, including nurseries, must be included, not just FLC activities for a particular grower. Coverage in the preceding year means that the individual is presumed covered in the current year. The individual is covered for the entire year if he is covered, and he does not get an exemption for the first 13 weeks. Other parts of MSPA may be applicable to a grower even if the crewleader is not required to be licensed. Workers' protections may be required even if the crewleader is exempt.

C. Local Packing House Workers

Packing house and grading shed workers who do no field work and who return to their permanent home or residence each night are not covered under MSPA so long as they are not day-haul workers -- i.e., where workers gather at a central location to be picked up and taken to the shed as prospective employees. Note: the first day a worker is transported and hired in this manner makes him a day-haul seasonal worker and therefore subject to MSPA requirements.

D. CAVEAT

Records should be kept to prove exemption entitlement. The burden of proof in a lawsuit is often on the individual who claims an exemption.

IV. Overview Requirements Applicable to Farm Labor Contractors ("FLC")

A. An FLC must be registered for all activities in which he will be engaged before he engages in those activities. This requirement includes basic registration for a license to hire, employ, etc., as well as registration to provide housing and workers' transportation and to drive workers. The crewleader must be authorized to provide the particular housing and use the particular vehicles which he intends to use. This means he must be

authorized to utilize your housing if he is going to be in control of a camp you provide to members of his crew. An FLC's license should indicate all activities he may perform and all housing and vehicles he is authorized to use. Employees of crewleaders engaged in such activities must be licensed as well.

B. FLCs and registered FLC employees must carry their certificate of registration at all times and upon request exhibit the certificate.

C. The real party in interest must hold license, not a front man or spouse who is not the actual crewleader.

D. An FLC must seek to amend his certificate of registration each time his address changes and each time there are changes with respect to vehicles to be used or housing to be used.

E. Copies of all payroll records for each place of employment must be furnished to the grower, processor or packer to whom workers are furnished.

F. **NOTE:** Crewleaders have additional responsibilities toward workers that are covered below where obligations of agricultural employers toward migrant and seasonal workers are covered.

V. Information, Pay and Record-keeping Requirements Applicable to Migrant and Seasonal Workers

A. Form WH-516 Disclosures in Workers' Language: At the time of recruitment, information contained in this form must be disclosed in writing in the workers' language to all migrant and day-haul workers. For both migrant and seasonal workers, this information must be disclosed in writing when requested. The practical result, however, is that, because the status of the worker may not be known (or provable) at the time he is first contacted, the crewleader, his employees conducting FLC activities, the grower and his foreman or other employees should disclose the WH-516 information in writing to each worker who is recruited. Workers must be given copies of the WH-516 information if they request it.

Many employers obtain workers' written acknowledgments that they were given the written WH-516 disclosures at the time they were recruited. As noted below, growers may provide certain information pertaining to workers' compensation insurance by providing workers a copy of the applicable state worker compensation notice(s). If you choose to meet the MSPA worker compensation information requirement with a photocopy

of the state worker comp notice, it must be provided at the same time as the WH-516. Keep copies of WH-516 forms in pickups, cars, office, etc. You may need to prepare WH-516 forms for different crops and/or activities or incorporate supplemental sheets for more detailed information regarding the requirements of the job. We are seeing more and more cases where workers contend that crewleaders or sub-crewleaders promised higher wages or longer employment than authorized by a farmer who has taken over pay responsibilities and is therefore the direct employer, at least once the workers begin work. Growers are in a better position to defend themselves if they can prove workers were given proper written notice of the terms of employment.

B. Items Required on WH-516:

1. The place of employment. This should be the grower's name and physical location to the extent possible.

2. The wage rates to be paid. The wage rate should be stated as an hourly wage if the wages will be paid on an hourly basis. If the worker is paid on a piece rate, the rate should be so stated. Explain accurately how the piece rates are calculated. If there will be deductions for poor quality, state the details. If you will use picking buckets or boxes of a particular volume, state the detail. If you are covered by the FLSA, you will be required by law to "build up" or increase a piece rate worker's pay to meet the FLSA minimum. We recommend stating the piece rate and that the worker will be paid \$6.55¹ per hour minimum (or the applicable state minimum wage) over the pay period. If you know certain employees will be paid more, the law contemplates that they will be told their rate in writing. If during the season the rate will be different day to day, workers need to be told the rate for a particular day before they start work for that day. We see this as a future problem area. There are already cases disputing how much is enough disclosure and whether daily written disclosure is required. Representations that cannot be fulfilled should not be made.

3. The crops and kinds of activities on which the workers may be employed.

4. The period of employment. We recommend indicating "approximate" dates, and consider stating that the employment is "employment at will" or that it may be

¹\$7.25 effective July 24, 2009.

terminated for any reason, with or without notice, at any time by the worker or the employer. The Department of Labor and worker advocates may challenge this procedure, contending in effect that an employer may not change the terms of employment — such as the dates when employment will be available — once the worker is recruited. Whether growers may assert the right to change employment terms unilaterally because of changed conditions affecting the crop, the marketability of the crop, etc., whether growers have the right to say that the period of employment is approximate and the right to offer only "at will employment," meaning only for so long as both the farmer and the worker want the relationship to continue, will probably have to be worked out through litigation.

5. The transportation and other employee benefits to be provided, if any, and any costs to be charged for each of them.

6. Workers' compensation insurance. Growers must disclose whether workers' compensation is provided and if so, the name of the workers' compensation insurance carrier, the name of the policyholder of such insurance, the name and the telephone number of each person who must be notified of an injury or death, and the time period within which this notice must be given. Form WH-516 permits inclusion of this statutorily required information. The workers' compensation disclosure requirement can alternatively be met by the employer furnishing the worker with a photocopy of any notice regarding workers' compensation insurance required by law of the State in which such worker is employed. According to DOL, if the employer chooses to meet its notice requirement by providing a photocopy of the required state notice and the worker is later injured or made ill, thus requiring additional notices and information under state worker compensation law, the worker must be provided that information, or the grower will be held to have failed to provide information as required under MSPA.

7. Unemployment insurance. DOL's current and former forms provide spaces for information as to whether unemployment insurance is provided although it is not one of the items listed in the Act.

8. Other benefits. DOL's form provides a space for describing other benefits. The text of the Act itself does not require that any other benefits be described.

9. Housing for migrant workers. Where both migrant and seasonal workers will be utilized, you may have to use different forms for migrants and seasonal workers or at least indicate on the form that there will be limited housing available for

migrants, transportation to a certain place for migrants and local transportation provided to migrants, etc. "Limited migrant housing, check with [indicate name]." Decide if any housing will be provided to non-workers.

10. The existence of any strike or other concerted work stoppage, slowdown or interruption of operations by employees at the place of employment.

11. The existence of any arrangements with any owner or agent of an establishment in the area of employment under which the farm labor contractor, the agricultural employer, or the agricultural association is to receive a commission or any other benefit resulting from any sales by such establishment to the workers. The better answer to this is "no," assuming, of course, that is true.

C. Should You Provide Additional Information on the WH-516 or on a Supplemental Sheet: If you have productivity standards, work rules, housing rules, or other "conditions" or "terms" of employment, you should consider whether you want to incorporate supplemental pages containing this information to put workers on notice of the requirements. If you use group piece rates or have rules regarding quality or quantity of production affecting pay, then rules should be spelled out in detail. Many growers require prospective workers to sign an acknowledgment that they have seen and/or received copies of the WH-516 and supplemental rules and information.

D. Yellow MSPA Poster — Rights of Workers Under MSPA: Must be posted at the place of employment in a conspicuous place. See samples at pages 24-25.

E. Form WH-521: Must be posted in any migrant worker housing provided by a farm labor contractor, agricultural employer, or agricultural association in a conspicuous place. Must be in workers' language. Consider also providing it in writing at the time workers are recruited, especially if workers must comply with rules in order to retain the privilege of using the housing.

F. Pay: Workers must be paid all wages due when they are due. May end payroll period on Thursday and pay Saturday, for example. Must comply with Fair Labor Standards Act and state law. Must pay at least FLSA minimum (or state minimum) per hour for all hours worked in agricultural employment. Overtime under the FLSA is not required to be paid to employees on a farm with respect to crops grown on that farm or for work for a farmer in connection with produce the farmer has grown, as when he is packing his own crop. Some states do not provide overtime exemptions available under federal

law. Packers may not avoid overtime in packing house activities by purchasing crop in field and harvesting it because merely harvesting a crop does not make the “packer” the “farmer” of a crop. Lose overtime exemption entirely in any workweek in which packing house employees perform work on crops grown by another farmer.

G. Cash Advance and Loan Repayment: Under FLSA you may permit a cash advance and obtain repayment of loan that cuts into the FLSA minimum wage so long as loan was truly free and clear loan and there is no interest or bookkeeping charge. Document an employee’s agreement to the future wage deductions to repay any loan. A form that meets FLSA/MSPA requirements is attached. Note that many state laws restrict wage deductions. Check your state law to see if authorizations to make deductions must be in writing, must be notarized, etc. You should not permit cash advances to the extent they create a daily payday if you do not want to provide the Form 501 information daily as discussed below.

H. Hours Worked: Employer must count work time all hours workers are “suffered or permitted” to work, including waiting time when workers are not free to leave the premises and use the time for their own pursuits. Break times of twenty minutes or less are work time. Cases in the poultry industry indicate a propensity for courts to rule that workers released for equipment breakdowns do not have sufficient opportunity to make use of free time, therefore making breakdown time work time even if workers are not required to remain on the premises. There can be a practical problem to prove actual release of workers from work activities if they have no place to go or insufficient specific amounts of time off to make practical use of free time, but records and procedures will help you make your case. While there is litigation over exactly when travel time is “hours worked,” minimize your risk of having travel time to and from fields or orchards at beginning and end of day counted as work time for riders by not requiring workers to use crew van or transportation, letting workers know the day before where the crew will work the following day if you are changing locations, giving workers a telephone number so they can call and check on where crew will be working, having vans go directly from workers’ quarters or pickup point to grove and back without stopping to perform any work before arrival at fields such as loading buckets, water coolers, etc. Need to have announced starting time so do not have to pay for waiting time in the morning. Arrival time at 7:00 a.m. but delay for thirty

minutes to let dew dry most likely means working time began at 7:00 a.m. Travel time between fields during the day is work time.

I. Deductions: May only deduct actual cost or fair and reasonable value or cost of food, housing and facilities, and need to be able to prove costs of deductions that cut into workers' minimum wage. Some case authority holds that an employer must be able to prove the full amount of deduction to have the benefit of any set-off. Avoid "two window" payroll situations which amount to a wage deduction. U.S. DOL and worker advocates are taking the position that payment for "bad" housing may not be deducted from wages at all; we disagree on this point of law, but there is case law that supports their position. Deductions may not cut into minimum wage for cost of picking sacks, gloves, tools, etc., that are required in order to do the job. If they are not "required," employer may provide them by arms-length sales transactions rather than deduction. Problem with transportation deductions where transportation is deemed by courts to be primarily for employers' benefit. Problem with crewleaders selling drugs, alcohol, etc., and making deductions for these items even if grower is unaware of problem. (Mandatory deductions must be disclosed in the WH-516; the "pay stub" information must itemize all deductions as discussed below.)

J. Special Problems: Must keep record of hours worked and pay all workers. Do not allow more than one worker to work under the same name, e.g., family members dumping into the same hamper. Children not on payroll may not help parents in the field. Child Labor Act and state laws regulate minimum ages, maximum hours, and types of work children may perform and define "hazardous" work that children may not perform.

K. WH-501 Form and/or Similar Payroll Information: Crewleader and/or agricultural employer must for each employee make, keep and preserve records for three (3) years that show:

1. The basis on which wages are paid (piece work or hourly).
2. The number of piece work units earned, if paid on a piece work basis.
3. The number of hours worked (even if paid on piece rate).
4. The total pay period earnings.
5. The specific sums withheld (i.e., deductions) and the purpose for each sum withheld.
6. The net pay.
7. The employee's name.
8. The employee's permanent address.

9. The employee's social security number.
10. The employer's name.
11. The employer's address.
12. The employer's IRS identification number.

By regulation, the DOL has substantially increased the items required on the paycheck stub beyond those specified in MSPA, which are only items 1-6. In one opinion letter, even DOL acknowledged that no statutory purpose would be served by requiring the employee's address on each pay stub so long as the employee's permanent address is in the payroll records made and maintained by the crewleader and maintained by the grower. We expect litigation to determine how far DOL can go on this issue. At least one court has held that a grower must review pay records for at least facial FLSA and MSPA compliance.

L. Forms and Poster Where Language Problem Exists: Under the law, only WH Form 516, the yellow MSPA poster and WH Form 521 on housing must be in a language spoken by the workers. Wage-Hour has a Form WH-501 wage and payroll form available in Spanish, but it is an optional form. If you have Spanish workers, you may want to use the Spanish text or post a Spanish version form somewhere so workers can review it. The forms follow exactly the same layout. The Department of Labor presently does not have a Haitian Form WH-501.

M. Accuracy of Information Disclosed: The information provided above must not be knowingly false or misleading. A crewleader who says he deducts for FICA contributions but does not actually make them has provided false information. Legal Services claims failure to make FICA or FUTA payments and returns are MSPA violations, particularly where the FICA contribution has been deducted from the worker. Legal Services takes the position that the grower is liable for the crewleader's conversion of such funds to his own use when there is a joint employment situation. Growers can expect Legal Services to pressure the IRS. Moreover, we do not find a basis for urging that it is illegal or unethical for Legal Services to refuse to settle a lawsuit unless such back payments and tax filings are made.

N. Purchase of Goods or Services by Employees: No crewleader or agricultural employer may require workers to purchase goods or services solely from such crewleader or employer.

O. Working Arrangements: No crewleader or agricultural employer shall without justification violate the terms of any working arrangement made with the worker. Problems arise for a grower if representations are made by crewleaders or recruiters for crewleaders that are different from those intended by grower employers. Suits have been filed on disputes regarding oral representations allegedly being made — wages, amounts of work available, etc. A case in New York held that a farmer could not lawfully fire workers for refusing to work on weekends where the court found that the working arrangements or understanding of the workers was that they could choose whether to work on weekends. There is a legal dispute about whether claims may proceed as "working arrangement" cases where there is no written disclosure, but failure to make a written disclosure of the terms of employment is a separate violation of MSPA.

[Note that many states have additional specific requirements that must be met to permit employers to recoup wage advances and severe penalties for failing to meet those requirements. Check with your attorney before using these forms in your operations.]

AGREEMENT FOR REPAYMENT OF CASH ADVANCE

I hereby acknowledge receipt of a cash advance in the amount of \$ _____, and I further agree that this advance shall be repaid at the rate of \$ _____ per pay period by payroll deduction. If I leave the employment of _____ (the "Employer") for any reason, repayment of the advance in full is due on termination of my employment, and I authorize the Employer to deduct any remaining amount owed up to the full amount of the after-tax wages payable. In the event my net wages are insufficient to cover the full amount due the Employer, the Employer may collect the remaining amount due by process of law, and I agree to pay the Employer's reasonable attorney's fees and costs.

Agreed to this _____ day of _____, 20____.

Address and telephone no.

Employee

and

Address and telephone no.

Employer

ACUERDO DE REEMBOLSAR PAGO AVANCE

Yo confirmo que he recibido pago avance en la suma de \$ _____, tambien estoy de acuerdo que este avance será repagado en la cantidad de \$ _____ por período de pago en la forma de deducciones a mi sueldo. Si dejo mi empleo con _____ (el Patrón) por cualquier razón, yo prometo repagar el avance completo a la terminación de mi empleo y yo autorizo el Patrón a deducir cualquier cantidad que queda por deber hasta la cantidad completa de mi sueldo después de deducir los impuestos. Si en algún momento mis sueldos no están suficiente para cubrir la cantidad completa que le debo al Patrón, el Patrón puede cobrar mis deudas por medio de la ley, y yo estoy de acuerdo en pagarle al Patrón los costos razonables de costos y los cargos de abogado(s).

De acuerdo este _____ día de _____ del 20____.

Dirección y Numero de Teléfono

Empleado

y

Dirección y Numero de Teléfono

Patrón



Persons are not required to respond to this information unless it displays a currently valid OMB number.

OMB No.: 1215-0187
Expires: 05/31/2011

Worker Information — Terms and Conditions of Employment

1. Place of employment: _____
2. Period of employment: From _____ To _____
3. Wage rates to be paid: \$ _____ per Hour Piece Rate \$ _____ per _____
4. Crops and kinds of activities: _____
5. Transportation or other benefits, if any: _____

- Charge(s) to workers, if any: _____
6. Workers' compensation insurance provided: Yes _____ No _____
Name of compensation carrier: _____
Name and address of policyholder(s) _____

- Person(s) and phone number(s) of person(s) to be notified to file claim: _____

- Deadline for filing claim: _____
7. Unemployment compensation insurance provided: Yes _____ No _____
8. Other benefits: _____ Charge(s) _____
9. For migrant workers who will be housed, the kind of housing available and cost, if any: _____

- Charge(s) _____
10. List any strike, work stoppage, slowdown, or interruption of operation by employees at the place where the workers will be employed. *(If there are no strikes, etc., enter "None")*:

11. List any arrangements which have been made with establishment owners or agents for the payment of a commission or other benefits for sales made to workers. *(If there are no such arrangements, enter "None")*:

Name of Person(s) Providing This Information: _____

Note: The Department of Labor — Wage and Hour Division makes this form available in certain other languages to enable employers to satisfy the requirement that the terms and conditions of employment be disclosed in a language common to the workers. Contact the nearest office of the Wage and Hour Division to obtain such forms.

The Migrant and Seasonal Agricultural Worker Protection Act requires the disclosure in writing of the foregoing information to migrant and day-haul workers upon recruitment, and to seasonal workers other than day-haul workers upon request when an offer of employment is made. This optional form may be used to disclose the required information. Thereafter, any migrant or seasonal worker has the right to have, upon request, a written statement provided to him or her by the employer, of the information described above. This optional form may also be used for this purpose.

We estimate that it will take an average of 32 minutes to complete this collection of information, including the time for reviewing instructions, search existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, Room S-3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210. **Do NOT Send the Completed Form to This Office.**



Persons are not required to respond to this information unless it displays a currently valid OMB number.

OMB No: 1215-0187
Expires: 05/31/2011

Worker Information — Terms and Conditions of Employment

- 1. Place of employment: _____
- 2. Period of employment: From _____ To _____ (Approximate)
- 3. Wage rates to be paid: \$ _____ per Hour Piece Rate \$ _____ (Employment at Will) per _____
- 4. Crops and kinds of activities: _____
- 5. Transportation or other benefits, if any: _____

Charge(s) to workers, if any: _____

- 6. Workers' compensation insurance provided: Yes _____ No _____

Name of compensation carrier: _____

Name and address of policyholder(s) _____

Person(s) and phone number(s) of person(s) to be notified to file claim: _____

Deadline for filing claim: _____

- 7. Unemployment compensation insurance provided: Yes _____ No _____

- 8. Other benefits: _____ Charge(s) _____

- 9. For migrant workers who will be housed, the kind of housing available and cost, if any: _____

Charge(s) _____

- 10. List any strike, work stoppage, slowdown, or interruption of operation by employees at the place where the workers will be employed. (If there are no strikes, etc., enter "None"):

- 11. List any arrangements which have been made with establishment owners or agents for the payment of a commission or other benefits for sales made to workers. (If there are no such arrangements, enter "None"):

Name of Person(s) Providing This Information: _____

Note: The Department of Labor — Wage and Hour Division makes this form available in certain other languages to enable employers to satisfy the requirement that the terms and conditions of employment be disclosed in a language common to the workers. Contact the nearest office of the Wage and Hour Division to obtain such forms.

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No es necesario responder a esta información a menos que tenga un número OMB válido.

OMB No.: 1215-0187
Vence: 05/31/2011

Información Sobre el Trabajador -Términos y Condiciones de Empleo

1. Lugar de empleo: _____

2. Período de empleo: De _____ a _____

3. Escala salarial a pagar: \$ _____ por hora Pago a destajo \$ _____ por _____

4. Cultivos y tipos de actividades: _____

5. Transporte u otros beneficios, si corresponde: _____

Gastos con cargo a los trabajadores, si corresponde: _____

6. Indemnización por accidente de trabajo: Si _____ No _____

Nombre de la compañía de seguros: _____

Nombre y dirección del (de los) asegurado(s): _____

Persona(s) y número de teléfono de la(s) persona(s) a notificar para presentar reclamación: _____

Plazo para presentar reclamación: _____

7. Seguro de compensación por desempleo: Si _____ No _____

8. Otros beneficios: _____ Gasto(s) _____

9. En el caso de los trabajadores migrantes que necesiten alojamiento, el tipo de alojamiento disponible y el costo, si corresponde: _____

Cargo(s): _____

10. Enumere toda huelga, paro o interrupción de las operaciones por parte de los empleados en el lugar donde se empleará a los trabajadores. (Si no ha habido huelgas, etc., indique "Ninguna")

11. Indique todo acuerdo o convenio firmado con los propietarios del establecimiento o los agentes para el pago de una comisión u otros beneficios por ventas hechas a los trabajadores. (Si no hay ningún acuerdo o convenio, indique, "Ninguno"):

Nombre de la(s) persona(s) que proporciona(s) esta información: _____

Nota: La División de Horarios y Salarios del Departamento de Trabajo ofrece este formulario en otros idiomas para permitir a los empleadores cumplir con el requisito de notificación de los términos y las condiciones en un idioma que sea común a los trabajadores. Comuníquese con la oficina más cercana de la División de Horarios y Salarios a los efectos de obtener dichos formularios.

La Ley de Protección de los Trabajadores Agrícolas Migrantes y Estacionales exige la divulgación por escrito de la información precedente a los trabajadores migrantes y jornaleros al contratarlos, y a los trabajadores estacionales que no sean jornaleros, previa solicitud, al ofrecerles empleo. Se puede usar este formulado opcional para divulgar la información necesaria. En lo sucesivo, todo trabajador migrante o estacional tiene el derecho a solicitar a su empleador una declaración escrita de la información que se describe antes. También se puede usar este formulario opcional con este propósito.

Se calcula que toma un promedio de 32 minutos llenar toda esta información, incluido el tiempo para repasar las instrucciones, investigar las fuentes de datos existentes, recolectar y mantener los datos necesarios y llenar y repasar toda la información. Si tiene algún comentario con respecto a este cálculo o cualquier otro aspecto de esta información, inclusive recomendaciones para reducir esta carga, envíelos a Administrator, Wage and Hour Division, Room S-3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210. **NO Envíe a Esta Oficina el Formulario Con la Información.**



No es necesario responder a esta información a menos que tenga un número OMB válido.

OMB No.: 1215-0187
Vence: 05/31/2011

Información Sobre el Trabajador -Términos y Condiciones de Empleo

1. Lugar de empleo: _____
2. Periodo de empleo: De _____ a _____ (aproximadamente)
3. Escala salarial a pagar: \$ _____ por hora Pago a destajo \$ _____ (Nota: empleo a voluntad) por _____
4. Cultivos y tipos de actividades: _____
5. Transporte u otros beneficios, si corresponde: _____

- Gastos con cargo a los trabajadores, si corresponde: _____
6. Indemnización por accidente de trabajo: Si _____ No _____
Nombre de la compañía de seguros: _____
Nombre y dirección del (de los) asegurado(s): _____

- Persona(s) y número de teléfono de la(s) persona(s) a notificar para presentar reclamación: _____

- Plazo para presentar reclamación: _____
7. Seguro de compensación por desempleo: Si _____ No _____
8. Otros beneficios: _____ Gasto(s) _____
9. En el caso de los trabajadores migrantes que necesiten alojamiento, el tipo de alojamiento disponible y el costo, si corresponde: _____

- Cargo(s): _____
10. Enumere toda huelga, paro o interrupción de las operaciones por parte de los empleados en el lugar donde se empleará a los trabajadores.
(Si no ha habido huelgas, etc., indique "Ninguna")

11. Indique todo acuerdo o convenio firmado con los propietarios del establecimiento o los agentes para el pago de una comisión u otros beneficios por ventas hechas a los trabajadores. (Si no hay ningún acuerdo o convenio, indique, "Ninguno"):

Nombre de la(s) persona(s) que proporciona(s) esta información: _____

Nota: La División de Horarios y Salarios del Departamento de Trabajo ofrece este formulario en otros idiomas para permitir a los empleadores cumplir con el requisito de notificación de los términos y las condiciones en un idioma que sea común a los trabajadores. Comuníquese con la oficina más cercana de la División de Horarios y Salarios a los efectos de obtener dichos formularios.

La Ley de Protección de los Trabajadores Agrícolas Migrantes y Estacionales exige la divulgación por escrito de la información precedente a los trabajadores migrantes y jornaleros al contratarlos, y a los trabajadores estacionales que no sean jornaleros, previa solicitud, al ofrecerles empleo. Se puede usar este formulado opcional para divulgar la información necesaria. En lo sucesivo, todo trabajador migrante o estacional tiene el derecho a solicitar a su empleador una declaración escrita de la información que se describe antes. También se puede usar este formulario opcional con este propósito.

Se calcula que toma un promedio de 32 minutos llenar toda esta información, incluido el tiempo para repasar las instrucciones, investigar las fuentes de datos existentes, recolectar y mantener los datos necesarios y llenar y repasar toda la información. Si tiene algún comentario con respecto a este cálculo o cualquier otro aspecto de esta información, inclusive recomendaciones para reducir esta carga, envíelos a Administrator, Wage and Hour Division, Room S-3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210. **NO Envíe a Esta Oficina el Formulario Con la Información.**

Notice

Migrant and Seasonal Agricultural Worker Protection Act

This federal law requires agricultural employers, agricultural associations, farm labor contractors and their employees to observe certain labor standards when employing migrant and seasonal farmworkers unless specific exemptions apply. Further, farm labor contractors are required to register with the U.S. Department of Labor.

Migrant and Seasonal Farmworkers Have These Rights

- To receive accurate information about wages and working conditions for the prospective employment
- To receive this information in writing and in English, Spanish or other languages, as appropriate
- To have the terms of the working arrangement upheld
- To have farm labor contractors show proof of registration at the time of recruitment
- To be paid wages when due
- To receive itemized, written statements of earnings for each pay period
- To purchase goods from the source of their choice
- To be transported in vehicles which are properly insured and operated by licensed drivers, and which meet federal and state safety standards
- For migrant farmworkers who are provided housing
 - * To be housed in property which meets federal and state safety and health standards
 - * To have the housing information presented to them in writing at the time of recruitment
 - * To have posted in a conspicuous place at the housing site or presented to them a statement of the terms and conditions of occupancy, if any

Workers who believe their rights under the act have been violated may file complaints with the department's Wage and Hour Division or may file suit directly in federal district court. The law prohibits employers from discriminating against workers who file complaints, testify or in any way exercise their rights on their own behalf or on behalf of others. Complaints of such discrimination must be filed with the division within 180 days of the alleged event.

For further information, get in touch with the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor.

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division



The law requires employers to display this poster where employees can readily see it.

Aviso

Ley de Protección de Trabajadores Migrantes y Temporales en la Agricultura

Esta ley federal exige que los patronos agrícolas, las asociaciones agrícolas, los contratistas de mano de obra agrícola (o troqueros), y sus empleados cumplan con ciertas normas laborales cuando ocupan a los trabajadores migrantes y temporales en la agricultura, a menos que se apliquen excepciones específicas. Los contratistas, o troqueros, tienen además la obligación de registrarse con el Departamento del Trabajo.

Los Trabajadores Migrantes y Temporales en la Agricultura Tienen los Derechos Siguietes

- Recibir detalles exactos sobre el salario y las condiciones de trabajo del empleo futuro
- Recibir estos datos por escrito en inglés, en español, o en otro idioma que sea apropiado
- Cumplimiento de todas las condiciones de trabajo como fueron presentadas cuando se les hizo la oferta de trabajo
- Al ser reclutados para un trabajo, ver una prueba de que el contratista se haya registrado con el Departamento del Trabajo
- Cobrar el salario en la fecha fijada
- Recibir cada día de pago un recibo indicando el salario y la razón de cualquier deducción
- Comprar mercancías al comerciante que ellos escojan
- Ser transportados en vehículos que tengan seguros adecuados y que hayan pasado las inspecciones federales y estatales de seguridad, y conducidos por choferes que tengan permisos de manejar
- Las garantías para los trabajadores migrantes a quienes se les proporcionen viviendas o alojamiento
 - * Viviendas que satisficzan los requisitos federales y estatales de seguridad y de sanidad
 - * Al ser reclutados, recibir por escrito informes sobre las viviendas y su costo
 - * Recibir de su patron un aviso escrito explicando las condiciones de ocupación de la vivienda, o que tal aviso esté colocado en un lugar visible de la vivienda

Los trabajadores que crean haber sufrido una violación de sus derechos pueden presentar sus quejas a la División de Salarios y Horas o pueden presentar una demanda directamente a los tribunales federales. La ley prohíbe cualquier discriminación o sanción hacia los trabajadores que presenten tales quejas, que hagan declaraciones, o que reclamen de cualquier manera sus derechos, sea a beneficio de sí mismos o a beneficio de otros. Hay que presentar las quejas de discriminación o de sanción a la división dentro de 180 días del suceso.

En caso de que se necesite más información, comuníquense con la oficina de la División de Salarios y Horas más cercana, que aparece en la mayoría de los directorios telefónicos bajo el título U.S. Government, Department of Labor.

Departamento del Trabajo de los EE.UU.
Administración de Normas de Empleo
División de Salarios y Horas

La ley exige que los patronos fijen este aviso en un lugar donde puedan verlo fácilmente los trabajadores.

WH Publication 1376
Revised April 1983

Notice

Migrant and Seasonal Agricultural Worker Protection Act

This federal law requires agricultural employers, agricultural associations, farm labor contractors and their employees to observe certain labor standards when employing migrant and seasonal farmworkers unless specific exemptions apply. Further, farm labor contractors are required to register with the U.S. Department of Labor.

Migrant and Seasonal Farmworkers Have These Rights

- To receive accurate information about wages and working conditions for the prospective employment
- To receive this information in writing and in English, Spanish or other languages, as appropriate
- To have the terms of the working arrangement upheld
- To have farm labor contractors show proof of registration at the time of recruitment
- To be paid wages when due
- To receive itemized, written statements of earnings for each pay period
- To purchase goods from the source of their choice
- To be transported in vehicles which are properly insured and operated by licensed drivers, and which meet federal and state safety standards
- For migrant farmworkers who are provided housing
 - * To be housed in property which meets federal and state safety and health standards
 - * To have the housing information presented to them in writing at the time of recruitment
 - * To have posted in a conspicuous place at the housing site or presented to them a statement of the terms and conditions of occupancy, if any

Workers who believe their rights under the act have been violated may file complaints with the department's Wage and Hour Division or may file suit directly in federal district court. The law prohibits employers from discriminating against workers who file complaints, testify or in any way exercise their rights on their own behalf or on behalf of others. Complaints of such discrimination must be filed with the division within 180 days of the alleged event.

For further information, get in touch with the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor.

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division



The law requires employers to display this poster where employees can readily see it.

Avètisman

Ak ki Proteje Ciltivate cap fe va e vien e cultivate cap travay pa saison (MSPA)

Lwa federal ça mande patron, associasion agriculte contracte agriculte e ouvriè yo pou yo obsève ou sèvi de règ, lè yap employe ciltivate cap fe va, e vien ou bien ciltivate ki travay pa récolte. Cè pou yo obsève lwa ça yo a moins ké sé ou koté la lwa lè exception. Lè fin, yo mande contracte agriculte pou yal enrejistré yo nan departman di travay americalin.

MIN DWA CILTIVATE CAP FE VA E VIEN OU BIEN CAP TRAVAY PA RECOLTE GIN YIN

- Pou yo resèrwa infomasyon exakte sou travay yo pral fè ya.
- Cè pou infomasyon ça ekri nan you lang ké yo palé e conpran bien, swa anglé ou bien panyol ou bien you lot lang.
- Pou yo ba yo condition travay la e pou yo akonpli sa yo promèt o
- Pou contracte ya montré yo prèv ké li enrejistré nan departman di travay, lè lap pran yo pou travay la.
- Pou pèyé yo lè yo dwé yo.
- Pou yo resèrwa an délay prèv lajan ké yo fè pou chak fous ké yo touché pou yo bay yo rézon si contracte pran nan lajan a.
- Pou yo achete koté ki fè yo plèsi.
- Pou yo monté machin ki gin bon assirans, ké chofé ki gin licens condi, e machin ça yo dwé an rüg avèk sekurité fédéral e sekurité nan coté ké yap viv la.
- Pou ciltivate cap fe va e vien ké yo ba yo cay
 - * Cè pou yo rété nan you cay ki gin sékurité ak liyène.
 - * Pou yo ba yo sou papie tout condition lojeman an lè yap pran yo pou travay la.
 - * Tout condition ki ginyin koté yo pral rété a lét pou koté you koté ké tout mounn ka oué yo ou bien ekri sou papie.

Ouvriè ki koué ké patron yo violé lwa ça kapab poté plint nan departman di travay, nan saison Wage & Hour ou bien yo ka lé patron yo procè dirèktéman nan tribunal fédéral. La lwa pa pèmet patron baye ouvriè au tin traca ni punition lé li poté plint, sèvi témouin, ou bien réclame dwa li nan tribunal pou li mim ou pou lot. Si patron nou révoke nou pou ça, nou gin 180 jou pou nou poté plint nan departman di travay.

Si nou bezouin gin plis infomasyon pran kontak avèk biro di travay ki pi prè nou. Nap join adrè e tétéfon yo nan liv tétéfon nan, koté ki maké: U.S. Government Department of Labor.

Departman di Travay
Administration de Condition de Travay
Bekasyon Wage & Hour

La lwa di lé tout patron obligé poste papie-sa koté pou tout travayé lab oué li bien.

WH Publication 1576-A
(English-Haitian)



Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Se le avisa al que rellene este formulario que no responda a la compilación de esta información a menos que se encuentre y se exhiba un número actualmente válido de control de OMB.

OMB No. 1215-0146
 Expires/Se caduca: 07/31/2011

HOUSING TERMS AND CONDITIONS

Important Notice to Migrant Agricultural Worker: The Migrant and Seasonal Agricultural Worker Protection Act requires the furnishing of the following information.

1. The housing is provided by

Name _____
 Address _____

2. Individual(s) in charge

Name _____
 Address _____

 Phone _____

3. Mailing address of housing facility

Address _____

 City & state/Zip code
 Phone _____

4. Conditions of occupancy

Who may live in housing facility
Charges made for housing (if none, so state)
Meals provided (if none, so state)
Charges for utilities (if none, so state)
Other charges, if any
Other conditions of occupancy

CONDICIONES DE OCUPACIÓN DE LA VIVIENDA

Aviso Importante Para el Trabajador Migrante en la Agricultura: La Ley de Protección de Trabajadores Migrantes y Temporales en la Agricultura exige que Ud. conozca los informes siguientes.

1. Dueño de la vivienda (casa, apartamento, etc.)

Nombre _____
 Dirección _____

2. Persona encargada de la vivienda

Nombre _____
 Dirección _____

 Teléfono _____

3. Dirección de la vivienda

Número y calle _____

 Ciudad y estado/número ZIP
 Teléfono _____

4. Condiciones de ocupación

Personas que pueden ocupar la vivienda
Renta por semana: \$_____ por mes: \$_____ (si no se cobra, escriba "Ningún costo al trabajador")
Comida (si no proporciona comida, escriba "Ninguna comida")
Costo de la comida (si no hay, escriba "Ningún costo al trabajador")
Costo de la luz, el agua, el gas, etc. (si no hay, escriba "Ningún costo al trabajador")
Cualquier otro costo
Otras condiciones de ocupación



HOUSING TERMS AND CONDITIONS

Important Notice to Migrant Agricultural Worker: The Migrant and Seasonal Agricultural Worker Protection Act requires the furnishing of the following information.

1. This housing is provided by

Name _____

Address _____

2. Individual(s) in charge

Name _____

Address _____

Phone _____

3. Mailing address of housing facility

Address _____

City & state/Zip code _____

Phone _____

4. Conditions of occupancy

Who may live in housing facility
Charges made for housing (if none, so state)
Meals provided (if none, so state)
Charges for utilities (if none, so state)
Other charges, if any
Other conditions of occupancy

Important Notice to Farm Labor Contractor, Agricultural Employer, or Agricultural Association:

This form may be used for the disclosure required by section 201(c) of the act. It must be posted in a conspicuous place or presented to each worker in English, Spanish, or another language, as appropriate.

CONDISION KOTE YO BA NOU RETE A

AVI INPOTANT POU CILTIVATE CAP FE VA E VIEN:

Lwa mande informasyon ca yo:

1. Ki moun ki ba nou kay pou nou rete:

Non li _____

Adres li _____

2. Ki Moun ki reponsab la:

Non li _____

Adres li _____

Telefon li _____

3. Adres pou recevoi let

Adres _____

Vil la _____

Zip Code _____

4. Condision Kay la

Ki moun capab rete nan Kay la
Combien nou peye kay la (si nou pa peye mete zero)
Manje yo ba nou: (si yo pa banou ekri ca sou feil la)
Combien cob nou peye pou manje: (si nou pa peye, mete zero)
Combien nou peye pou limie ak lot bezouin: (si nou pa peye mete zero)
Si gin lot bagay ke you fe nou peye pou yo: (ekri you sou feil la)
Lot condision pou nou rete nan kay la:

Avi impotan pou contracte, patron, ou bian asociasyon agricultur.

Seksyon 201(c) ki nan lwa mande pou yo distribue fom ca ou bien ou lot parey li, ou bien kolel you kote tout mounn ka oue li ou bien montre chak ouvriyel nan you lang ke yo capab li e conpran li e conpran bien.

Wage Statement
(Optional Form)

**U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division**



Employee		Social Security No.							OMB No.: 1215-0148	Expires: 08-31-2009	
Permanent Address											
Day/date	Sun/	Mon/	Tues/	Wed/	Thurs/	Fri/	Sat/	Total Hours Worked in Week	Itemized Deductions		
Starting Time										FICA	
Quitting Time									Federal Tax		
Hours Worked									State Tax		
Crop/Task Units Done									Rent		
Rate of Pay (Hourly or Piece Rate)									Food		
Daily Pay									Transportation		
Employer									Other	Other	
Address									Total Gross Pay	Total Deductions	
Employer identification number										Net Pay (Amount Due Employed)	Date Paid:

Instructions

Properly filled out, this optional form will satisfy the requirements of sections 201 (d), (e), and (g) and sections 301 (c), (d), and (f) of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA). This form also satisfies statutory requirements under section 11 (c) of the Fair Labor Standards Act (FLSA). If the employer chooses not to use this optional form, the information still must be maintained by the employer and provided to the employees in written form.

PAYROLL INFORMATION: Enter the month, day and year on which the employee's payroll workweek ends. Enter the calendar date of the day worked. Enter the time work started and ended each day. Enter the total time actually worked each day. Subtract bona fide meal periods. Crop/Task - Units done - Enter the kind of work (such as picking oranges per bin) and the number of units produced if the employee is paid on a piece work or task basis. Enter the hourly or piece rate of pay. Enter the amount of the gross daily pay computed at the hourly and/or piece rate and then transfer to left. Subtract total deductions from total Gross Pay - Enter the result as Net Pay (Amount Due Employee). Enter date worker is paid.

NOTE: Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number.

BURDEN STATEMENT

We estimate it will take an average of one (1) minute to complete this collection of information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspects of this information collection, including suggestions for reducing this burden, send them to the U.S. Department of Labor, Employment Standards Administration, Administrator, Wage and Hour Division, Room S-3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210. **DO NOT SEND THE COMPLETED FORM TO THIS OFFICE**

Diario De Días Trabajados
(Formulario Opcional)

Departamento De Trabajos De Los EE UU
Administración de Normas de Empleo
División de Horarios y Salarios



Trabajador: _____ OMB No.: 1215-0148 Expire: 08-31-2009
 Dirección: _____ Fin de la semana trabajada (mes, día, año)
 _____ Numero del Seguro Social: _____

Día/fecha	domingo/	lunes/	martes/	miércoles/	jueves/	viernes/	sábado/	Total de horas trabajadas en la semana	DEDUCCIONES
Hora de comenzar									Impuesto del Seguro Social
Hora de terminar									Impuesto federal
Horas trabajadas									Impuesto estatal
Cultivo/trabajo									Renta
Unidades terminadas									Comida
Base de pago (por hora o por contrato)								Salario bruto	Transportación
Salario diario									Otra deducción
Patrón									Otra deducción
Dirección									Total de deducciones
Numero de identidad del patrón para el Seguro Social									Salario neto (Cantidad debida al trabajador)
									Día de pago

Formulario WH-501 Inserciones
 1. Instrucciones que reemplazan los elementos Informativos siguientes (Lo subrayado significa revisiones e información añadida.)
INSTRUCCIONES
 Correctamente relleno, esta formulado opcional satisficará los requisitos de las secciones 201 (d), (e), y (g) y de las secciones 301 (c), (d), y (O) de la Ley para la Protección de los Obreros Migratorios y Estacionales Agrícolas (MSPA). Este formulario también satisficará los requisitos estatuarios bajo la sección 11 (c) de las Normas Justas de Trabajo (FLSA). Si el empleador (a) opta por no utilizar este formulario opcional, el/ella no obstante, debe mantener la información y se la debe proveer a los empleados por escrito.
"NO ENVIE EJEMPLARES O COPIAS DE ESTE FORMULARIO A LA DIRECCIÓN QUE SE PROVEE ABAJO:"
INFORMACIÓN SOBRE LA PLANILLA DE PAGOS: Rellene el mes, día y año en los cuales la semana laboral de pago del empleado termina. Rellene la fecha calendario del día trabajado. Rellene a qué hora el trabajo comenzó y a qué hora terminó cada día. Rellene el total del tiempo realmente trabajado cada día. Reste los periodos de comidas bonafide. Rellene el tipo de trabajo desempeñado (como recoger naranjas por recipiente). Rellene el número de las unidades producidas si el empleado se lo paga por pieza o a base de tareas. Rellene el pago por pieza o por hora. Rellene la suma del pago diario computado por el pago por hora y/o por pieza.
DEDUCCIONES ENUMERADAS: Además de FICA (Seguro Social), impuesto federal, impuesto estatal, el alquiler, la comida, y las deducciones por el transporte (si existen), rellene cualquier otra deducción **especificada** en la columna a la derecha y luego pásela a la izquierda. Reste el total de las deducciones del total del pago bruto. Rellene el resultado como pago neto (la Suma que se le debe al Empleado). Rellene la fecha en la cual es la paga al obrero.
 OJO: Nadie tiene que responder a la compilación de esta información a menos que ésta exhiba un número valido y actual de control de OMB
 2. Añada la declaración de responsabilidad/carga al formularia
DECLARACIÓN DE RESPONSABILIDAD
 Se calcula que tomará un promedio de un (1) minuto para rellena la compilación de esta información, incluyendo el tiempo que se necesita para repasar las instrucciones, para buscar las fuentes informativas existentes. Para recolectar y mantener la información necesaria, y para rellena y repasar la compilación de la información. Si tiene algún comentario sobre estos cálculos o sobre cualquier otro aspecto de la compilación de esta información, incluso sugerencias para reducir esta obligación, envíelos al Administrador, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210.
 Form WH 501S (Rev June 1998)

VI. Housing Safety and Health Standards Applying to Migrant Agricultural Workers

A. Review and follow developments in the recent three-judge decision of the Court of Appeals for the Eleventh Circuit in Renteria-Marin v. Ag-Mart Produce, Inc., CA No. 07-14898 (August 8, 2008), which held that growers and crewleaders who provide housing to migrant workers must post applicable terms and conditions of occupancy but are not required to ensure that the housing meets applicable federal or state safety and health standards unless they own or control the facility. Worker advocates have asked the full Court of Appeals to review this decision and claim it is contrary to law and other cases, including Castillo v. Case Farms of Ohio, Inc., 96 F. Supp. 2d 578, 612-22 (W.D. Tx. 1999).

B. An earlier decision by the Federal Court of Appeals in Atlanta has held, in effect, that the housing regulations do apply to grower or crewleader owned or controlled housing in which persons who would otherwise be seasonal workers reside permanently. Caro-Galvan v. Curtis Richardson, Inc., 993 F.2d 1500, 1505 (11th Cir. 1993). The regulations do not apply to persons who own or control housing which is in fact rented or otherwise provided on a commercial basis to the general public so long as the housing provided to migrant agricultural workers is of the same character and provided on the same or comparable terms and conditions as provided to the general public. The U.S. Department of Labor has asserted that, while this provision may exempt the owner of a trailer park from coverage of the Act, it does not exempt an employer or crewleader who makes arrangements for the housing from housing coverage under the Act.

C. Unless a request for inspection of the facility has been made with the appropriate federal, state or local agency at least 45 days prior to the date on which it is occupied and the agency has not conducted an inspection by that date, the facility may not be occupied by migrant agricultural workers unless a federal, state or local health authority or other appropriate agency has certified that the facility or property meets applicable safety and health standards. It may not be occupied unless a copy of this Certificate of Occupancy is posted in addition to the WH Form 521. Obtaining a Certificate of Occupancy does not, however, relieve any person of responsibilities for continued compliance with applicable standards. Copies of the certification must be retained for three years.

D. When these regulations do apply, they require that the housing and related facilities comply with all substantive federal and state standards throughout the period of occupancy, not just before occupancy.

E. Persons providing housing that is subject to this Act should develop and implement procedures for making certain that compliance is maintained in the housing. This requirement may mean paying someone an hourly wage to make certain that the kitchen, shower, toilet and other common use facilities are kept clean. A responsible person whom the workers may contact and know how to contact should be available to replace light bulbs as well as to handle plumbing, electrical, and more serious problems. The law recognizes that, at the height of the season, a person who owns or controls migrant worker housing may do without hot water for several days and let the grass grow, but it imposes requirements on persons covered by its requirements to maintain the facilities at all times in compliance with applicable regulations.

F. Applicable standards. If your housing was constructed before April 3, 1980, or was under contract for construction prior to March 4, 1980, the housing may meet either ETA standards, 20 C.F.R. §654, or OSHA standards, 29 C.F.R. §1910.142. If it was constructed after April 3, 1980, or if there was no contract for construction in existence prior to March 4, 1980, the housing must meet OSHA standards.

G. Growers face increased risk of negligence claims for accidents arising at housing they provide. Some courts have allowed children who lived with their farmworker parents in grower-provided housing to sue under MSPA for claims that their injuries were caused by failure of the housing owner to keep the housing in compliance with the MSPA requirements. Even if there is workers' compensation applicability and coverage in connection with a labor camp injury, as amended in 1995, the worker may nonetheless seek statutory damages for MSPA violations.

H. Housing providers must decide if they will allow anyone to use the housing if he or she will not work for a particular grower.

I. Records of who is using housing should be made and maintained.

J. Reasonable rules regarding visitors and hours of visitation should be considered and made known to residents.

K. State law may govern or limit the rights of the housing provider to demand immediate vacation of the premises if a worker quits or is fired.

PURPOSE AND APPLICABILITY

§ 654.400 Scope and purpose.

(a) This subpart sets forth the Employment and Training Administration standards for agricultural housing. Local Job Service offices, as part of the State employment service agencies and in cooperation with the United States Employment Service, assist employers in recruiting agricultural workers from places outside the area of intended employment. The experiences of the employment service indicate that employees so referred have on many occasions been provided with inadequate, unsafe, and unsanitary housing conditions. To discourage this practice, it is the policy of the Federal-State employment service system, as set forth in § 653.108 of this chapter, to deny its intrastate and interstate recruitment services to employers until the State employment service agency has ascertained that the employer's housing meets certain standards.

(b) To implement this policy, § 653.108 of this chapter provides that recruitment services shall be denied unless the employer has signed an assurance, a preoccupancy inspection has been conducted and the ES staff has ascertained that, with respect to intrastate clearance, if the workers are to be housed, the employer's housing meets or, with respect to interstate clearance, that the employer will provide housing for the workers which meets either the full set of standards set forth at 29 CFR 1910.142 or the full set of standards set forth in this subpart. Whichever is applicable under the criteria set forth in § 654.401; except that for mobile range housing for sheepherders, the housing shall meet existing Departmental guidelines.

[45 FR 14182, Mar. 4, 1980; 45 FR 22901, Apr. 4, 1980]

Subparts C-D (Reserved)

Subpart E—Housing for
Agricultural Workers

AUTHORITY: 29 U.S.C. 49k; 8 U.S.C. 1186(c)(4); 41 Op. A.G. 406 (1959).

SOURCE: 45 FR 14182, Mar. 4, 1980, unless otherwise noted.

§ 654.401 Applicability; transitional provisions.

(a) Employers whose housing was constructed in accordance with the ETA housing standards may continue to follow the full set of ETA standards set forth in this subpart only where prior to April 3, 1980 the housing was completed or under construction, or where prior to March 4, 1980 a contract

for the construction of the specific housing was signed.

(b) To effectuate these transitional provisions, agricultural housing to which this subpart applies and which complies with the full set of standards set forth in this subpart shall be considered to be in compliance with the Occupational Safety and Health Administration temporary labor camp standards at 29 CFR 1910.142.

§ 654.402 Variances.

(a) An employer may apply for a permanent, structural variance from a specific standard(s) in this subpart by filing a written application for such a variance with the local Job Service office serving the area in which the housing is located. This application must be filed by June 2, 1980 and must:

(1) Clearly specify the standard(s) from which the variance is desired;

(2) Provide adequate justification that the variance is necessary to obtain a beneficial use of an existing facility, and to prevent a practical difficulty or unnecessary hardship; and

(3) Clearly set forth the specific alternative measures which the employer has taken to protect the health and safety of workers and adequately show that such alternative measures have achieved the same result as the standard(s) from which the employer desires the variance.

(b) Upon receipt of a written request for a variance under paragraph (a) of this section, the local Job Service office shall send the request to the State office which, in turn, shall forward it to the Regional Administrator, Employment and Training Administration (RA). The RA shall review the matter and, after consultation with OSHA, shall either grant or deny the request for a variance.

(c) The variance granted by the RA shall be in writing, shall state the particular standard(s) involved, and shall state as conditions of the variance the specific alternative measures which have been taken to protect the health and safety of the workers. The RA shall send the approved variance to the employer and shall send copies to the Regional Administrator of the Occupational Safety and Health Administration, the Regional Administrator of the

Employment Standards Administration, and the appropriate State agency and the local Job Service office. The employer shall submit and the local Job Service office shall attach copies of the approved variance to each of the employer's job orders which is placed into intrastate or interstate clearance.

(d) If the RA denies the request for a variance, the RA shall provide written notice stating the reasons for the denial to the employer, the appropriate State agency and the local Job Service office. The notice shall also offer the employer an opportunity to request a hearing before a DOL Hearing Officer, provided the employer requests such a hearing from the RA within 30 calendar days of the date of the notice. The request for a hearing shall be handled in accordance with the employment service complaint procedures set forth at §§ 658.421 (i) and (j), 658.422 and 658.423 of this chapter.

(e) The procedures of paragraphs (a) through (d) of this section shall only apply to an employer who has chosen, as evidenced by its written request for a variance, to comply with the ETA housing standards at §§ 654.404-654.417 of this subpart.

§ 654.403 Conditional access to the intrastate or interstate clearance system.

(a) *Filing requests for conditional access—(1) "Noncriteria" employers.* Except as provided in paragraph (a)(2) of this section, an employer whose housing does not meet applicable standards may file with the local Job Service office serving the area in which its housing is located, a written request that its job orders be conditionally allowed into the intrastate or interstate clearance system, provided that the employer's request assures that its housing will be in full compliance with the requirements of the applicable housing standards at least 30 calendar days (giving the specific date) before the housing is to be occupied.

(2) *"Criteria" employers.* If the request for conditional access described in paragraph (a)(1) of this section is from an employer filing a job order pursuant to an application for temporary alien agricultural labor certification for H-2A alien agricultural workers or H-2

alien workers under subpart B or subpart C, respectively, of part 655 of this chapter, the request shall be filed with the RA as an attachment to the application for temporary alien agricultural labor certification.

(3) *Assurance.* The employer's request pursuant to paragraphs (a)(1) or (a)(2) of this section shall contain an assurance that the housing will be in full compliance with the applicable housing standards at least 30 calendar days (stating the specific date) before the housing is to be occupied.

(b) *Processing requests—(1) State agency processing.* Upon receipt of a written request for conditional access to the intrastate or interstate clearance system under paragraph (a)(1) of this section, the local Job Service office shall send the request to the State office, which, in turn, shall forward it to the Regional Administrator, Employment and Training Administration, (RA).

(2) *Regional office processing and determination.* Upon receipt of a request for conditional access pursuant to paragraph (a)(2) or paragraph (b)(1) of this section, the RA shall review the matter and, as appropriate, shall either grant or deny the request.

(c) *Authorization.* The authorization for conditional access to the intrastate or interstate clearance system shall be in writing, and shall state that although the housing does not comply with the applicable standards, the employer's job order may be placed into intrastate or interstate clearance until a specified date. The RA shall send the authorization to the employer and shall send copies to the appropriate State agency and local Job Service office. The employer shall submit and the local Job Service shall attach copies of the authorization to each of the employer's job orders which is placed into intrastate or interstate clearance.

(d) *Notice of denial.* If the RA denies the request for conditional access to the intrastate or interstate clearance system, the RA shall provide written notice to the employer, the appropriate State agency, and the local Job Service office, stating the reasons for the denial.

(e) *Inspection.* (1) The local Job Service office serving the area containing the housing of any employer granted

conditional access to the intrastate or interstate clearance system shall assure that the housing is inspected no later than the date by which the employer has promised to have its housing in compliance with the requirements of this subpart. An employer, however, may request an earlier preliminary inspection. If, on the date set forth in the authorization, the housing is not in full compliance with the applicable housing standards as assured in the request for conditional access, the local Job Service office shall afford the employer five calendar days to bring the housing into full compliance. After the five-calendar-day period, if the housing is not in full compliance with the applicable housing standards as assured in the request for conditional access, the local Job Service office immediately:

(i) Shall notify the RA;

(ii) Shall remove the employer's job orders from intrastate and interstate clearance; and

(iii) Shall, if workers have been recruited against these orders, in cooperation with the employment service agencies in other States, make every reasonable attempt to locate and notify the appropriate crew leaders or workers, and to find alternative and comparable employment for the workers.

[52 FR 20506, June 1, 1987]

HOUSING STANDARDS

§ 654.404 Housing site.

(a) Housing sites shall be well drained and free from depressions in which water may stagnate. They shall be located where the disposal of sewage is provided in a manner which neither creates nor is likely to create a nuisance, or a hazard to health.

(b) Housing shall not be subject to, or in proximity to conditions that create or are likely to create offensive odors, fumes, noise, traffic, or any similar hazards.

(c) Grounds within the housing site shall be free from debris, noxious plants (poison ivy, etc.) and uncontrolled weeds or brush.

(d) The housing site shall provide a space for recreation reasonably related

to the size of the facility and the type of occupancy.

§ 654.405 Water supply.

(a) An adequate and convenient supply of water that meets the standards of the State health authority shall be provided.

(b) A cold water tap shall be available within 100 feet of each individual living unit when water is not provided in the unit. Adequate drainage facilities shall be provided for overflow and spillage.

(c) Common drinking cups shall not be permitted.

§ 654.406 Excreta and liquid waste disposal.

(a) Facilities shall be provided and maintained for effective disposal of excreta and liquid waste. Raw or treated liquid waste shall not be discharged or allowed to accumulate on the ground surface.

(b) Where public sewer systems are available, all facilities for disposal of excreta and liquid wastes shall be connected thereto.

(c) Where public sewers are not available, a subsurface septic tank-seepage system or other type of liquid waste treatment and disposal system, privies or portable toilets shall be provided. Any requirements of the State health authority shall be complied with.

§ 654.407 Housing.

(a) Housing shall be structurally sound, in good repair, in a sanitary condition and shall provide protection to the occupants against the elements.

(b) Housing shall have flooring constructed of rigid materials, smooth finished, readily cleanable, and so located as to prevent the entrance of ground and surface water.

(c) The following space requirements shall be provided:

(1) For sleeping purposes only in family units and in dormitory accommodations using single beds, not less than 50 square feet of floor space per occupant;

(2) For sleeping purposes in dormitory accommodations using double bunk beds only, not less than 40 square feet per occupant;

(3) For combined cooking, eating, and sleeping purposes not less than 60 square feet of floor space per occupant.

(d) Housing used for families with one or more children over 6 years of age shall have a room or partitioned sleeping area for the husband and wife. The partition shall be of rigid materials and installed so as to provide reasonable privacy.

(e) Separate sleeping accommodations shall be provided for each sex or each family.

(f) Adequate and separate arrangements for hanging clothing and storing personal effects for each person or family shall be provided.

(g) At least one-half of the floor area in each living unit shall have a minimum ceiling height of 7 feet. No floor space shall be counted toward minimum requirements where the ceiling height is less than 5 feet.

(h) Each habitable room (not including partitioned areas) shall have at least one window or skylight opening directly to the out-of-doors. The minimum total window or skylight area, including windows in doors, shall equal at least 10 percent of the usable floor area. The total openable area shall equal at least 45 percent of the minimum window or skylight area required, except where comparably adequate ventilation is supplied by mechanical or some other method.

§ 654.408 Screening.

(a) All outside openings shall be protected with screening of not less than 16 mesh.

(b) All screen doors shall be tight fitting, in good repair, and equipped with self-closing devices.

§ 654.409 Heating.

(a) All living quarters and service rooms shall be provided with properly installed, operable heating equipment capable of maintaining a temperature of at least 68° F. if during the period of normal occupancy the temperature in such quarters falls below 68°.

(b) Any stoves or other sources of heat utilizing combustible fuel shall be installed and vented in such a manner as to prevent fire hazards and a dangerous concentration of gases. No portable heaters other than those operated

by electricity shall be provided. If a solid or liquid fuel stove is used in a room with wooden or other combustible flooring, there shall be a concrete slab, insulated metal sheet, or other fireproof material on the floor under each stove, extending at least 18 inches beyond the perimeter of the base of the stove.

(c) Any wall or ceiling within 18 inches of a solid or liquid fuel stove or a stovepipe shall be of fireproof material. A vented metal collar shall be installed around a stovepipe, or vent passing through a wall, ceiling, floor or roof.

(d) When a heating system has automatic controls, the controls shall be of the type which cut off the fuel supply upon the failure or interruption of the flame or ignition, or whenever a predetermined safe temperature or pressure is exceeded.

[45 FR 14182, Mar. 4, 1980; 45 FR 22901, Apr. 4, 1980]

§654.410 Electricity and lighting.

(a) All housing sites shall be provided with electric service.

(b) Each habitable room and all common use rooms, and areas such as: Laundry rooms, toilets, privies, hallways, stairways, etc., shall contain adequate ceiling or wall-type light fixtures. At least one wall-type electrical convenience outlet shall be provided in each individual living room.

(c) Adequate lighting shall be provided for the yard area, and pathways to common use facilities.

(d) All wiring and lighting fixtures shall be installed and maintained in a safe condition.

§654.411 Toilets.

(a) Toilets shall be constructed, located and maintained so as to prevent any nuisance or public health hazard.

(b) Water closets or privy seats for each sex shall be in the ratio of not less than one such unit for each 15 occupants, with a minimum of one unit for each sex in common use facilities.

(c) Urinals, constructed of non-absorbent materials, may be substituted for men's toilet seats on the basis of one urinal or 24 inches of trough-type urinal for one toilet seat

up to a maximum of one-third of the required toilet seats.

(d) Except in individual family units, separate toilet accommodations for men and women shall be provided. If toilet facilities for men and women are in the same building, they shall be separated by a solid wall from floor to roof or ceiling. Toilets shall be distinctly marked "men" and "women" in English and in the native language of the persons expected to occupy the housing.

(e) Where common use toilet facilities are provided, an adequate and accessible supply of toilet tissue, with holders, shall be furnished.

(f) Common use toilets and privies shall be well lighted and ventilated and shall be clean and sanitary.

(g) Toilet facilities shall be located within 200 feet of each living unit.

(h) Privies shall not be located closer than 50 feet from any living unit or any facility where food is prepared or served.

(i) Privy structures and pits shall be fly tight. Privy pits shall have adequate capacity for the required seats.

§654.412 Bathing, laundry, and handwashing.

(a) Bathing and handwashing facilities, supplied with hot and cold water under pressure, shall be provided for the use of all occupants. These facilities shall be clean and sanitary and located within 200 feet of each living unit.

(b) There shall be a minimum of 1 showerhead per 15 persons. Showerheads shall be spaced at least 3 feet apart, with a minimum of 9 square feet of floor space per unit. Adequate, dry dressing space shall be provided in common use facilities. Shower floors shall be constructed of nonabsorbent nonskid materials and sloped to properly constructed floor drains. Except in individual family units, separate shower facilities shall be provided each sex. When common use shower facilities for both sexes are in the same building they shall be separated by a solid non-absorbent wall extending from the floor to ceiling, or roof, and shall be plainly designated "men" or "women" in English and in the native language

of the persons expected to occupy the housing.

(c) Lavatories or equivalent units shall be provided in a ratio of 1 per 15 persons.

(d) Laundry facilities, supplied with hot and cold water under pressure, shall be provided for the use of all occupants. Laundry trays or tubs shall be provided in the ratio of 1 per 25 persons. Mechanical washers may be provided in the ratio of 1 per 50 persons in lieu of laundry trays, although a minimum of 1 laundry tray per 100 persons shall be provided in addition to the mechanical washers.

§ 654.413 Cooking and eating facilities.

(a) When workers or their families are permitted or required to cook in their individual unit, a space shall be provided and equipped for cooking and eating. Such space shall be provided with:

(1) A cookstove or hot plate with a minimum of two burners; and (2) adequate food storage shelves and a counter for food preparation; and (3) provisions for mechanical refrigeration of food at a temperature of not more than 45° F.; and (4) a table and chairs or equivalent seating and eating arrangements, all commensurate with the capacity of the unit; and (5) adequate lighting and ventilation.

(b) When workers or their families are permitted or required to cook and eat in a common facility, a room or building separate from the sleeping facilities shall be provided for cooking and eating. Such room or building shall be provided with:

(1) Stoves or hot plates, with a minimum equivalent of two burners, in a ratio of 1 stove or hot plate to 10 persons, or 1 stove or hot plate to 2 families; and (2) adequate food storage shelves and a counter for food preparation; and (3) mechanical refrigeration for food at a temperature of not more than 45° F.; and (4) tables and chairs or equivalent seating adequate for the intended use of the facility; and (5) adequate sinks with hot and cold water under pressure; and (6) adequate lighting and ventilation; and (7) floors shall be of nonabsorbent, easily cleaned materials.

(c) When central mess facilities are provided, the kitchen and mess hall shall be in proper proportion to the capacity of the housing and shall be separate from the sleeping quarters. The physical facilities, equipment and operation shall be in accordance with provisions of applicable State codes.

(d) Wall surface adjacent to all food preparation and cooking areas shall be of nonabsorbent, easily cleaned material. In addition, the wall surface adjacent to cooking areas shall be of fire-resistant material.

§ 654.414 Garbage and other refuse.

(a) Durable, fly-tight, clean containers in good condition of a minimum capacity of 20 gallons, shall be provided adjacent to each housing unit for the storage of garbage and other refuse. Such containers shall be provided in a minimum ratio of 1 per 15 persons.

(b) Provisions shall be made for collection of refuse at least twice a week, or more often if necessary. The disposal of refuse, which includes garbage, shall be in accordance with State and local law.

§ 654.415 Insect and rodent control.

Housing and facilities shall be free of insects, rodents, and other vermin.

§ 654.416 Sleeping facilities.

(a) Sleeping facilities shall be provided for each person. Such facilities shall consist of comfortable beds, cots, or bunks, provided with clean mattresses.

(b) Any bedding provided by the housing operator shall be clean and sanitary.

(c) Triple deck bunks shall not be provided.

(d) The clear space above the top of the lower mattress of a double deck bunk and the bottom of the upper bunk shall be a minimum of 27 inches. The distance from the top of the upper mattress to the ceiling shall be a minimum of 36 inches.

(e) Beds used for double occupancy may be provided only in family accommodations.

§ 654.417 Fire, safety, and first aid.

(a) All buildings in which people sleep or eat shall be constructed and

maintained in accordance with applicable State or local fire and safety laws.

(b) In family housing and housing units for less than 10 persons, of one story construction, two means of escape shall be provided. One of the two required means of escape may be a readily accessible window with an openable space of not less than 24 x 24 inches.

(c) All sleeping quarters intended for use by 10 or more persons, central dining facilities, and common assembly rooms shall have at least two doors remotely separated so as to provide alternate means of escape to the outside or to an interior hall.

(d) Sleeping quarters and common assembly rooms on the second story shall have a stairway, and a permanent, affixed exterior ladder or a second stairway.

(e) Sleeping and common assembly rooms located above the second story shall comply with the State and local fire and building codes relative to multiple story dwellings.

(f) Fire extinguishing equipment shall be provided in a readily accessible place located not more than 100 feet from each housing unit. Such equipment shall provide protection equal to a 2½ gallon stored pressure or 5-gallon pump-type water extinguisher.

(g) First aid facilities shall be provided and readily accessible for use at all time. Such facilities shall be equivalent to the 16 unit first aid kit recommended by the American Red Cross, and provided in a ratio of 1 per 50 persons.

(h) No flammable or volatile liquids or materials shall be stored in or adjacent to rooms used for living purposes, except for those needed for current household use.

(i) Agricultural pesticides and toxic chemicals shall not be stored in the housing area.



Identity & Address of Housing Owner/Provider		Location of Housing Investigated: (attach map, if necessary)		
Identity & Address of Person in Charge of Housing: (if FLC - give Registration No.)				
Description of Housing: (attach drawings or photographs, if necessary)		Housing Capacity:		
		Number of Occupants:		
Current Permits or Licenses: (identify by date and agency) (attach copy)				
Variances, if any, granted by ETA:				
Compliance Officer(s):		Date:		
<p align="center">STANDARDS</p> <p>Record all violations of any applicable standard. Technical or procedural violations of standards will be classified as marginal. Substantive standards violations may be either substantive and aggravated or substantive and serious. See 29 CFR 500.133 for definition of substantive standards.</p>		Substantive		Marginal
		Aggravated	Serious	
HOUSING SITE (20 CFR 654.404) 1. Inadequate drainage (20 CFR 654.404(a)). COMMENTS:				
2. Housing located in proximity to conditions that create or could create offensive odors, flies, noise, traffic or similar hazards (20 CFR 654.404(b)). COMMENTS:				
3. Grounds not free from debris, poisonous plants, uncontrolled weeds or brush (20 CFR 654.404(c)). COMMENTS:				
4. Site does not provide reasonable space for recreation relevant to the size and type of facility (20 CFR 654.404(d)). COMMENTS:				

Identity of Housing:	Registration Number: (if applicable)		
STANDARDS	Substantive		Marginal
	Aggravated	Serious	
WATER SUPPLY (20 CFR 654.405) 5. Water supply does not meet State Health Department Standards. (20 CFR 654.405(a)). COMMENTS:			
6. Inadequate water supply (20 CFR 654.405(a)). COMMENTS:			
7. Cold water tap(s) not available within 100' living unit which does not have water service within the unit(s). (20 CFR 654.405(b)). COMMENTS:			
8. Inadequate drainage facilities provided for overflow and spillage. (20 CFR 654.405(b)). COMMENTS:			
9. Common drinking cups used. (20 CFR 654.405(c)). COMMENTS:			
EXCRETA AND LIQUID WASTE DISPOSAL (20 CFR 654.406) 10. Facilities not provided for effective disposal of sewage (20 CFR 654.406(a)). COMMENTS:			
11. Sewage facilities not maintained to allow for effective disposal of sewage (20 CFR 654.406(a)). COMMENTS:			

Identity of Housing:	Registration Number: (if applicable)		
STANDARDS	Substantive		Marginal
	Aggravated	Serious	
12. Liquid waste discharged or allowed to accumulate on ground (20 CFR 654.406(a)). COMMENTS:			
13. Failure to connect to public sewer systems where available (20 CFR 654.406(b)). COMMENTS:			
14. Privies or portable toilets not provided (where public sewers or septic tanks are not available) (20 CFR 654.406(c)). COMMENTS:			
HOUSING (20 CFR 654.407) 15. Housing not structurally sound (20 CFR 654.407(a)). COMMENTS:			
16. Housing not in good repair (20 CFR 654.407(a)). COMMENTS:			
17. Housing not maintained in a sanitary condition (20 CFR 654.407(a)). COMMENTS:			
18. Housing does not provide protection against the elements (20 CFR 654.407(a)). COMMENTS:			

Identity of Housing:	Registration Number: (if applicable)		
STANDARDS	Substantive		Marginal
	Aggravated	Serious	
19. Floors in housing not of a smooth, rigid, cleanable surface (20 CFR 654.407(b)). COMMENTS:			
20. Less than 50 square feet per person for sleeping purposes in units containing single beds (20 CFR 654.407(c) (1)). COMMENTS:			
21. Less than 40 square feet per person for sleeping purposes in dormitory accommodations using double-bunk beds only (20 CFR 654.407(c) (2)). COMMENTS:			
22. Less than 60 square feet of floor space per occupant for combined cooking, eating and sleeping purposes (20 CFR 654.407(c) (3)). COMMENTS:			
23. Housing utilized by families does not have separate or partitioned sleeping areas for parents, where there are children over 6 years old (20 CFR 654.407(d)). COMMENTS:			
24. Separate sleeping facilities not provided for each sex in non-family groups (20 CFR 654.407(e)). COMMENTS:			
25. Separate sleeping facilities not provided for each family (20 CFR 654.407(e)). COMMENTS:			

Identity of Housing:	Registration Number: (if applicable)		
STANDARDS	Substantive		Marginal
	Aggravated	Serious	
26. No facilities for hanging clothes and storing personal effects for each person or family (20 CFR 654.407(f)). COMMENTS:			
27. Inadequate arrangements for hanging clothes and storing personal effects for each person or family (20 CFR 654.407(f)). COMMENTS:			
28. Ceiling height is less than 7' for more than half of the floor area in each living unit (20 CFR 654.407(g)). COMMENTS:			
29. Window space is less than 10% of usable floor space (20 CFR 654.407(h)). COMMENTS:			
30. Total space is less than 45% of minimum window area required and no other ventilation available (20 CFR 654.407(h)). COMMENTS:			
SCREENING (20 CFR 654.408) 31. Openings in shelter not screened with not less than 16 mesh material (20 CFR 654.408(a)). COMMENTS:			
32. No screen doors (20 CFR 654.408(b)). COMMENTS:			

Identity of Housing:	Registration Number: (if applicable)		
STANDARDS	Substantive		Marginal
	Aggravated	Serious	
33. Screen doors not equipped with self-closing devices (20 CFR 654.408(b)). COMMENTS:			
34. Screen doors not in good repair or tight fitting (20 CFR 654.408(b)). COMMENTS:			
HEATING (20 CFR 654.409) 35. No heating equipment in living quarters and service rooms (where temperature can fall below 68° F) (20 CFR 654.409(a)). COMMENTS:			
36. Heating equipment not capable of maintaining a temperature of 68° in living quarters or service rooms due to disrepair or improper installation (CFR 654.409(a)). COMMENTS:			
37. Stoves or other heat sources which require combustible fuel not properly vented (20 CFR 654.409(b)). COMMENTS:			
38. Portable heaters, other than electric used (20 CFR 654.409(b)). COMMENTS:			
39. Solid or liquid fuel stove used in a room with wooden or other combustible floor, without proper insulation or fire proofing on floor, walls, and ceiling (20 CFR 654.409(b) and (c)). COMMENTS:			

Identity of Housing:	Registration Number: (if applicable)		
STANDARDS	Substantive		Marginal
	Approved	Serious	
40. Heating pipes not of fireproof material (20 CFR 654.409(c)). COMMENTS:			
41. Vents or stovepipes do not have a metal collar (20 CFR 654.409(c)). COMMENTS:			
ELECTRICITY AND LIGHTING (20 CFR 654.410) 42. No electricity provided (20 CFR 654.410(a)). COMMENTS:			
43. Inadequate ceiling or wall-type light fixtures in all rooms (20 CFR 654.410(b)). COMMENTS:			
44. Electrical outlets not provided in each room (20 CFR 654.410(b)). COMMENTS:			
45. Inadequate lighting for yard and pathways (20 CFR 654.410(c)). COMMENTS:			
46. Wiring and lighting fixtures in an unsafe condition (20 CFR 654.410(d)). COMMENTS:			

Identity of Housing:	Registration Number: (if applicable)		
STANDARDS	Substantive		Marginal
	Aggravated	Serious	
TOILETS (20 CFR 654.411) 47. Toilets not constructed, located or maintained in a manner to prevent nuisance or public health hazard (20 CFR 654.411(a)). COMMENTS:			
48. Water closets or privy seats not provided in a ration of at least one unit for each 15 occupants (20 CFR 654.411(b)). COMMENTS:			
49. Separate facilities not provided for each sex except in family units (20 CFR 654.411(d)). COMMENTS:			
50. Urinals not constructed of nonabsorbant materials. Urinals may be substituted for men's toilets in the ratio of one urinal or 24" of through-type urinal for one toilet seat up to a maximum of 1/3 requirement. (20 CFR 654.411(c)) COMMENTS:			
51. Toilet facilities for men and women not divided by solid walls from floor to ceiling. (20 CFR 654.411(d)). COMMENTS:			
52. Toilets not marked "men" and "women" and in native language of workers (20 CFR 654.411(d)). COMMENTS:			
53. Toilet tissue not provided in common-use toilet facilities (20 CFR 654.411(e)). COMMENTS:			

Identity of Housing:	Registration Number: (if applicable)		
STANDARDS	Substantive		Marginal
	Aggravated	Serious	
54. Common use toilets and privies not well-lighted, ventilated or clean and sanitary (20 CFR 654.411(f)). COMMENTS:			
55. Toilet facilities located more than 200' from living units (20 CFR 654.411(g)). COMMENTS:			
56. Privies less than 50' from living or cooking areas (20 CFR 654.411(h)). COMMENTS:			
57. Privy structures and pits not fly-tight (20 CFR 654.411(i)). COMMENTS:			
BATHING, LAUNDRY AND HANDWASHING (20 CFR 654.412) 58. Bathing and handwashing facilities not provided (20 CFR 654.412(a)). COMMENTS:			
59. Hot and cold water under pressure not provided for bathing and handwashing (20 CFR 654.412(a)). COMMENTS:			
60. Bathing and handwashing facilities not maintained in a clean sanitary manner (20 CFR 654.412(a)). COMMENTS:			

Identity of Housing:	Registration Number: (if applicable)		
STANDARDS	Substantive		Marginal
	Aggravated	Serious	
61. Bathing and handwashing facilities not located within 200' of each living unit (20 CFR 654.412(a)). COMMENTS:			
62. Showerheads at a ratio of one per every 15 persons not provided (Shower heads are less than 3 ft. apart) (20 CFR 654.412(b)). COMMENTS:			
63. Shower area does not include 9 sq. ft. of floor space per migrant worker (20 CFR 654.412(b)). COMMENTS:			
64. Adequate, dry dressing space not available in commonuse facilities (20 CFR 654.412(b)). COMMENTS:			
65. Shower floors not constructed of nonabsorbant, nonskit materials with proper drains (20 CFR 654.412(b)). COMMENTS:			
66. Except for family units, separate shower facilities not provided for each sex (20 CFR 654.412(b)). COMMENTS:			
67. Shower facilities for both sexes which are located in same buildings, not plainly marked "men" and "women" in English and the native language of the workers (20 CFR 654.412(b)). COMMENTS:			

Identity of Housing:	Registration Number: (if applicable)		
STANDARDS	Substantive		Marginal
	Aggravated	Serious	
68. Wash basins not provided in a ratio of at least one per every 15 persons (20 CFR 654.412(c)). COMMENTS:			
69. Laundry facilities with hot and cold water, under pressure, not provided (20 CFR 654.412(d)). COMMENTS:			
70. Laundry trays or tubs not provided in the ratio of at least one per 25 persons (or washing machines in the ratio of 1 per 50 persons including 10 laundry trays per 100 persons) (20 CFR 654.412(d)). COMMENTS:			
COOKING AND EATING FACILITIES (20 CFR 654.413) 71. In family units, no space or equipment provided for cooking and eating (20 CFR 654.413(a)). COMMENTS:			
The following six requirements apply to individual family units and common facilities for families:			
72. Cooking space not provided with a cook stove or hot plate with a minimum of two burners (in a ratio of 1 stove or hot plate to every 10 people) (20 CFR 654.413(a) (1) and (b) (1)). COMMENTS:			
73. Cooking space not provided with shelves or counter space (20 CFR 654.413(a) (2) and (b) (2)). COMMENTS:			
74. Cooking space not provided with mechanical refrigeration at a temperature of not more than 45° (20 CFR 654.413(a) (3) and (b) (3)). COMMENTS:			

Identity of Housing:	Registration Number: (if applicable)		
STANDARDS	Substantive		Marginal
	Aggravated	Serious	
75. Cooking and eating space not equipped with table and chairs commensurate with the capacity of the unit (20 CFR 654.413 (a) (4) and (b)(4)). COMMENTS:			
76. Cooking and eating space not adequately lighted or ventilated (20 CFR 654.413(a) (5) and (b)(6)). COMMENTS:			
77. In common facilities, sinks with hot and cold water, under pressure, not provided (20 CFR 654.413(b) (5)). COMMENTS:			
78. Central mess facilities, where provided, not separate from sleeping quarters (20 CFR 654.413(c)). COMMENTS:			
79. Walls in all cooking and eating areas not of nonabsorbant, cleanable materials (20 CFR 654.413(d)). COMMENTS:			
80. Wall surfaces adjacent to cooking areas not of fireresistant material (20 CFR 654.413(d)). COMMENTS:			
GARBAGE AND OTHER REFUSE (20 CFR 654.414) 81. Fly-tight 20 gallon refuse containers not provided adjacent to housing unit, in a ratio of one container per every 15 persons (20 CFR 654.414(a)). COMMENTS:			

Identity of Housing:	Registration Number: (if applicable)		
STANDARDS	Substantive		Marginal
	Aggravated	Serious	
82. Refuse not collected at least twice a week or more often if necessary (20 CFR 654.414(b)). COMMENTS:			
INSECT AND RODENT CONTROL (20 CFR 654.415) 83. Housing and facilities not free of rodents, insects or other vermin (20 CFR 654.415) COMMENTS:			
SLEEPING FACILITIES (20 CFR 654.416) 84. Sleeping facilities not provided (beds, cots or bunks) for each person (20 CFR 654.416(a)). COMMENTS:			
85. Beds not provided with clean mattresses (20 CFR 654.416(a)). COMMENTS:			
86. Bedding (linen) provided not clean and sanitary (20 CFR 654.416(b)). COMMENTS:			
87. Triple bunks used (20 CFR 654.416(c)). COMMENTS:			
88. Double bunks do not have a minimum of 27" between them and/or top bunk is less than 36" from the ceiling (20 CFR 654.416(d)). COMMENTS:			

Identity of Housing:	Registration Number: (if applicable)		
STANDARDS	Substantive		Marginal
	Aggravated	Serious	
89. Double beds used for other than family accommodations (20 CFR 654.416(e)). COMMENTS:			
FIRE, SAFETY AND FIRST AID (20 CFR 654.417) 90. Buildings used for sleeping or eating purposes do not meet safety and fire laws (20 CFR 654.417(a)). COMMENTS:			
91. In housing for less than 10 persons, of one story construction, two means of fire escape not provided (20 CFR 654.417(b)). COMMENTS:			
92. Dormitories for 10 or more persons, central dining facilities and common rooms do not have at least two doors remotely separated for fire escape (20 CFR 654.417(c)). COMMENTS:			
93. Rooms on a second story do not have permanently affixed ladder or second stairway (20 CFR 654.417(d)). COMMENTS:			
94. Fire extinguishers not provided (20 CFR 654.417(f)). COMMENTS:			
95. First aid facilities not provided (20 CFR 654.417(g)). COMMENTS:			

Identity of Housing:	Registration Number: (If applicable)		
STANDARDS	Substantive		Marginal
	Aggravated	Serious	
96. Volatile or flammable liquids stored in or adjacent to living quarters (20 CFR 654.417(h)). COMMENTS:			
97. Pesticides and toxic chemicals stored in housing area (20 CFR 654.417(i)). COMMENTS:			

§ 1910.142 Temporary labor camps.

(a) *Site.* (1) All sites used for camps shall be adequately drained. They shall not be subject to periodic flooding, nor located within 200 feet of swamps, pools, sink holes, or other surface collections of water unless such quiescent

water surfaces can be subjected to mosquito control measures. The camp shall be located so the drainage from and through the camp will not endanger any domestic or public water supply. All sites shall be graded, ditched, and rendered free from depressions in which water may become a nuisance.

(2) All sites shall be adequate in size to prevent overcrowding of necessary structures. The principal camp area in which food is prepared and served and where sleeping quarters are located shall be at least 500 feet from any area in which livestock is kept.

(3) The grounds and open areas surrounding the shelters shall be maintained in a clean and sanitary condition free from rubbish, debris, waste paper, garbage, or other refuse.

(4) Whenever the camp is closed for the season or permanently, all garbage, manure, and other refuse shall be collected and so disposed of as to prevent nuisance. All abandoned privy pits shall be filled with earth and the grounds and buildings left in a clean and sanitary condition. If privy buildings remain, they shall be locked or otherwise secured to prevent entrance.

(b) *Shelter.* (1) Every shelter in the camp shall be constructed in a manner which will provide protection against the elements.

(2) Each room used for sleeping purposes shall contain at least 50 square feet of floor space for each occupant. At least a 7-foot ceiling shall be provided.

(3) Beds, cots, or bunks, and suitable storage facilities such as wall lockers for clothing and personal articles shall be provided in every room used for sleeping purposes. Such beds or similar facilities shall be spaced not closer than 36 inches both laterally and end to end, and shall be elevated at least 12 inches from the floor. If double-deck bunks are used, they shall be spaced not less than 48 inches both laterally and end to end. The minimum clear space between the lower and upper bunk shall be not less than 27 inches. Triple-deck bunks are prohibited.

(4) The floors of each shelter shall be constructed of wood, asphalt, or concrete. Wooden floors shall be of smooth and tight construction. The floors shall be kept in good repair.

(5) All wooden floors shall be elevated not less than 1 foot above the ground level at all points to prevent dampness and to permit free circulation of air beneath.

(6) Nothing in this section shall be construed to prohibit "banking" with earth or other suitable material around the outside walls in areas subject to extreme low temperatures.

(7) All living quarters shall be provided with windows the total of which shall be not less than one-tenth of the floor area. At least one-half of each window shall be so constructed that it can be opened for purposes of ventilation.

(8) All exterior openings shall be effectively screened with 16-mesh material. All screen doors shall be equipped with self-closing devices.

(9) In a room where workers cook, live, and sleep a minimum of 100 square feet per person shall be provided. Sanitary facilities shall be provided for storing and preparing food.

(10) In camps where cooking facilities are used in common, stoves (in ratio of one stove to 10 persons or one stove to two families) shall be provided in an enclosed and screened shelter. Sanitary facilities shall be provided for storing and preparing food.

(11) All heating, cooking, and water heating equipment shall be installed in accordance with State and local ordinances, codes, and regulations governing such installations. If a camp is used during cold weather, adequate heating equipment shall be provided.

(c) *Water supply.* (1) An adequate and convenient water supply, approved by the appropriate health authority, shall be provided in each camp for drinking, cooking, bathing, and laundry purposes.

(2) A water supply shall be deemed adequate if it is capable of delivering 35 gallons per person per day to the campsite at a peak rate of 2½ times the average hourly demand.

(3) The distribution lines shall be capable of supplying water at normal operating pressures to all fixtures for simultaneous operation. Water outlets shall be distributed throughout the camp in such a manner that no shelter is more than 100 feet from a yard hy-

drant if water is not piped to the shelters.

(4) Where water under pressure is available, one or more drinking fountains shall be provided for each 100 occupants or fraction thereof. The construction of drinking fountains shall comply with ANSI Standard Specifications for Drinking Fountains, Z4.2-1942. Common drinking cups are prohibited.

(d) *Toilet facilities.* (1) Toilet facilities adequate for the capacity of the camp shall be provided.

(2) Each toilet room shall be located so as to be accessible without any individual passing through any sleeping room. Toilet rooms shall have a window not less than 6 square feet in area opening directly to the outside area or otherwise be satisfactorily ventilated. All outside openings shall be screened with 16-mesh material. No fixture, water closet, chemical toilet, or urinal shall be located in a room used for other than toilet purposes.

(3) A toilet room shall be located within 200 feet of the door of each sleeping room. No privy shall be closer than 100 feet to any sleeping room, dining room, lunch area, or kitchen.

(4) Where the toilet rooms are shared, such as in multifamily shelters and in barracks type facilities, separate toilet rooms shall be provided for each sex. These rooms shall be distinctly marked "for men" and "for women" by signs printed in English and in the native language of the persons occupying the camp, or marked with easily understood pictures or symbols. If the facilities for each sex are in the same building, they shall be separated by solid walls or partitions extending from the floor to the roof or ceiling.

(5) Where toilet facilities are shared, the number of water closets or privy seats provided for each sex shall be based on the maximum number of persons of that sex which the camp is designed to house at any one time, in the ratio of one such unit to each 15 persons, with a minimum of two units for any shared facility.

(6) Urinals shall be provided on the basis of one unit or 2 linear feet of urinal trough for each 25 men. The floor from the wall and for a distance not less than 15 inches measured from the outward edge of the urinals shall be

constructed of materials impervious to moisture. Where water under pressure is available, urinals shall be provided with an adequate water flush. Urinal troughs in privies shall drain freely into the pit or vault and the construction of this drain shall be such as to exclude flies and rodents from the pit.

(7) Every water closet installed on or after August 31, 1971, shall be located in a toilet room.

(8) Each toilet room shall be lighted naturally, or artificially by a safe type of lighting at all hours of the day and night.

(9) An adequate supply of toilet paper shall be provided in each privy, water closet, or chemical toilet compartment.

(10) Privies and toilet rooms shall be kept in a sanitary condition. They shall be cleaned at least daily.

(e) *Sewage disposal facilities.* In camps where public sewers are available, all sewer lines and floor drains from buildings shall be connected thereto.

(f) *Laundry, handwashing, and bathing facilities.* (1) Laundry, handwashing, and bathing facilities shall be provided in the following ratio:

(i) Handwash basin per family shelter or per six persons in shared facilities.

(ii) Shower head for every 10 persons.

(iii) Laundry tray or tub for every 30 persons.

(iv) Slop sink in each building used for laundry, hand washing, and bathing.

(2) Floors shall be of smooth finish but not slippery materials; they shall be impervious to moisture. Floor drains shall be provided in all shower baths, shower rooms, or laundry rooms to remove waste water and facilitate cleaning. All junctions of the curbing and the floor shall be coved. The walls and partitions of shower rooms shall be smooth and impervious to the height of splash.

(3) An adequate supply of hot and cold running water shall be provided for bathing and laundry purposes. Facilities for heating water shall be provided.

(4) Every service building shall be provided with equipment capable of maintaining a temperature of at least 70° F. during cold weather.

(5) Facilities for drying clothes shall be provided.

(6) All service buildings shall be kept clean.

(g) *Lighting.* Where electric service is available, each habitable room in a camp shall be provided with at least one ceiling-type light fixture and at least one separate floor- or wall-type convenience outlet. Laundry and toilet rooms and rooms where people congregate shall contain at least one ceiling- or wall-type fixture. Light levels in toilet and storage rooms shall be at least 20 foot-candles 30 inches from the floor. Other rooms, including kitchens and living quarters, shall be at least 30 foot-candles 30 inches from the floor.

(h) *Refuse disposal.* (1) Fly-tight, rodent-tight, impervious, cleanable or single service containers, approved by the appropriate health authority shall be provided for the storage of garbage. At least one such container shall be provided for each family shelter and shall be located within 100 feet of each shelter on a wooden, metal, or concrete stand.

(2) Garbage containers shall be kept clean.

(3) Garbage containers shall be emptied when full, but not less than twice a week.

(i) *Construction and operation of kitchens, dining hall, and feeding facilities.* (1) In all camps where central dining or multiple family feeding operations are permitted or provided, the food handling facilities shall comply with the requirements of the "Food Service Sanitation Ordinance and Code," Part V of the "Food Service Sanitation Manual," U.S. Public Health Service Publication 934 (1965).

(2) A properly constructed kitchen and dining hall adequate in size, separate from the sleeping quarters of any of the workers or their families, shall be provided in connection with all food handling facilities. There shall be no direct opening from living or sleeping quarters into a kitchen or dining hall.

(3) No person with any communicable disease shall be employed or permitted to work in the preparation, cooking, serving, or other handling of food, food-stuffs, or materials used therein, in any kitchen or dining room operated in

connection with a camp or regularly used by persons living in a camp.

(j) *Insect and rodent control.* Effective measures shall be taken to prevent infestation by and harborage of animal or insect vectors or pests.

(k) *First aid.* (1) Adequate first aid facilities approved by a health authority shall be maintained and made available in every labor camp for the emergency treatment of injured persons.

(2) Such facilities shall be in charge of a person trained to administer first aid and shall be readily accessible for use at all times.

(l) *Reporting communicable disease.* (1) It shall be the duty of the camp superintendent to report immediately to the local health officer the name and address of any individual in the camp known to have or suspected of having a communicable disease.

(2) Whenever there shall occur in any camp a case of suspected food poisoning or an unusual prevalence of any illness in which fever, diarrhea, sore throat, vomiting, or jaundice is a prominent symptom, it shall be the duty of the camp superintendent to report immediately the existence of the outbreak to the health authority by telegram or telephone.

(Approved by the Office of Management and Budget under control number 1218-0096)

[39 FR 23502, June 27, 1974, as amended at 47 FR 14696, Apr. 6, 1982; 49 FR 18295, Apr. 30, 1984]

§ 1910.143 Nonwater carriage disposal systems. [Reserved]

§ 1910.144 Safety color code for marking physical hazards.

(a) *Color identification*—(1) *Red.* Red shall be the basic color for the identification of:

(i) *Fire protection equipment and apparatus.* [Reserved]

(ii) *Danger.* Safety cans or other portable containers of flammable liquids having a flash point at or below 80° F, table containers of flammable liquids (open cup tester), excluding shipping containers, shall be painted red with some additional clearly visible identification either in the form of a yellow band around the can or the name of the contents conspicuously stenciled or painted on the can in yellow. Red



Identity & Address of Housing Owner/Provider		Location of Housing Investigated: (attach map, if necessary)		
Identity & Address of Person in Charge of Housing: (if FLC - give Registration Number)				
Description of Housing: (attach drawings or photographs, if necessary)		Housing Capacity:		
		Number of Occupants:		
Current Permits or Licenses: (identify by date and agency) (attach copy)				
Compliance Officer(s):		Date:		
<p align="center">STANDARDS</p> <p>Record all violations of any applicable standard. Technical or procedural violations of standards will be classified as marginal. Substantive standards violations may be either substantive and aggravated or substantive and serious. See 29 CFR 500.133 for definition of substantive standards.</p>		Substantive		Marginal
		Aggravated	Serious	
SITE (29 CFR 1910.142(a)). 1. Inadequate drainage (29 CFR 1910.142(a) (1)). COMMENTS:				
2. Inactive water (swamp, sinkhole, etc.) within 200' of camp and untreated for mosquito control (29 CFR 1910.142(a) (1)). COMMENTS:				
3. Site not graded, ditched, or rendered free from depressions in which water may become a nuisance (29 CFR 1910.142(a) (1)). COMMENTS:				
4. Danger to domestic or public water supply from poor drainage (29 CFR 1910.142(a) (1)). COMMENTS:				

Identity of Housing:	Registration Number: (if applicable)		
STANDARDS	Substantive		Marginal
	Approved	Serious	
5. Subject to periodic flooding (29 CFR 1910.142(a) (1)). COMMENTS:			
6. Within 500' of livestock area (29 CFR 1910.142(a) (2)). COMMENTS:			
7. Overcrowding of structures (29 CFR 1910.142(a) (2)). COMMENTS:			
8. Grounds and open areas not maintained in a clean and sanitary condition. Areas not free from rubbish, debris, waste paper, garbage or other refuse (29 CFR 1910.142(a) (3)). COMMENTS:			
9. When closing camp for the season, failure to collect and dispose of refuse (29 CFR 1910.142(a) (4)). COMMENTS:			
10. Abandoned toilet pits not filled with dirt (29 CFR 1910.142(a) (4)). COMMENTS:			
11. Toilet buildings not locked when camp closing for season (29 CFR 1910.142(a) (4)). COMMENTS:			

Identity of Housing:	Registration Number: (if applicable)		
STANDARDS	Substantive		Marginal
	Aggravated	Serious	
SHELTER (29 CFR 1910.142(b)). 12. Shelter(s) do not provide protection against the elements (29 CFR 1910.142(b) (1)). COMMENTS:			
13. Less than 50 sq. ft. per person in sleeping rooms (29 CFR 1910.142(b) (2)). COMMENTS:			
14. Ceiling not 7' high (29 CFR 1910.142(b) (2)). COMMENTS:			
15. No wall lockers for clothing and personal articles provided in sleeping rooms (29 CFR 1910.142(b) (3)). COMMENTS:			
16. No beds, cots, or bunks provided for each occupant (29 CFR 1910.142(b) (3)). COMMENTS:			
17. Beds, cots or bunks less than 3' apart, and/or less than 12" from floor (29 CFR 1910.142(b) (3)). COMMENTS:			
18. Double Deckers: Less than 4' between bunks, side to sides and end to end; and less than 27" between bunks (29 CFR 1910.142(b) (3)). COMMENTS:			

Identity of Housing:	Registration Number: (if applicable)		
STANDARDS	Substantive		Marginal
	Approved	Serious	
19. Triple bunks used (29 CFR 1910.142(b) (3)). COMMENTS:			
20. Floors in structures made of other than wood, asphalt or concrete (29 CFR 1910.142(b) (4)). COMMENTS:			
21. Wooden floors not of smooth and tight construction (29 CFR 1910.142(b) (4)). COMMENTS:			
22. Floors in disrepair (29 CFR 1910.142(b) (4)). COMMENTS:			
23. Wooden floors elevated less than 1' above ground level (29 CFR 1910.142(b) (5)). COMMENTS:			
24. Windows and doors in living quarters total less than 1/10 of floor area (29 CFR 1910.142(b) (7)). COMMENTS:			
25. Windows cannot be opened one-half to allow for ventilation (29 CFR 1910.142(b) (7)). COMMENTS:			

Identity of Housing:	Registration Number: (if applicable)		
STANDARDS	Substantive		Marginal
	Approved	Serious	
26. Broken windows (29 CFR 1910.142(b) (1)). COMMENTS:			
27. Openings in shelter not screened with 16 -mesh material (29 CFR 1910.142(b) (8)). COMMENTS:			
28. Door not equipped with self-closing devices (29 CFR 1910.142(b) (8)). COMMENTS:			
29. Less than 100 sq. ft. per person in a room where workers cook, live and sleep (29 CFR 1910.142(b) (9)). COMMENTS:			
30. Sanitary facilities not provided for storing and preparing food in rooms where workers cook, live, and sleep (29 CFR 1910.142(b) (9)). COMMENTS:			
31. At least 1 stove for each 10 people or 2 families not provided where cooking facilities are used in common (29 CFR 1910.142(b) (10)). COMMENTS:			
32. Cooking facilities used in common not provided in an enclosed and screened shelter (29 CFR 1910.142(b) (10)). COMMENTS:			

Identity of Housing:	Registration Number: (if applicable)		
STANDARDS	Substantive		Marginal
	Aggravated	Serious	
33. Heating, cooking and water heating equipment not installed in accordance with applicable codes and regulations (29 CFR 1910.142(b) (11)). COMMENTS:			
34. Adequate heating not provided in every shelter used during cold weather to maintain a comfortable temperature (29 CFR 1910.142(b) (11)). COMMENTS:			
WATER SUPPLY (29 CFR 1910.142(c)). 35. Water supply inadequate and/or inconvenient for drinking, cooking, bathing and laundry (29 CFR 1910.142(c) (1)). COMMENTS:			
36. Water supply less than 35 gallons per person per day (29 CFR 1910.142(c) (2)). COMMENTS:			
37. Water not approved by health department for drinking, cooking, bathing and laundry purposes (29 CFR 1910.142(c) (1)). COMMENTS:			
38. Water unfit for human use (29 CFR 1910.142(c) (1)). COMMENTS:			
39. Shelters more than 100' from available water outlet when no indoor water facilities are provided (29 CFR 1910.142(c) (3)). COMMENTS:			

Identity of Housing:	Registration Number: (if applicable)		
STANDARDS	Substantive		Marginal
	Aggravated	Serious	
40. Drinking fountains (at ration of 1 fountain per 100 occupants) not provided where water under pressure is available (29 CFR 1910.142(c) (4)). COMMENTS:			
41. Common drinking cups used (29 CFR 1910.142(c) (4)). COMMENTS:			
TOILET FACILITIES (29 CFR 1910.142(d)). 42. Toilet room accessible only through sleeping room (29 CFR 1910.142(d) (2)). COMMENTS:			
43. Toilet rooms not adequately ventilated and/or do not have a 6' sq. ft. opening to the outside (29 CFR 1910.142(d) (2)). COMMENTS:			
44. Privies within 100' of any sleeping room, dining room, lunch area or kitchen (29 CFR 1910.142(d) (3)). COMMENTS:			
45. Toilet room(s) located more than 200' away from every sleeping room (29 CFR 1910.142(d) (3)). COMMENTS:			
46. Separate toilet facilities not provided for each sex (29 CFR 1910.142(d) (4)). COMMENTS:			

Identity of Housing:	Registration Number: (if applicable)		
STANDARDS	Substantive		Marginal
	Approved	Serious	
47. Facilities for each sex not separated by solid walls or partitions extending from floor to ceiling (29 CFR 1910.142(d) (4)). COMMENTS:			
48. Toilet facilities not provided in the required ratio of one unit for each 15 persons and urinals of at least 2 feet of trough for every 25 men (29 CFR 1910.142(d) (5) and (6)). COMMENTS:			
49. Construction of pit or vault does not keep out flies and rodents (29 CFR 1910.142(d)(6)). COMMENTS:			
50. Water closets installed after August 31, 1971, not located in a toilet room (29 CFR 1910.142(d) (7)). COMMENTS:			
51. Toilet rooms, commodes and urinals not kept lighted all hours of the night and day (CFR 1910.142(d) (8)). COMMENTS:			
52. Outside openings not screened (29 CFR 1910.142(d) (2)). COMMENTS:			
53. Toilet paper not provided in adequate supply (29 CFR 1910.142(d) (9)). COMMENTS:			

Identity of Housing:	Registration Number: (if applicable)		
STANDARDS	Substantive		Marginal
	Aggravated	Serious	
54. Toilets in an unsanitary condition (29 CFR 1910.142(d) (10)). COMMENTS:			
55. Toilet rooms not clean daily (29 CFR 1910.142(d) (10)). COMMENTS:			
SEWAGE DISPOSAL FACILITIES (29 CFR 1910.142(e)). 56. Sewer lines and drains not connected to available public sewers (29 CFR 1910.142(e)). COMMENTS:			
LAUNDRY, HANDWASHING, AND BATHING FACILITIES (29 CFR 1910.142(f)). 57. Laundry facilities not provided (29 CFR 1910.142(f)(1)). COMMENTS:			
58. Handwashing facilities not provided (29 CFR 1910.142(f) (1)). COMMENTS:			
59. Bathing facilities not provided (29 CFR 1910.142(f) (1)). COMMENTS:			
60. Handwash basins at ratio of 1 per family shelter or 1 per every 6 persons in shared facility not provided (29 CFR 1910.142(f)(1)(i)). COMMENTS:			

Identity of Housing:	Registration Number: (if applicable)		
STANDARDS	Substantive		Marginal
	Aggravated	Serious	
61. At least one shower head for every 10 persons (29 CFR 1910.142(f)(1)(iii)). COMMENTS:			
62. Laundry tray or tub at ratio of one for every 30 persons not provided (29 CFR 1910.142(f) (1) (iii)). COMMENTS:			
63. Slop sinks in buildings used for laundry, washing and bathing not provided (29 CFR 1910.142(f) (1) (iv)). COMMENTS:			
64. Waterproof, smooth, nonslip floors not provided in laundry and bathing facilities (29 CFR 1910.142(f) (2)). COMMENTS:			
65. No floor drains or adequate drainage (29 CFR 1910.142(f) (2)). COMMENTS:			
66. Walls and partitions not of waterproof material up to splash line (29 CFR 1910.142 (f) (2)). COMMENTS:			
67. Inadequate supply of hot and/or cold running water for bathing and laundry purposes (29 CFR 1910.142(f) (3)). COMMENTS:			

Identity of Housing:	Registration Number: (if applicable)		
STANDARDS	Substantive		Marginal
	Aggravated	Serious	
68. No hot water available (29 CFR 1910.142(f) (3)). COMMENTS:			
69. No facilities available for heating, bathing and laundry water (29 CFR 1910.142(f) (3)). COMMENTS:			
70. Service building not equipped with heating facilities to maintain a temperature of 70° F during cold weather (29 CFR 1910.142(f) (4)). COMMENTS:			
71. No facilities provided for drying clothes (29 CFR 1910.142 (f) (5)). COMMENTS:			
72. Service buildings not kept clean (29 CFR 1910.142(f) (6)). COMMENTS:			
LIGHTING (29 CFR 1910.142(g)). 73. Electric service available but not supplied to each habitable room, laundry rooms, toilet rooms, kitchens, dining rooms and storage rooms (29 CFR 1910.142(g)). COMMENTS:			
74. Each room not supplied with at least one ceiling-type light fixture (29 CFR 1910.142 (g)). COMMENTS:			

Identity of Housing:	Registration Number: (if applicable)		
STANDARDS	Substantive		Marginal
	Approved	Serious	
75. Electrical outlets not provided in each room (29 CFR 1910.142(g)). COMMENTS:			
76. Lighting of an adequate level not provided in each room (29 CFR 1910.142(g)). COMMENTS:			
REFUSE DISPOSAL (29 CFR 1910.142(h)). 77. No refuse containers (insect and rodent-proof) provided (29 CFR 1910.142(h) (1)). COMMENTS:			
78. Failed to have at least one container for each family unit (29 CFR 1910.142(h) (1)). COMMENTS:			
79. Containers not kept clean (29 CFR 1910.142(h) (2)). COMMENTS:			
80. Containers not on a wooden, metal or concrete stand (29 CFR 1910.142(h) (1)). COMMENTS:			
81. Containers not within 100' of shelters (29 CFR 1910.142(h) (1)). COMMENTS:			

Identity of Housing:	Registration Number: (If applicable)		
STANDARDS	Substantive		Marginal
	Aggravated	Serious	
82. Containers not emptied when full (29 CFR 1910.142(h) (3)). COMMENTS:			
83. Containers emptied less than twice a week (29 CFR 1910.142(h) (3)). COMMENTS:			
CONSTRUCTION AND OPERATION OF KITCHEN, DINING HALLS, AND CENTRAL FEEDING FACILITIES (29 CFR 1910.142(i)) 84. Food not free from vermin, rodents, flies, etc., (29 CFR 1910.142(i)). COMMENTS:			
85. Food not free from spoilage (29 CFR 1910.142(i)). COMMENTS:			
86. Poisonous or toxic materials stored with food or in food preparation area (29 CFR 1910.142(i)). COMMENTS:			
87. Person(s) with communicable disease working in preparation, cooking or handling of food (29 CFR 1910.142(i) (3)). COMMENTS:			
88. Equipment and utensils not clean (29 CFR 1910.142(ii)). COMMENTS:			

Identity of Housing:	Registration Number: (if applicable)		
STANDARDS	Substantive		Marginal
	Aggravated	Serious	
89. Kitchen area unclean (29 CFR 1910.142(i)). COMMENTS:			
90. Hot and cold running water not provided (29 CFR 1910.142(i)). COMMENTS:			
91. Garbage containers, leakproof and with tight lids, not provided in kitchen area (29 CFR 1910.142(i)). COMMENTS:			
92. Central feed facilities separate from sleeping quarters not provided (29 CFR 1910.142(i) (2)). COMMENTS:			
INSECT AND RODENT CONTROL (29 CFR 1910.142(j)). 93. Infestation by and harborage of insects and/or pests (29 CFR 1910.142(j)). COMMENTS:			
FIRST AID (29 CFR 1910.142(k)). 94. No first aid supplies or equipment available in camp (29 CFR 1910.142(k) (1)). COMMENTS:			
95. No person in camp trained to administer first aid (29 CFR 1910.142(k) (2)). COMMENTS:			

Identity of Housing:	Registration Number: (if applicable)		
S T A N D A R D S	Substantive		Marginal
	Approved	Serious	
<p>COMMUNICABLE DISEASE (29 CFR 1910.142(l)).</p> <p>96. Failure to report to local health authorities the identity of anyone in the camp suspected of having a communicable disease (29 CFR 1910.142(l) (1)).</p> <p>COMMENTS:</p>			
<p>97. Failure to report immediately to local health authorities a case of food poisoning or an unusual prevalence of any illness in which fever, diarrhea, sore throat, vomiting, or jaundice is prominent (29 CFR 1910.142(l) (2)).</p> <p>COMMENTS:</p>			

VII. Driver, Vehicle Safety and Insurance Requirements Applicable to Migrant and Seasonal Agricultural Workers

A. These regulations apply to crewleader and grower transportation of any migrant or seasonal agricultural worker where they “use or cause any vehicle to be used” for providing transportation. The regulations do not cover use of tractors, harvesting and similar equipment while the equipment is engaged in planting, cultivating or harvesting. The exemption is lost if the equipment is used to transport workers except in these circumstances. These DOL requirements also do not apply to completely voluntary worker carpooling in which neither the crewleader nor the grower is involved in any way, even to the extent of providing gas money to the driver. In Federal Register announcements in March and May, 1996, DOL clarified its position on carpooling and raitero situations. For a discussion of this topic, see the text at pages 3-5. If the standards are applicable, they apply to both on-farm and off-farm transportation, including transportation from labor camps to stores for food purchase, etc. These standards deal with vehicle safety, insurance, and driver licensing and qualifications.

B. Applicability of Department of Labor Vehicle Standards. DOL has standards in effect which cover passenger automobiles, station wagons, and the cabs of pickups regardless of the distance they travel in connection with transportation of migrant or seasonal workers and regardless of the type of workers carried. These regulations apply also to other vehicles if the round-trip distance over which migrant or seasonal workers are transported is less than 75 miles and if the vehicle is not used for a "day haul" operation. (See the definition of “day haul” in the Definitions section above.) A summary of these vehicle standards is attached.

C. Vehicles besides passenger automobiles, station wagons, or the cabs of pickup trucks that are used for day-haul and such vehicles that will be used or that are intended to be used for transportation of any migrant or seasonal agricultural worker for a round-trip distance greater than 75 miles must meet the regulations issued by the Department of Transportation (“DOT”) at 49 C.F.R. Part 398. These DOT rules include driver qualification and driving standards, as well as vehicle standards:

1. Qualification of Drivers

a. Every driver and everyone responsible for hiring, supervising, training, assigning and dispatching drivers must comply with and be conversant with the requirements applicable to drivers.

b. Drivers of DOT-covered vehicles must meet DOT physical requirements and have obtained a medical examination of such compliance and certification within the immediately preceding 36-month period. This is Form WH-515. Copies must be maintained. The driver must carry a copy with him when driving. The employer must maintain a copy in his principal place of business.

c. Driver must be at least 21 years of age, with at least one year of driving experience.

d. Driver must be able to read and speak English sufficiently to understand traffic signals in English and to respond to official inquiries.

e. Driver must possess valid permit qualifying driver to operate the type of vehicle driven by him.

2. Driving of Motor Vehicles

a. Driver must be instructed to and must in fact drive in accordance with law and regulations as well as be conversant with the requirements of the regulations.

b. Driver may not drive under influence of alcoholic beverage nor, regardless of alcoholic content, drink any such beverage or liquor while on duty.

c. No person shall permit or require operation of vehicle between such points in such a period of time so as to allow or necessitate operation of vehicle in excess of applicable speed limits.

d. Driver may not operate vehicle until he has satisfied himself that prescribed parts, accessories and emergency devices are in good working order.

e. Driver may not operate vehicle loaded so heavily or so improperly distributed or inadequately secured as to prevent safe operation of vehicle.

f. Tailgates and doors must be securely in place during operation.

g. No object may obscure driver's view or freedom of motion or prevent ready exit in emergency.

h. Vehicle may not carry more passengers than seating capacity; passengers must remain seated.

i. Every person shall provide for meal stops at intervals not to exceed six hours and for a period of not less than 30 minutes' duration. Must have at least one rest stop between each meal stop.

j. No person shall drive nor shall any person permit or require a driver to drive for more than 10 hours in the aggregate (excluding rest stops and stops for meals) in any 24-hour consecutive period unless the driver has been afforded eight (8) consecutive hours' rest immediately following the 10 hours' aggregate driving.

3. Vehicle Use Restrictions. Kinds of vehicles on which workers may be transported include only buses, trucks with no trailers attached, or a semitrailer attached to a truck tractor, provided that no other trailer is attached. Closed vans without windows or other ventilation may not be used.

a. Any truck used for transporting workers in excess of 600 miles must be stopped for a period of not less than eight (8) consecutive hours either before or upon completion of 600 miles travel and any subsequent 600-mile interval.

b. Required lamps and reflectors may not be obscured and must be operational.

c. Driver must take prescribed steps to avoid ignition of fuel, including, e.g., turning off engine to fuel vehicle, not smoking in the vicinity of a vehicle being fueled, etc. May not carry reserve fuel except in properly mounted fuel tank.

d. Except in emergency, no driver shall permit an unauthorized person to drive his vehicle.

e. Protection of passengers from weather must be provided.

f. Driver must set parking brake and chock wheels on leaving vehicle.

g. Rear of vehicle should display "This vehicle stops at railroad crossing" signs and in fact comply with regulations pertaining to railroad crossing.

4. DOT Vehicle Standards. A summary of DOT vehicle standards is attached.

5. Inspection and Maintenance of Motor Vehicles. There must be systematic inspection and maintenance of all motor vehicles and accessories to ensure compliance.

D. Insurance or liability bonds required for each vehicle used to transport any migrant or seasonal worker, whether DOL and DOT standards apply.

Neither crewleader nor agricultural employer may transport any migrant or seasonal agricultural worker or his property in any vehicle unless he has an insurance policy or liability bond in effect at specified minimum levels based on the seating capacity of the particular vehicle. The amount of the vehicle liability must be not less than \$100,000 for each seat, but the total insurance is not required to be more than \$5,000,000 regardless of the seating capacity of the vehicle. The insurance requirements may be met by having workers' compensation insurance, by having a certificate of liability insurance in the seat-based required amount which covers transportation of all passengers who are not employees and of workers whose transportation is not covered by workers' compensation insurance and by having property damage insurance in the minimum amount of \$50,000 for the property of others or a general liability policy that provides the same protection. The grower should be an "also insured" in the crewleader's insurance certificate.

**Vehicle Mechanical Inspection Report for
Transportation Subject to Department of
Labor Safety Standards**

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division



Name of Carrier _____

OMB No. 1215-0036
Expires: 08-31-2010

Address _____

State _____

ZIP Code _____

Important

The Migrant and Seasonal Agricultural Worker Protection Act requires that farm labor contractors subject to this law who transport any migrant and seasonal agricultural workers for agricultural employment obtain from the U.S. Department of Labor a certificate of registration. Applicants for a certificate of registration must produce evidence that the vehicles they use for this purpose meet Department of Labor requirements. Provided below is a list of major items which should be checked. On the reverse side of this form is a brief summary of the Department of Labor standards for each of these items. A check () should be placed adjacent to each item which meets these minimum standards. In those instances where an item does not meet these standards, necessary repairs must be completed before the transportation of migrant and seasonal agricultural workers will be authorized. This form must be properly completed and signed, certifying that the vehicle meets Department of Labor requirements.

This form (WH-514a) is to be used for the inspection of any passenger car or station wagon regardless of the distance traveled and for other vehicles used to transport migrant and seasonal agricultural workers (except day-haul operations) for distances of seventy five (75) miles or less. Vehicles used in day-haul operations and those used to transport workers for more than 75 miles are subject to Department of Transportation standards. Form WH-514 must be used for inspection of such vehicles.

If the farm labor contractor possesses a valid current State vehicle safety inspection sticker from the jurisdiction in which the vehicle is registered, the items listed below need not be checked. However, in the Remarks section, the farm labor contractor must identify the State where the inspection was performed, list the appropriate State vehicle safety inspection number and license tag number and then sign and date the form.

Vehicle: Serial or Motor No. _____ No. of Seats _____

Truck Tractor Semitrailer Full Trailer Bus Passenger Car Station Wagon Van

Registration No. _____ State _____ Make _____

Lighting Devices

- (1) Headlights
- (2) Stop Lights
- (3) Tail Lights
- (4) Back-up Lights
- (5) Turn Signals

Brakes

- (6) Service (Foot)
- (7) Parking Brake

Passenger Compartment

- (8) Windshield/Windows
- (9) Ventilation
- (10) Seats
- (11) Door-Handles/Latches

Emergency Equipment

- (12) Hazard Warning Lights

- (13) Tires
- (14) Side Mirrors
- (15) Steering
- (16) Horn

Parts and Accessory

- (17) Windshield Wipers
- (18) Rear Vision Mirrors
- (19) Fuel System
- (20) Exhaust System

Remarks: _____

Name of Shop (Garage) _____

Name of Person Making Inspection _____

Address where Inspection is Performed _____

Title _____

Telephone Number _____

Date of Inspection _____

Public Burden Statement

Public reporting burden for this collection of information is estimated to average 5 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Administrator, U.S. Department of Labor, Wage and Hour Division, Room S-3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number.

DO NOT SEND THE COMPLETED FORM TO THIS OFFICE

Form WH-514a
Rev. Oct 1998

MSPA

29 CFR 500.104 DOL VEHICLE SAFETY STANDARDS

External Lights:	Operable headlights, tail lights, stop lights and, if so equipped, back-up lights, turn signals, and hazard warning lights.
Brakes:	Operable and free of leaks.
Tires:	No cracks/defects in sidewall and tread depth at least 2/32 inch.
Steering:	Steering wheel and linkage properly adjusted and maintained.
Horn:	Operable air or electric horn.
Mirrors:	Must provide full vision to the sides and rear.
Windshield/ Windshield Wipers:	Windshields must have no cracks which obscure vision and no opaque obstructions. Windshield wipers must be operable in all weather conditions.
Fuel System:	Fuel lines and tank must be free of leaks and filling opening securely covered by a cap.
Exhaust System:	Must discharge carbon monoxide away from passenger compartment and be free of leaks.
Ventilation:	Windows must be operable to allow fresh air to occupants.
Safe Loading:	Loading must not exceed gross vehicle weight rating.
Seating:	Seat required for each passenger except that seating not required for vehicles used on trips of less than 10 miles which begin and end on the farm and transportation is primarily on farm roads.
Handles & Latches:	Door handles and latches operable to allow exiting for occupants.
Passenger Compartment:	Floor and sides of any part of the vehicle to be occupied by passenger must be free of openings or rusted areas which are likely to result in injury to passengers.

**Vehicle Mechanical Inspection Report for
Transportation Subject to Department of
Transportation Requirements**

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division



Name of Carrier _____	OMB No. 1215-0036 Expires: 08-31-2010
Address _____	State _____ ZIP Code _____

Important:

The Migrant and Seasonal Agricultural Worker Protection Act requires that farm labor contractors subject to this law who transport any migrant and seasonal agricultural workers for agricultural employment obtain from the U.S. Department of Labor a certificate of registration. Applicants for a certificate of registration must produce evidence that the vehicles they use for this purpose meet Department of Transportation requirements. Provided below is a list of major items which should be checked. On the reverse side of this form is a brief summary of the Department of Transportation standards for each of these items. A check () should be placed adjacent to each item which meets these minimum standards. In those instances where an item does not meet these standards, necessary repairs must be completed before the transportation of migrant and seasonal agricultural workers will be authorized. This form must be properly completed and signed, certifying that the vehicle meets Department of Transportation requirements.

If the farm labor contractor possesses a valid current State vehicle safety inspection sticker from the jurisdiction in which the vehicle is registered, the items listed below need not be checked. However, in the Remarks section, the farm labor contractor must identify the State where the inspection was performed, list the appropriate State vehicle safety inspection number and license tag number and then sign and date the form.

Vehicle: Serial or Motor No. _____ No. of Seats _____

Truck Tractor Semitrailer Full Trailer Bus Van

Registration No. _____ State _____ Make _____

Lighting Devices

- (1) Headlights
- (2) Stop Lights
- (3) Tail Lights
- (4) Clearance Lights
- (5) Side Markers
- (6) Reflectors
- (7) Turn Signals

Brakes

- (8) Service (Foot)
- (9) Parking Brake
- (10) Brake Tubing
- (11) Brake Hoses
- (12) Connections
- (13) Brake Warning Device on Vehicles With Air or Vacuum Brakes

Passenger Compartment

- (14) Protection From Weather
- (15) Floors
- (16) Sides
- (17) Seats
- (18) Exit
- (19) Gates/Doors
- (20) Emergency Exit

Emergency Equipment

- (21) Fire Extinguisher
- (22) Fuses
- (23) Flares, Reflectors, Lanterns
- (24) Simultaneous Flashing Turn Signals

- (25) Tires
- (26) Wiring
- (27) Steering
- (28) Horn

Parts and Accessories

- (29) Windshield Wipers
- (30) Rear Vision Mirrors
- (31) Fuel System
- (32) Exhaust System

Remarks:

Name of Shop (Garage) _____	Name of Person Making Inspection _____
Address where Inspection is Performed _____	Title _____
Telephone Number _____	Date of Inspection _____

Public Burden Statement

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DO NOT SEND THE COMPLETED FORM TO THIS OFFICE

Form WH-514
Rev. Oct 1998

1. Headlights - On the front, at least two headlamps, an equal number at each side, shall provide an upper and lower distribution of light selected at the driver's will.
2. Stoplights - On the rear, two stoplamps, one at each side; shall be actuated from application of the service brakes.
3. Taillights - On the rear, two taillamps, one at each side.
4. Clearance Lights - On the front, two amber clearance lamps, one at each side. Three amber identification lamps located at center. On rear, two red clearance lamps, one at each side. Three red identification lamps located in the center.
5. Side Markers - On each side, one amber side marker lamp at or near the front, one red side marker lamp at or near the rear.
6. Reflectors - On each side, one amber reflector located at or near the front and one red reflector at or near the rear. On the rear, two red reflectors, one on each side.
7. Turn Signals - on the front, two amber turn signals, one on each side; on the rear, two red turn signals, one on each side.
8. Service Brake (Foot) - Shall be equipped with one application valve, which, when applied, operates all service brakes. It shall be adequate to control the movement of, and to stop the vehicle.
9. Parking Brake - Must be capable of holding the vehicle under any condition of loading on any grade despite exhaustion of any source of energy or leakage of any kind.
10. and 11. Brake Tubing, Brake Hoses - Must be secured against chafing, kinking or other mechanical injury.
12. Connections - Must be free of leaks, constrictions or other devices.
13. Brake Warning Device - Equipped with either audible or visual warning signals to indicate any loss of air or lack of vacuum.
14. Protection from Weather - Be equipped with a top at least 80 inches high above the floor and facilities for enclosing side and ends of passenger-carrying compartment.
15. Floors - Substantially smooth floor, without protruding obstructions more than 2 inches high (except when necessary to secure seats or other devices to the floor) and void of cracks and holes.
16. Sides - At least 60 inches high by attachment of side boards to the permanent body construction if necessary.
17. Seats - A seat shall be provided for each worker transported, and must be securely attached to the vehicle; not less than 16 inches, nor more than 19 inches above the floor; at least 13 inches deep; equipped with back rests extending to a height of at least 36 inches above the floor, with at least 24 inches between seats.
18. Exit - Adequate means of ingress and egress shall be provided on the rear or at the right side.
19. Gates/Doors - Designed to close the means of ingress and egress and shall be equipped with at least one latch or other fastening device constructed so as to keep the gates or doors securely closed.
20. Emergency Exit - Vehicles with permanently affixed roofs shall be equipped with at least one emergency exit; shall be in addition to the exit provided above, and comply with the requirements of gates or doors.
21. Fire Extinguisher - At least one fire extinguisher of the following type, properly mounted - 1 1/2 quart carbon tetrachloride, 4 pounds dry chemical, 4 pounds carbon dioxide.
22. Fusee - At least one burning red fusee.
23. Flares, Reflectors, Lanterns - At least three flares, red electric lanterns, or red emergency reflectors.
24. Simultaneous Flashing Turn Signals - A switch must be provided that will cause the two front and two rear turn signals to flash simultaneously as a vehicular hazard traffic warning. This must be capable with the ignition of the vehicle turned on or off.
25. Tires - Shall have tread configuration on all parts of the tire which are in contact with the road surface. Cannot use regrooved, recapped, or retread tires on front wheels.
26. Wiring - Bare, loose, dangling, chafing, or poorly constructed wires prohibited.
27. Steering - All parts of steering mechanism, including wheel bearings, tie rods, king pins, and bushings, centered control assembly, drag link, springs, shackles, etc., shall be maintained in safe operating conditions.
28. Horn - Must be capable of giving adequate and reliable warning signal.
29. Windshield Wipers - At least two automatically operating blades, one on each side of the center line of the windshield.
30. Rear Vision Mirrors - Two required, one at each side firmly attached to the outside provided that only one shall be required which shall be at the driver's side on those vehicles so constructed that the driver has a view by the means of an interior mirror.
31. Fuel System - Cannot be located in or above passenger carrying portion. Shall be free of leaks, securely attached to the vehicle, and shall have a properly fitted plug cap to cover its filling opening. Cannot project beyond overall width of vehicle, nor shall it be located forward of the front axle of the power unit from which it is located.
32. Exhaust System - Shall discharge to the atmosphere at or within 6 inches forward of the rearmost part of the vehicle.

DOCTOR'S CERTIFICATE

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
OMB No. 1215-0036
Expires: 08/31/2010

This is to certify that I have this day examined:

(Name of Driver of Migrant Workers)

in accordance with Section 398.3(b) of the Federal Motor Carrier Safety Regulations of the Federal Highway Administration and that I find him:

_____ Qualified under said rules.

_____ Qualified only when wearing glasses.

I have kept on file in my office a completed examination.

_____ (Date)

_____ (Place)

_____ (Signature of examining doctor)

_____ (Address of doctor)

_____ (Signature of driver)

_____ (Address of driver)

Form WH-515 (Rev. 05/08)

GENERAL INSTRUCTIONS

Take this form to your doctor. Ask the doctor to read the following section, examine you, and fill in the certificate (located on the front of this form). After making a copy for your employer and yourself, submit the original with your Farm Labor Contractor or Farm Labor Contractor Employee application (Form WH-530).

You must carry your copy with you whenever you are driving workers subject to the Migrant and Seasonal Agricultural Worker Protection Act (MSPA).

TO THE DOCTOR

Regulations 29 C.F.R. § 500.104(b)(1)(ii)(I) and 49 C.F.R. § 398.3(b) provide for the following minimum qualifications for persons who drive any motor vehicle carrying migrant workers subject to the regulations:

- (A) No loss of foot, leg, hand or arm.
- (B) No mental, nervous, organic, or functional disease, likely to interfere with safe driving.
- (C) No loss of fingers, impairment of use of foot, leg, fingers, hand or arm, or other structural defect or limitation, likely to interfere with safe driving.
- (D) *Eyesight.* Visual acuity of at least 20/40 (Snellen) in each eye either without glasses or by correction with glasses; form field of vision in the horizontal meridian shall not be less than a total of 140 degrees; ability to distinguish colors red, green and yellow; drivers requiring correction by glasses shall wear properly prescribed glasses at all times when driving.
- (E) *Hearing.* Hearing shall not be less than 10/20 in the better ear, for conversational tones, without a hearing aid.
- (F) *Liquor, narcotics and drugs.* Shall not be addicted to the use of narcotics or habit-forming drugs, or the excessive use of alcoholic beverages or liquors.

INFORMATION AND USE

The MSPA and Federal Regulations require farm labor contractors and farm labor contractor employees to submit a doctor's certificate when they seek authorization to drive migrant/seasonal agricultural workers. Failure to submit this statement may result in driving authorization not to be authorized. The Wage and Hour Division of the U.S. Department of Labor uses this statement to verify that those who drive migrant/seasonal agricultural workers are physically fit to do so.

The MSPA and regulations require—subject to certain limited exemptions—any farm labor contractor, agricultural employer, or agricultural association (or their employees) providing transportation to migrant and seasonal agricultural workers to have a legible doctor's certificate (or copy thereof) on file at the principal place of business for every driver employed or used. In addition, the regulations provide for each driver to have the certificate (or copy thereof) in his or her possession while driving migrant or seasonal farm workers subject to the Act. Failure to carry the certificate, or a legible copy thereof, results in the driver not being authorized to transport migrant and seasonal agricultural workers at that time and may result in the assessment of a civil money penalty.

PUBLIC BURDEN STATEMENT

Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. We estimate that it will take an average of 20 minutes to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution AV, NW, Washington, D.C. 20210. **DO NOT SEND THE COMPLETED FORM TO THIS OFFICE; RETURN IT TO THE PATIENT.**

Fact Sheet #50: Transportation under the Migrant and Seasonal Agricultural Worker Protection Act

The Migrant and Seasonal Agricultural Worker Protection Act (MSPA), administered by the Wage and Hour Division of the U.S. Department of Labor (DOL), protects migrant and seasonal agricultural workers by establishing employment standards related to wages, housing, transportation, disclosures and recordkeeping. MSPA also requires farm labor contractors to register with the DOL. This Fact Sheet provides information concerning the transportation requirements of MSPA. Additional information about the other MSPA requirements can be found in the Wage and Hour Division Fact Sheet # 49.

MSPA Transportation Safety Standards

Under MSPA, any non-exempt person who uses, or causes to be used, a vehicle to transport migrant or seasonal agricultural workers must comply with the applicable vehicle safety standards. Under MSPA, the standards are either the DOL standards or the Department of Transportation (DOT) standards incorporated by DOL into the MSPA regulations. Which standard applies under MSPA depends on the type of vehicle and how the vehicle is to be used, as summarized in the chart below. The chart is an aid and is not a substitute for the regulatory language. Definitions of the terms follow the chart.

TYPE OF VEHICLE	TYPE OF USE & SAFETY STANDARD	
	75 miles or less*	More than 75 miles or Day Haul
Passenger automobile	500.104	500.104
Station Wagon	500.104	500.104
Van		
10 or fewer passengers	500.104	500.104
More than 10 passengers	500.104	500.105
“Windowless” cargo van	500.104	500.105**
Bus	500.104	500.105
Truck/Truck Tractor/Semi-trailer	500.104	500.105
Pick-up Truck		
Workers riding in cab	500.104	500.104

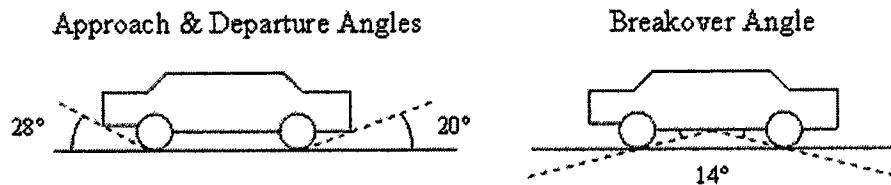
Workers riding in truck bed	500.104	500.105
Multipurpose Passenger Vehicle		
Not meeting truck features	500.104	500.104
Meeting truck features	500.104	500.105
Low Speed Vehicle	500.104	500.105
<p>*The mile limitation applies to the entire trip. One trip may have numerous intermediate stops and normally ends when the vehicle returns to its starting point.</p> <p>**Vans without windows or means to assure ventilation are not permitted.</p>		

WHD will use the following descriptions of vehicle types when enforcing the motor vehicle safety standards in the MSPA regulations. This information is largely based on USDOT regulations and guidance.

- **Passenger automobile**
a motor vehicle with motive power designed for carrying 10 persons or less (except a low-speed vehicle, a multipurpose passenger vehicle, a truck, a motorcycle, or a trailer). This includes a vehicle designated by the manufacturer as a station wagon.
- **Bus**
a motor vehicle with motive power, except a trailer, designed for carrying more than 10 persons.
- **Multipurpose passenger vehicle**
a motor vehicle with motive power, except a low-speed vehicle or trailer, designed to carry 10 persons or less which is constructed either on a truck chassis or with special features for occasional off-road operation (e.g. SUV). For MSPA enforcement purposes, a multipurpose passenger vehicle will be treated as a *passenger automobile* with the exception of those that meet the criteria of a *truck* (see below).
- **Pickup truck**
a *truck* (see below) whether extended cab, crew cab, etc. When transporting passengers *only* within the cab they will be treated as a *station wagon* as allowed in 29 CFR § 500.102(f).
- **Truck**
a motor vehicle with motive power, except a trailer, designed primarily for the transportation of property or special purpose equipment. This includes a *light truck*, which is an automobile (other than a passenger automobile) that meets the characteristics in either a) or b) below:
 - a) Designed to perform at least one of the following functions:
 - Transport more than 10 persons;
 - Provide temporary living quarters;
 - Transport property on an open bed;
 - Provide greater cargo-carrying than passenger-carrying volume; or
 - Permit expanded use of the automobile for cargo-carrying purposes or other nonpassenger-carrying purposes through the removal of seats by means installed for that purpose by the automobile's manufacturer or with simple tools, such as screwdrivers and wrenches, so as to create a flat, floor level surface extending from the forward most point of installation of those seats to the rear of the automobile's interior.
 - b) Designed for off-highway operation:

- (i) That has 4-wheel drive; or
- (ii) Is rated at more than 6,000 pounds gross vehicle weight; and
- That has at least four of the following characteristics calculated when the automobile is at curb weight, on a level surface, with the front wheels parallel to the automobile's longitudinal centerline, and the tires inflated to the manufacturer's recommended pressure:

- (i) Approach angle of not less than 28 degrees (see diagram below);
- (ii) Breakover angle of not less than 14 degrees (see diagram below);
- (iii) Departure angle of not less than 20 degrees (see diagram below);
- (iv) Running clearance of not less than 20 centimeters;
- (v) Front and rear axle clearances of not less than 18 centimeters each. (See 49 CFR §523.2 for further details.)



A *light truck* designed to transport more than 10 passengers that meets all the passenger compartment requirements in 29 CFR § 500.105(b)(3)(vi) and none of the other characteristics above as a “truck” will be treated as a “bus.”

- **Van**
a *light truck* (see (a)(5) under *truck* above). A van with windows along both sides of the passenger-carrying area which is designed to carry 10 persons or less will be treated as a *passenger automobile* or when designed to carry more than 10 persons will be treated as a “bus” as long it meets all of the passenger compartment requirements in 29 CFR § 500.105(b)(3)(vi) and no other “truck” characteristics other than passenger capacity. A van designed for carrying cargo, typically without windows along both sides of the passenger-carrying area, is a *truck*. This regulation specifically prohibits the use of closed vans without windows or means to assure ventilation.
- **Trailer**
a motor vehicle with or without motive power, designed for carrying persons or property and for being drawn by another motor vehicle.
- **Semi-trailer**
a trailer so constructed that a substantial part of its weight rests upon or is carried by another motor vehicle.
- **Truck tractor**
a truck designed primarily for drawing other motor vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and the load so drawn.
- **Low-speed vehicle**
a 4-wheeled motor vehicle, other than a truck, whose speed attainable in 1.6 km (1 mile) is more than 32 kilometers per hour (20 miles per hour) and not more than 40 kilometers per hour (25 miles per hour) on a paved level surface.

“Designed” as used in this fact sheet is restricted to actions taken by the original manufacturer of the vehicle. Where further guidance is needed beyond the above definitions, the manufacturer’s designation of the vehicle type can be determined by researching the specific vehicle identification number (VIN). Aftermarket

modifications or alterations are not a part of the vehicle design. The driver is included in the term “person” or “passenger” when determining seating capacity.

MSPA Drivers’ License Requirements

Under MSPA, any non-exempt person who uses or causes to be used a vehicle to transport any migrant or seasonal agricultural worker is required to ensure that each driver has a currently valid motor vehicle operator’s permit or license to operate the vehicle (as provided by applicable State law). If, for example, State law requires the driver to have a commercial drivers’ license (CDL) to operate a given vehicle, then the driver must have a valid CDL before driving the vehicle. In addition, each FLC and Farm Labor Contactor Employee (FLCE) who drives must have and carry a Doctor’s Certificate (WH-515).

MSPA Insurance Requirements

Any person subject to the Act who uses, or causes to be used, a vehicle to transport covered workers must ensure that the vehicle is properly insured against liability for damage to persons or property. The specific insurance requirements are found in the MSPA regulations. Generally, the owner or lessor of the vehicle will be responsible for providing the required insurance. Basically, there are three ways in which the insurance requirement may be met:

- **Option A**
Obtain vehicle liability insurance coverage in the amount of not less than \$100,000 for each seat in the vehicle (up to a maximum of \$5,000,000 for any one vehicle). The policy must be maintained in full force and effect at all times for transportation subject to the Act’s requirements.
- **Option B**
Obtain State Workers’ Compensation insurance coverage. The policy must be maintained in full force and effect at all times when transportation subject to the Act’s requirements occurs. If the vehicle is used for transportation not covered by the State Workers’ Compensation insurance policy, the person responsible for the transportation must also have vehicle liability insurance coverage (see Option A above) to protect the workers against injury or property loss. For those who choose this option, the person responsible for the transportation must also obtain a minimum of \$50,000 in property damage insurance coverage for loss or damage in any one accident to the property of others (excluding cargo) or evidence of a general liability insurance policy that provides the same protection.
- **Option C**
Obtain a liability bond from a U.S. Department of Treasury approved “surety,” assuring payment for any liability up to \$500,000 for damages to persons or property arising out of transportation of workers in connection with the business, activities or operations of the person doing the transporting. Any liability bond obtained pursuant to the requirements of the Act must be maintained in full force and effect for the entire period during which workers may be transported.

Are “Raiteros” Subject to MSPA?

Generally, the term “raitero” refers to a person (usually a fieldworker) who, for a fee, provides transportation for farm workers both to and from the work site. Generally, workers are charged a daily roundtrip fee with the specific amount usually contingent upon the distance traveled. If the amount charged each worker transported exceeds the actual cost of providing the transportation, the raitero will most likely meet the MSPA definition of a FLC (i.e., transporting MSPA covered workers for a fee). In such a case, the raitero should be registered with DOL as a FLC, and is responsible for complying with the registration, transportation safety, drivers’ licensing, and insurance requirements of the Act.

FLC Employees Who Operate Vehicles to Transport Workers

Employees of FLCs who recruit, solicit, hire, employ, furnish, or transport migrant or seasonal agricultural workers on behalf of their employer (the FLC), must be registered with the U.S. Department of Labor as an

Farm Labor Contractor Employee (FLCE) prior to engaging in any of those named activities. To lawfully drive a vehicle used to transport workers, the FLCE must obtain specific authorization to do so from the USDOL. In order to obtain the authorization, the FLC must submit documentation showing that the vehicle is safe and properly insured, and documentation must be submitted by the FLCE to establish that he or she holds a valid drivers' license to operate the vehicle in question.

MSPA Trailer Towing Requirements

Towing a trailer behind any vehicle (other than a truck subject to DOT standards) transporting MSPA workers is permitted only if it meets the applicable DOL or DOT safety standards. A truck subject to DOT standards while transporting MSPA workers may not tow a trailer.

A vehicle transporting MSPA workers and towing a trailer will be examined to insure that both the vehicle and towed trailer meet the applicable safety standards. Safety standards applicable to towed trailers include the following:

When subject to DOL standards:

- external lights 29 CFR § 500.104(a)
- brakes 29 CFR § 500.104(b)
- tires 29 CFR § 500.104(c)
- safe loading 29 CFR § 500.104(k)

When subject to DOT standards:

- equipment and emergency devices (including trailer brake connections and coupling devices) 29 CFR § 500.105(b)(2)(vi)
- safe loading 29 CFR § 500.105(b)(2)(vii)
- lighting devices and reflectors 29 CFR § 500.105(b)(2)(xi)
- parts and accessories (including lighting devices, brakes, and tires) 29 CFR § 500.105(b)(3)

Additional safety factors to consider include, but are not limited to, whether workers were transported in the trailer and the overall safe operation of the vehicle and trailer.

Factors to consider in determining that the vehicle and trailer have been safely loaded include, but are not limited to, whether the load has been balanced from side to side and cargo weight distributed evenly along the length of the trailer; whether items have been secured and braced to prevent them from moving during travel; and for most situations, whether the trailer and tow vehicle are level (parallel to the ground) during travel (information from the trailer manufacturer may be needed to make sure this is correct for this combination of vehicles). This guidance is based on materials provided by DOT's Federal Motor Carrier Safety Administration (FMCSA).

Some states and municipalities may have special requirements and DOT may have requirements applicable to vehicles under its jurisdiction that are towing trailers (e.g. some states require brakes on loaded trailers

weighing in excess of a set amount; special permits based on the size and weight of a trailer; or additional equipment such as side view mirrors). Vehicles subject to MSPA transportation safety requirements must meet other applicable Federal and State safety standards.

Vehicles towing trailers must also carry proper insurance coverage.

Exclusions from MSPA Transportation Requirements

The following types of transportation are not subject to the requirements of MSPA:

- Transportation on tractors, combines, harvesters, pickers, or other similar machinery and equipment if the worker is actually engaged in the planting, cultivating, or harvesting of any agricultural commodity or in the care of livestock or poultry; and
- Bona fide carpooling arrangements in which the FLC does not participate, including when: the workers make all of the arrangements themselves; the workers use one of the workers' own vehicles; and the workers are not specifically directed or requested by the employer to participate.
- Transportation if the only other occupants of the person's vehicle are members of his or her immediate family.

Penalties and Sanctions

Violators may be subject to payment of back wages; assessment of civil money penalties; and/or revocation of FLC registration. Violators may also be subject to enforcement through civil action in federal court and criminal prosecution in federal court.

Where to Obtain Additional Information

For more complete information regarding MSPA and related topics such as joint employment or the Fair Labor Standards Act's minimum wage, overtime, and youth employment provisions, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

To register as a farm labor contractor, contact either the nearest office of State Employment Services, listed in most telephone directories under State government, or the nearest office of the Wage and Hour Division, listed under U.S. Government, Labor Department.

The MSPA statute appears at 29 U.S.C. §1801 et seq. The federal regulations implementing MSPA appear in 29 CFR Part 500.

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USWAGE
TTY: 1-866-487-9243
Contact Us

VIII. Grower Obligations Regarding Registration of Farm Labor Contractors

A. No grower or packer subject to the law may utilize the services of a farm labor contractor to supply migrant or seasonal agricultural workers unless he first takes reasonable steps to determine that the contractor possesses a valid certificate of registration that authorizes the particular activity for which the contractor may be utilized. DOL is currently taking the position that agents who are not agricultural employer associations who interview prospective workers in connection with H-2A applications and who submit newspaper advertisements on behalf of their clients are engaging in farm labor contractor activities that require registration.

B. Several states have separate farm labor contractor registration requirements so that the grower must check to confirm federal registration compliance and compliance with one or more states where contractors will recruit workers or engage in other “farm labor contracting” activities. Where you (or your foremen) know or you would reasonably be expected to know that a crewleader with whom you are dealing is providing housing and/or transportation to his crew members, you must ascertain that he has the transportation and housing registration certificates for the particular vehicles and housing he is using. Under the law, he must have the valid certificate before he engages in any covered activity. This means his paper work should all be finished before he recruits workers and certainly before any crew member moves into housing owned or controlled by the crewleader or begins work.

IX. Enforcement

A. Criminal Sanctions

1. Any person who willfully and knowingly violates the Act or any regulation may be fined up to \$1,000 or sentenced to a prison term not to exceed one (1) year, or both. For any subsequent conviction, the defendant may be fined up to \$10,000 or sentenced to a prison term not to exceed three (3) years, or both.

2. A Farm Labor Contractor working without a certificate may be fined up to \$10,000 or sentenced to up to three (3) years in prison, or both.

B. Department of Labor Enforcement

1. The Secretary of Labor may petition a Federal District Court for a temporary or permanent injunction if the Secretary determines that the Act has been violated.

2. The Secretary of Labor may fine any person who commits a violation of the Act or regulations a penalty of up to \$1,000 for each violation after notice of penalty, opportunity for agency hearing, etc. Unless a hearing is requested within 30 days and otherwise pursuant to regulations, the Secretary of Labor's assessment is a final and unappealable order. If the ALJ hearing procedure is fully utilized, the person against whom a penalty has been ordered may obtain limited review by a Federal District Court by following applicable procedures.

C. Private Right of Action by Workers Represented by Legal Aid Attorney or Private Attorneys

1. Any person claiming violation of the Act or regulations by a farm labor contractor or agricultural employer or other person (including housing owner or person who controls housing) may file suit in Federal District Court. Upon a finding that the defendant violated the Act but there was no bodily injury or death, each plaintiff may be awarded actual damages or statutory damages of up to \$500 per violation. If the MSPA violation caused a death or bodily injury and there is worker compensation coverage and applicability, the employee may recover under the worker compensation law and sue for MSPA statutory damages and equitable relief. The amount of statutory liability for most violations is \$500 per violation; however, the Act permits up to \$10,000 for certain statutory violations of the transportation safety provisions of the Act. The legal description of the circumstances in which these higher limits apply is quite technical. The higher limits apply under certain circumstances, such as where the driver was known to be under the influence of alcohol or a controlled substance, where the injury was caused by repeat violation of a safety standard that a court or administrator had previously found was violated, and where the defendant willfully disabled or removed a required safety device or consciously failed to provide such a device. Additionally, the \$10,000 statutory damage provision applies where there has been an injury or death caused by a safety violation and the defendant was, at the time of the violation, an unregistered farm labor contractor, or the person who used the unregistered farm labor contractor did so without taking

reasonable steps to determine that the contractor possessed a valid certificate authorizing the performance of the activities that the contractor was requested or permitted to perform with the knowledge of such person.

The limit of liability in a class action that does not involve a \$10,000 statutory claim is that the Court may award no more than the lesser of up to \$500 per plaintiff per violation, or up to \$500,000 damages or other equitable relief. As to violations for which \$10,000 statutory penalties are available, multiple infractions of a single provision of the Act will constitute only one violation for purposes of determining the statutory damages available. A \$500,000 cap on class action damages applies, but this cap is on top of worker compensation remedies. The full judgment may be collected against any joint employer/defendant found liable.

D. Discrimination Prohibited

1. No person may intimidate, threaten, restrain, coerce, blacklist, discharge or in any manner discriminate against any migrant or seasonal worker because the worker has, with just cause, filed a complaint or testified about or exercised any right or protection under MSPA. A worker who is so discriminated against may obtain back pay, damages and other relief.

E. No Waiver of Rights Permitted

1. Agreements by employees purporting to waive or modify rights under the Act are void as contrary to public policy and pay and record-keeping requirements applicable to migrant and seasonal workers.

F. Conduct of Wage-Hour Division Investigation

1. While you may not interfere with a Wage-Hour investigation of your FLSA or MSPA compliance, you do not have to allow the investigator to interview workers on work time or even at your work place. You may also ask the investigator to return at a later, more convenient time for any record examination.

The information contained herein should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult an attorney concerning your own situation and any specific legal questions you may have.

September 9, 2008

Potential MSPA Violations Checklist

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division



Name and address of person investigated:

(Typed or stamped address of AO)

A review of your business operations subject to the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) disclosed the potential violations of the Act shown on this preliminary report. The investigation report of the Compliance Officer(s) will be reviewed to establish whether there were MSPA violations and what, if any, further action will be taken by the Wage and Hour Division.

If it is subsequently determined that civil money penalties are to be assessed against you for any or all of the MSPA violations disclosed, you will be advised by letter concerning specific violations involved and the civil money penalty amounts to be assessed. Persons who violate the provisions of MSPA are subject to both criminal and civil sanctions.

		MSPA Sections Violated			FLC	AE	AA	User	HP
		Migrant Workers	Both	Seasonal Workers					
Employment Conditions Disclosure	1. Failure to disclose employment conditions to workers	201(a)	201(g)	301(a), 301(f)					
	2. Failure to post MSPA poster at worksite	201(b)		301(b)					
	3. Misrepresenting employment conditions to workers	201(f)		301(e)					
Working arrangements	4. Breach of working arrangements with workers	202(c)		302(c)					
Recordkeeping	5. Failure to make/keep employer records	201(d)(1)		301(c)(1)					
	6. Failure to provide wage statement to workers	201(d)(2)		301(e)(2)					
	7. Failure to provide records to growers	201(e)		301(d)					
	8. Failure to maintain records provided by FLC	210(e)		301(d)					
Prompt payment	9. Failure to pay wages when due	202(a)		302(a)					
Worker purchases	10. Restricting workers' purchases of goods or services	202(b)		302(b)					
Housing standards	11. Failure to post housing conditions	201(c)		NA					
	12. Failure to ensure housing safety and health	203(a)and(b)		NA					
Transportation	13. Failure to provide safe transportation vehicles	401(b)(1)(A), 401(b)(2)(C)							
	14. Failure to ensure that each driver of a transportation vehicle has a valid license	401(b)(1)(B)							
	15. Failure to obtain prescribed insurance coverage for transportation vehicles	401(b)(1)(C)							
General Provisions									
Registration	16. Utilizing services of unregistered FLC	402							
Discrimination	17. Discriminating against worker who files complaint or testifies, etc.	505							
Investigative activity	18. Interfering with DOL official during investigation	512(c)							
Farm Labor Contractor Violations									
Registration	19. Failure to register	101(a)							
	20. Failure to register employee	101(b)							
	21. Failure to exhibit certificate	101(c)							
	22. Knowingly made misrepresentations in application	103(a)(1)							
	23. Failure to comply with any court judgement or final order of secretary	103(a)(4)							
	24. Was not the real party in interest	103(a)(2)							
	25. Transported workers without certificate authorization	101(a)							
	26. Failure to provide notice of change of permanent residence	105(2)(c)							
	27. Failure to provide notice of change of permanent residence	105(1)							
	28. Failure to apply to amend certificate to engage in another contracting activity, to use another vehicle or to use another real property site for housing	105(2)							
Illegal aliens	29. Engaged in illegal aliens	106							
Agreements with users	30. Failure to abide by agreements with employers and associations	404							

Compliance Officer(s)

Date

FLC Farm Labor Contractor
AE Agricultural Employer
AA Agricultural Association
User User
HP Housing Provided

Name and Title of Individual Receiving Form

Date

Migrant And Seasonal Agricultural Worker Protection Act Civil Money Penalty Report

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division



Control Number _____

Name		Registration Number (if farm labor contractor)					
<input type="checkbox"/> Farm Labor Contractor <input type="checkbox"/> Agricultural Association <input type="checkbox"/> Agricultural Employer <input type="checkbox"/> User <input type="checkbox"/> Housing Provider							
Permanent Address		Investigation Site					
Compliance Officer(s)	Date						
Worker Protections Violated Complete One Column Only		Penalty	Farm Labor Contractor	Agricultural Employer	Agricultural Association	User	Housing Provider
01 Fail to disclose conditions to workers		100					
02 Fail to post MSPA poster at worksite		50					
03 Misrepresenting conditions to workers		400					
04 Breach of working arrangements with workers		400					
05 Fail to make/keep employer records		400					
06 Fail to provide wage statement to workers		100					
07 Fail to provide records		100					
08 Fail to maintain records provided by FLC		200					
09 Fail to pay wages when due **		200**					
10 Restrict workers in purchase of goods or services		200					
11 Fail to post housing conditions		50					
12 Fail to ensure housing safety and health		***					
13 Fail to provide safe transport vehicles		400					
14 Fail to ensure driver has valid license		200					
15 Fail to obtain prescribed insurance coverage		1000					
16 Utilizing services of unregistered FLC*		1000 ea.*					
17 Discriminate against workers testifying, etc.		1000					
18 Interfering with DOL official during investigation		1000					
19 Fail to register*		1000*					
20 Fail to register employee*		300 ea.*					
21 Fail to exhibit certificate		50					
22 Knowingly made misrepresentation in application		500					
23 Fail to comply with court judgement or final order		500					
24 Was not the real party in interest		1000					
25 Transported workers without certificate of authorization		400					
26 Housed workers without certificate of authorization		400					
27 Fail to provide change of permanent residence		100					
28 Fail to apply to amend certificate		50					
29 Engaged illegal aliens***		400 ea.**					
30 Fail to abide by agreements with AgEr or AgAs		400					
TOTAL ASSESSED PENALTY		XXXXX					

If violation is for other than aggravated, willful or recurring, reduce penalty by 50%.

Section 500.143 of Regulations, part 500 provides standards under which the type of violation and other relevant factors may be considered in further adjusting the amount of the recommended assessment.

*If application was made prior to beginning this investigation, subtract 50%.

** Total may exceed \$1,000.

*** Up to \$1,000.

Form WH-518
Rev. August 1984

CHAPTER 20—MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION

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- 1802. Definitions.
- 1803. Applicability of chapter.

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§ 1801. Congressional statement of purpose

It is the purpose of this chapter to remove the restraints on commerce caused by activities detrimental to migrant and seasonal agricultural workers; to require farm labor contractors to register under this chapter; and to assure necessary protections for migrant and seasonal agricultural workers, agricultural associations, and agricultural employers. (Pub.L. 97-470, § 2, Jan. 14, 1983, 96 Stat. 2584.)

HISTORICAL AND STATUTORY NOTES

References in Text

This chapter, referred to in text, was in the original, "this Act", meaning Pub.L. 97-470, Jan. 14, 1983, 96 Stat. 2583, known as the Migrant and Seasonal Agricultural Worker Protection Act, which enacted this chapter and repealed chapter 52 (section 2041 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

Effective and Applicability Provisions

1983 Acts. Section 524 of Pub.L. 97-470 provided in part that: "The provisions of this Act [enacting this chapter and repealing chapter 52 (§ 2041 et seq.) of Title 7, Agriculture] shall take effect ninety days from the date of enactment [Jan. 14, 1983]."

Short Title

1983 Acts. Section 1 of Pub.L. 97-470 provided in part that this Act [enacting this chapter and repealing chapter 52 (§ 2041 et seq.) of Title 7, Agriculture] may be cited as the "Migrant and Seasonal Agricultural Worker Protection Act".

CODE OF FEDERAL REGULATIONS

General provisions and applicability, see 29 CFR § 500.0 et seq.

LIBRARY REFERENCES

American Digest System

Labor Relations ⇌ 1660-1661.

Corpus Juris Secundum

CJS Agriculture § 5, Migrant and Seasonal Agricultural Worker Protection Act.

§ 1802. Definitions

As used in this chapter—

(1) The term "agricultural association" means any nonprofit or cooperative association of farmers, growers, or ranchers, incorporated or qualified under applicable State law, which recruits, solicits, hires, employs, furnishes, or transports any migrant or seasonal agricultural worker.

(2) The term "agricultural employer" means any person who owns or operates a farm, ranch, pro-

Complete Annotation Materials, see Title 29 U.S.C.A.

cessing establishment, cannery, gin, packing shed or nursery, or who produces or conditions seed, and who either recruits, solicits, hires, employs, furnishes, or transports any migrant or seasonal agricultural worker.

(3) The term "agricultural employment" means employment in any service or activity included within the provisions of section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), or section 3121(g) of Title 26 and the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state.

(4) The term "day-haul operation" means the assembly of workers at a pick-up point waiting to be hired and employed, transportation of such workers to agricultural employment, and the return of such workers to a drop-off point on the same day.

(5) The term "employ" has the meaning given such term under section 3(g) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(g)) for the purposes of implementing the requirements of that Act [29 U.S.C.A. § 201 et seq.].

(6) The term "farm labor contracting activity" means recruiting, soliciting, hiring, employing, furnishing, or transporting any migrant or seasonal agricultural worker.

(7) The term "farm labor contractor" means any person, other than an agricultural employer, an agricultural association, or an employee of an agricultural employer or agricultural association, who, for any money or other valuable consideration paid or promised to be paid, performs any farm labor contracting activity.

(8)(A) Except as provided in subparagraph (B), the term "migrant agricultural worker" means an individual who is employed in agricultural employment of a seasonal or other temporary nature, and who is required to be absent overnight from his permanent place of residence.

(B) The term "migrant agricultural worker" does not include—

- (i) any immediate family member of an agricultural employer or a farm labor contractor; or
- (ii) any temporary nonimmigrant alien who is authorized to work in agricultural employment in the United States under sections 1101(a)(15)(H)(ii)(a) and 1184(c) of Title 8.

(9) The term "person" means any individual, partnership, association, joint stock company, trust, cooperative, or corporation.

(10)(A) Except as provided in subparagraph (B), the term "seasonal agricultural worker" means an individual who is employed in agricultural employ-

ment of a seasonal or other temporary nature and is not required to be absent overnight from his permanent place of residence—

(i) when employed on a farm or ranch performing field work related to planting, cultivating, or harvesting operations; or

(ii) when employed in canning, packing, ginning, seed conditioning or related research, or processing operations, and transported, or caused to be transported, to or from the place of employment by means of a day-haul operation.

(B) The term "seasonal agricultural worker" does not include—

(i) any migrant agricultural worker;

(ii) any immediate family member of an agricultural employer or a farm labor contractor; or

(iii) any temporary nonimmigrant alien who is authorized to work in agricultural employment in the United States under sections 1101(a)(15)(H)(ii)(a) and 1184(c) of Title 8.

(11) The term "Secretary" means the Secretary of Labor or the Secretary's authorized representative.

(12) The term "State" means any of the States of the United States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, and Guam.

(Pub.L. 97-470, § 3, Jan. 14, 1983, 96 Stat. 2584; Pub.L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub.L. 99-603, Title I, § 101(b)(1)(A), Nov. 6, 1986, 100 Stat. 3372.)

HISTORICAL AND STATUTORY NOTES

References in Text

This chapter, referred to in provision preceding par. (1), was in the original, "this Act", meaning Pub.L. 97-470, Jan. 14, 1983, 96 Stat. 2583, known as the Migrant and Seasonal Agricultural Worker Protection Act, which enacted this chapter and repealed chapter 52 (section 2041 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

That Act, referred to in par. (5), is Act June 25, 1938, c. 676, 52 Stat. 1060, as amended, known as the Fair Labor Standards Act of 1938, which is classified principally to chapter 8 (section 201 et seq.) of this title. For complete classification of this Act to the Code, see section 201 of this title and Tables.

Effective and Applicability Provisions

1986 Acts. Section 101(b)(2) of Pub.L. 99-603, as amended Pub.L. 100-525, § 2(a)(2), Oct. 24, 1988, 102 Stat. 2610, provided that: "The amendments made by paragraph (1) [amending this section and sections 1813 and 1851 of this title and repealing section 1816 of this title] shall apply to the employment, recruitment, referral, or utilization of the services of an individual occurring on or after the first day of the seventh month beginning after the date of the enactment of this Act [Nov. 6, 1986]; except that if the provisions of section 274A of the Immigration and Nationality Act [section

Complete Annotation Materials, see Title 29 U.S.C.A.

1324a of Title 8, Aliens and Nationality] are terminated as of a date under subsection (l) of such section, then such amendments shall no longer apply as of such date.”

1983 Acts. Section effective ninety days from Jan. 14, 1983, see section 524 of Pub.L. 97-470, set out as a note under section 1801 of this title.

LIBRARY REFERENCES

American Digest System

Labor Relations ⇨ 1661.

Corpus Juris Secundum

CJS Agriculture § 5, Migrant and Seasonal Agricultural Worker Protection Act.

CJS Aliens § 1677, Prohibited Acts.

§ 1803. Applicability of chapter

(a) The following persons are not subject to this chapter:

(1) **Family business exemption.**—Any individual who engages in a farm labor contracting activity on behalf of a farm, processing establishment, seed conditioning establishment, cannery, gin, packing shed, or nursery, which is owned or operated exclusively by such individual or an immediate family member of such individual, if such activities are performed only for such operation and exclusively by such individual or an immediate family member, but without regard to whether such individual has incorporated or otherwise organized for business purposes.

(2) **Small business exemption.**—Any person, other than a farm labor contractor, for whom the man-days exemption for agricultural labor provided under section 13(a)(6)(A) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(6)(A)) is applicable.

(3) **Other exemptions.**—(A) Any common carrier which would be a farm labor contractor solely because the carrier is engaged in the farm labor contracting activity of transporting any migrant or seasonal agricultural worker.

(B) Any labor organization, as defined in section 2(5) of the Labor Management Relations Act (29 U.S.C. 152(5)) (without regard to the exclusion of agricultural employees in that Act [29 U.S.C.A. § 141 et seq.]) or as defined under applicable State labor relations law.

(C) Any nonprofit charitable organization or public or private nonprofit educational institution.

(D) Any person who engages in any farm labor contracting activity solely within a twenty-five mile intrastate radius of such person's permanent place of residence and for not more than thirteen weeks per year.

(E) Any custom combine, hay harvesting, or sheep shearing operation.

(F) Any custom poultry harvesting, breeding, de-beaking, desexing, or health service operation provided the employees of the operation are not regularly required to be away from their permanent place of residence other than during their normal working hours.

(G)(i) Any person whose principal occupation or business is not agricultural employment, when supplying full-time students or other individuals whose principal occupation is not agricultural employment to detassel, rogue, or otherwise engage in the production of seed and to engage in related and incidental agricultural employment, unless such full-time students or other individuals are required to be away from their permanent place of residence overnight or there are individuals under eighteen years of age who are providing transportation on behalf of such person.

(ii) Any person to the extent he is supplied with students or other individuals for agricultural employment in accordance with clause (i) of this subparagraph by a person who is exempt under such clause.

(H)(i) Any person whose principal occupation or business is not agricultural employment, when supplying full-time students or other individuals whose principal occupation is not agricultural employment to string or harvest shade grown tobacco and to engage in related and incidental agricultural employment, unless there are individuals under eighteen years of age who are providing transportation on behalf of such person.

(ii) Any person to the extent he is supplied with students or other individuals for agricultural employment in accordance with clause (i) of this subparagraph by a person who is exempt under such clause.

(I) Any employee of any person described in subparagraphs (A) through (H) when performing farm labor contracting activities exclusively for such person.

(b) Subchapter I of this chapter does not apply to any agricultural employer or agricultural association or to any employee of such an employer or association. (Pub.L. 97-470, § 4, Jan. 14, 1983, 96 Stat. 2585.)

HISTORICAL AND STATUTORY NOTES

References in Text

This chapter, referred to in subsec. (a), was in the original, “this Act”, meaning Pub.L. 97-470, Jan. 14, 1983, 96 Stat. 2583, known as the Migrant and Seasonal Agricultural Worker Protection Act, which enacted this chapter and repealed chapter 52 (section 2041 et seq.) of Title 7, Agriculture. For

complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

That Act, referred to in subsec. (a)(3)(B), is Act June 23, 1947, c. 120, 61 Stat. 136, as amended, known as the Labor Management Relations Act, 1947, which is classified principally to chapter 7 (section 141 et seq.) of this title. For complete classification of this Act to the Code, see section 141 of this title and Tables.

Effective and Applicability Provisions

1983 Acts. Section effective ninety days from Jan. 14, 1983, see section 524 of Pub.L. 97-470, set out as a note under section 1801 of this title.

LIBRARY REFERENCES

American Digest System

Labor Relations ⇌ 1661.

Corpus Juris Secundum

CJS Agriculture § 5, Migrant and Seasonal Agricultural Worker Protection Act.

SUBCHAPTER I—FARM LABOR CONTRACTORS

§ 1811. Certificate of registration required

(a) Persons engaged in any farm labor contracting activity

No person shall engage in any farm labor contracting activity, unless such person has a certificate of registration from the Secretary specifying which farm labor contracting activities such person is authorized to perform.

(b) Hire, employ, or use of any individual to perform farm labor contracting activities by farm labor contractor; liability of farm labor contractor for violations

A farm labor contractor shall not hire, employ, or use any individual to perform farm labor contracting activities unless such individual has a certificate of registration, or a certificate of registration as an employee of the farm labor contractor employer, which authorizes the activity for which such individual is hired, employed, or used. The farm labor contractor shall be held responsible for violations of this chapter or any regulation under this chapter by any employee regardless of whether the employee possesses a certificate of registration based on the contractor's certificate of registration.

(c) Possession and exhibition of certificate

Each registered farm labor contractor and registered farm labor contractor employee shall carry at all times while engaging in farm labor contracting activities a certificate of registration and, upon request, shall exhibit that certificate to all persons with whom they intend to deal as a farm labor contractor or farm labor contractor employee.

(d) Refusal or failure to produce certificate

The facilities and the services authorized by the Act of June 6, 1933 (29 U.S.C. 49 et seq.), known as the Wagner-Peyser Act, shall be denied to any farm labor contractor upon refusal or failure to produce, when asked, a certificate of registration.

(Pub.L. 97-470, Title I, § 101, Jan. 14, 1983, 96 Stat. 2587.)

HISTORICAL AND STATUTORY NOTES

References in Text

This chapter, referred to in subsec. (b), was in the original, "this Act", meaning Pub.L. 97-470, Jan. 14, 1983, 96 Stat. 2583, known as the Migrant and Seasonal Agricultural Worker Protection Act, which enacted this chapter and repealed chapter 52 (section 2041 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

The Wagner-Peyser Act, referred to in subsec. (d), is Act June 6, 1933, c. 49, 48 Stat. 113, as amended, which is classified principally to chapter 4B (section 49 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 49 of this title and Tables.

Effective and Applicability Provisions

1983 Acts. Section effective ninety days from Jan. 14, 1983, see section 524 of Pub.L. 97-470, set out as a note under section 1801 of this title.

CODE OF FEDERAL REGULATIONS

Registration of farm labor contractors, obligations, see 29 CFR § 500.40 et seq.

LIBRARY REFERENCES

American Digest System

Labor Relations ⇌ 1674.

Corpus Juris Secundum

CJS Agriculture § 5, Migrant and Seasonal Agricultural Worker Protection Act.

§ 1812. Issuance of certificate of registration

The Secretary, after appropriate investigation and approval, shall issue a certificate of registration (including a certificate of registration as an employee of a farm labor contractor) to any person who has filed with the Secretary a written application containing the following:

(1) a declaration, subscribed and sworn to by the applicant, stating the applicant's permanent place of residence, the farm labor contracting activities for which the certificate is requested, and such other relevant information as the Secretary may require;

(2) a statement identifying each vehicle to be used to transport any migrant or seasonal agricultural worker and, if the vehicle is or will be owned or controlled by the applicant, documentation showing that the applicant is in compliance with the

requirements of section 1841 of this title with respect to each such vehicle;

(3) a statement identifying each facility or real property to be used to house any migrant agricultural worker and, if the facility or real property is or will be owned or controlled by the applicant, documentation showing that the applicant is in compliance with section 1823 of this title with respect to each such facility or real property;

(4) a set of fingerprints of the applicant; and

(5) a declaration, subscribed and sworn to by the applicant, consenting to the designation by a court of the Secretary as an agent available to accept service of summons in any action against the applicant, if the applicant has left the jurisdiction in which the action is commenced or otherwise has become unavailable to accept service.

(Pub.L. 97-470, Title I, § 102, Jan. 14, 1983, 96 Stat. 2587.)

HISTORICAL AND STATUTORY NOTES

Effective and Applicability Provisions

1983 Acts. Section effective ninety days from Jan. 14, 1983, see section 524 of Pub.L. 97-470, set out as a note under section 1801 of this title.

CODE OF FEDERAL REGULATIONS

Registration of farm labor contractors, obligations, see 29 CFR § 500.40 et seq.

LIBRARY REFERENCES

American Digest System

Labor Relations ⇨ 1674.

§ 1813. Registration determinations

(a) Grounds for refusal to issue or renew, suspension, or revocation of certificate

In accordance with regulations, the Secretary may refuse to issue or renew, or may suspend or revoke, a certificate of registration (including a certificate of registration as an employee of a farm labor contractor) if the applicant or holder—

(1) has knowingly made any misrepresentation in the application for such certificate;

(2) is not the real party in interest in the application or certificate of registration and the real party in interest is a person who has been refused issuance or renewal of a certificate, has had a certificate suspended or revoked, or does not qualify under this section for a certificate;

(3) has failed to comply with this chapter or any regulation under this chapter;

(4) has failed—

(A) to pay any court judgment obtained by the Secretary or any other person under this chapter or any regulation under this chapter or under the

Farm Labor Contractor Registration Act of 1963 [7 U.S.C.A. § 2041 et seq.] or any regulation under such Act, or

(B) to comply with any final order issued by the Secretary as a result of a violation of this chapter or any regulation under this chapter or a violation of the Farm Labor Contractor Registration Act of 1963 or any regulation under such Act;

(5) has been convicted within the preceding five years—

(A) of any crime under State or Federal law relating to gambling, or to the sale, distribution or possession of alcoholic beverages, in connection with or incident to any farm labor contracting activities; or

(B) of any felony under State or Federal law involving robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury, prostitution, peonage, or smuggling or harboring individuals who have entered the United States illegally; or

(6) has been found to have violated paragraph (1) or (2) of section 1324a(a) of Title 8.

(b) Administrative review procedures applicable

(1) The person who is refused the issuance or renewal of a certificate or whose certificate is suspended or revoked under subsection (a) of this section shall be afforded an opportunity for agency hearing, upon request made within thirty days after the date of issuance of the notice of the refusal, suspension, or revocation. In such hearing, all issues shall be determined on the record pursuant to section 554 of Title 5. If no hearing is requested as herein provided, the refusal, suspension, or revocation shall constitute a final and unappealable order.

(2) If a hearing is requested, the initial agency decision shall be made by an administrative law judge, and such decision shall become the final order unless the Secretary modifies or vacates the decision. Notice of intent to modify or vacate the decision of the administrative law judge shall be issued to the parties within thirty days after the decision of the administrative law judge. A final order which takes effect under this paragraph shall be subject to review only as provided under subsection (c) of this section.

(c) Judicial review procedures applicable

Any person against whom an order has been entered after an agency hearing under this section may obtain review by the United States district court for any district in which he is located or the United States District Court for the District of Columbia by filing a notice of appeal in such court within thirty days from the date of such order, and simultaneously sending a copy of such notice by registered mail to the Secre-

Complete Annotation Materials; see Title 29 U.S.C.A.

tary. The Secretary shall promptly certify and file in such court the record upon which the order was based. The findings of the Secretary shall be set aside only if found to be unsupported by substantial evidence as provided by section 706(2)(E) of Title 5. Any final decision, order, or judgment of such District Court concerning such review shall be subject to appeal as provided in chapter 83 of Title 28.

(Pub.L. 97-470, Title I, § 103, Jan. 14, 1983, 96 Stat. 2583; Pub.L. 99-603, Title I, § 101(b)(1)(B), Nov. 6, 1986, 100 Stat. 3372.)

HISTORICAL AND STATUTORY NOTES

References in Text

This chapter, referred to in subsec. (a)(3) and (4), was in the original, "this Act", meaning Pub.L. 97-470, Jan. 14, 1983, 96 Stat. 2583, known as the Migrant and Seasonal Agricultural Worker Protection Act, which enacted this chapter and repealed chapter 52 (section 2041 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

The Farm Labor Contractor Registration Act of 1963 and such Act, referred to in subsec. (a)(4), is Pub.L. 88-582, Sept. 7, 1964, 78 Stat. 920, as amended, which was classified generally to chapter 52 (section 2041 et seq.) of Title 7, Agriculture, and was repealed by Pub.L. 97-470, Title V, § 523, Jan. 14, 1983, 96 Stat. 2600. See section 1801 et seq. of this title.

Effective and Applicability Provisions

1986 Acts. Amendment by Pub.L. 99-603 applicable to the employment, recruitment, referral, or utilization of the services of individuals occurring on or after the first day of the seventh month beginning after Nov. 6, 1986, except that if section 1324a of Title 8, Aliens and Nationality, is terminated as of a date under section 1324a(l) of Title 8, then amendments by Pub.L. 99-603, § 101(b)(1), no longer to apply as of such date, see section 101(b)(2) of Pub.L. 99-603, set as a note under section 1802 of this title.

1983 Acts. Section effective ninety days from Jan. 14, 1983, see section 524 of Pub.L. 97-470, set out as a note under section 1801 of this title.

CODE OF FEDERAL REGULATIONS

Labor certification, permanent employment of aliens, see 20 CFR § 656.1 et seq.

Registration requirements, see 29 CFR § 500.40 et seq.

LIBRARY REFERENCES

American Digest System

Labor Relations ⇌ 1674.

§ 1814. Transfer or assignment; expiration; renewal

(a) Transfer or assignment prohibited

A certificate of registration may not be transferred or assigned.

(b) Expiration; renewals

(1) Unless earlier suspended or revoked, a certificate shall expire twelve months from the date of issuance, except that (A) certificates issued under this chapter during the period beginning December 1, 1982, and ending November 30, 1983, may be issued for a period of up to twenty-four months for the purpose of an orderly transition to registration under this chapter, (B) a certificate may be temporarily extended by the filing of an application with the Secretary at least thirty days prior to its expiration date, and (C) the Secretary may renew a certificate for additional twelve-month periods or for periods in excess of twelve months but not in excess of twenty-four months.

(2) Eligibility for renewals for periods of more than twelve months shall be limited to farm labor contractors who have not been cited for a violation of this chapter, or any regulation under this chapter, or the Farm Labor Contractor Registration Act of 1963 [7 U.S.C.A. § 2041 et seq.], or any regulation under such Act, during the preceding five years.

(Pub.L. 97-470, Title I, § 104, Jan. 14, 1983, 96 Stat. 2589.)

HISTORICAL AND STATUTORY NOTES

References in Text

This chapter, referred to in subsec. (b), was in the original, "this Act", meaning Pub.L. 97-470, Jan. 14, 1983, 96 Stat. 2583, known as the Migrant and Seasonal Agricultural Worker Protection Act, which enacted this chapter and repealed chapter 52 (section 2041 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

The Farm Labor Contractor Registration Act of 1963 and such Act, referred to in subsec. (b)(2), is Pub.L. 88-582, Sept. 7, 1964, 78 Stat. 920, as amended, which was classified generally to chapter 52 (section 2041 et seq.) of Title 7, Agriculture, was repealed by Pub.L. 97-470, Title V, § 523, Jan. 14, 1983, 96 Stat. 2600. See section 1801 et seq. of this title.

Effective and Applicability Provisions

1983 Acts. Section effective ninety days from Jan. 14, 1983, see section 524 of Pub.L. 97-470, set out as a note under section 1801 of this title.

CODE OF FEDERAL REGULATIONS

Registration of farm labor contractors, obligations, see 29 CFR § 500.40 et seq.

LIBRARY REFERENCES

American Digest System

Labor Relations ⇌ 1674.

§ 1815. Notice of address change; amendment of certificate of registration

During the period for which the certificate of registration is in effect, each farm labor contractor shall—

(1) provide to the Secretary within thirty days a notice of each change of permanent place of residence; and

(2) apply to the Secretary to amend the certificate of registration whenever the farm labor contractor intends to—

(A) engage in another farm labor contracting activity,

(B) use, or cause to be used, another vehicle than that covered by the certificate to transport any migrant or seasonal agricultural worker, or

(C) use, or cause to be used, another real property or facility to house any migrant agricultural worker than that covered by the certificate.

(Pub.L. 97-470, Title I, § 105, Jan. 14, 1983, 96 Stat. 2589.)

HISTORICAL AND STATUTORY NOTES

Effective and Applicability Provisions

1983 Acts. Section effective ninety days from Jan. 14, 1983, see section 524 of Pub.L. 97-470, set out as a note under section 1801 of this title.

CODE OF FEDERAL REGULATIONS

Registration of farm labor contractors, obligations, see 29 CFR § 500.40 et seq.

§ 1816. Repealed. Pub.L. 99-603, Title I, § 101(b)(1)(C), Nov. 6, 1986, 100 Stat. 3372

HISTORICAL AND STATUTORY NOTES

Section, Pub.L. 97-470, Title I, § 106, Jan. 14, 1983, 96 Stat. 2589, prohibited the employment of illegal aliens by farm labor contractors. See section 1324a of Title 8, Aliens and Nationality.

Effective Date of Repeal

Repeal applicable to the employment, recruitment, referral, or utilization of the services of individuals occurring on or after the first day of the seventh month beginning after Nov. 6, 1986, except that if section 1324a of Title 8, Aliens and Nationality, is terminated as of a date under section 1324a(l) of Title 8, then amendments by Pub.L. 99-603, § 101(b)(1), no longer to apply as of such date, see section 101(b)(2) of Pub.L. 99-603, set as a note under section 1802 of this title.

SUBCHAPTER II—MIGRANT AGRICULTURAL WORKER PROTECTIONS

§ 1821. Information and recordkeeping requirements

(a) **Written disclosure requirements imposed upon recruiters**

Each farm labor contractor, agricultural employer, and agricultural association which recruits any migrant agricultural worker shall ascertain and disclose in writing to each such worker who is recruited for

employment the following information at the time of the worker's recruitment:

(1) the place of employment;

(2) the wage rates to be paid;

(3) the crops and kinds of activities on which the worker may be employed;

(4) the period of employment;

(5) the transportation, housing, and any other employee benefit to be provided, if any, and any costs to be charged for each of them;

(6) the existence of any strike or other concerted work stoppage, slowdown, or interruption of operations by employees at the place of employment;

(7) the existence of any arrangements with any owner or agent of any establishment in the area of employment under which the farm labor contractor, the agricultural employer, or the agricultural association is to receive a commission or any other benefit resulting from any sales by such establishment to the workers; and

(8) whether State workers' compensation insurance is provided, and, if so, the name of the State workers' compensation insurance carrier, the name of the policyholder of such insurance, the name and the telephone number of each person who must be notified of an injury or death, and the time period within which such notice must be given.

Compliance with the disclosure requirement of paragraph (8) for a migrant agricultural worker may be met if such worker is given a photocopy of any notice regarding workers' compensation insurance required by law of the State in which such worker is employed. Such worker shall be given such disclosure regarding workers' compensation at the time of recruitment or if sufficient information is unavailable at that time, at the earliest practicable time but in no event later than the commencement of work.

(b) **Posting requirements imposed upon employers**

Each farm labor contractor, agricultural employer, and agricultural association which employs any migrant agricultural worker shall, at the place of employment, post in a conspicuous place a poster provided by the Secretary setting forth the rights and protections afforded such workers under this chapter, including the right of a migrant agricultural worker to have, upon request, a written statement provided by the farm labor contractor, agricultural employer, or agricultural association, of the information described in subsection (a) of this section. Such employer shall provide upon request, a written statement of the information described in subsection (a) of this section.

Complete Annotation Materials, see Title 29 U.S.C.A.

(c) Posting or notice requirements imposed upon housing providers

Each farm labor contractor, agricultural employer, and agricultural association which provides housing for any migrant agricultural worker shall post in a conspicuous place or present to such worker a statement of the terms and conditions, if any, of occupancy of such housing.

(d) Recordkeeping and information requirements imposed upon employers

Each farm labor contractor, agricultural employer, and agricultural association which employs any migrant agricultural worker shall—

(1) with respect to each such worker, make, keep, and preserve records for three years of the following information:

- (A) the basis on which wages are paid;
- (B) the number of piecework units earned, if paid on a piecework basis;
- (C) the number of hours worked;
- (D) the total pay period earnings;
- (E) the specific sums withheld and the purpose of each sum withheld; and
- (F) the net pay; and

(2) provide to each such worker for each pay period, an itemized written statement of the information required by paragraph (1) of this subsection.

(e) Furnishing of records by farm labor contractor; maintenance of records by recipient

Each farm labor contractor shall provide to any other farm labor contractor, and to any agricultural employer and agricultural association to which such farm labor contractor has furnished migrant agricultural workers, copies of all records with respect to each such worker which such farm labor contractor is required to retain by subsection (d)(1) of this section. The recipient of such records shall keep them for a period of three years from the end of the period of employment.

(f) Prohibition on knowingly providing false or misleading information to workers

No farm labor contractor, agricultural employer, or agricultural association shall knowingly provide false or misleading information to any migrant agricultural worker concerning the terms, conditions, or existence of agricultural employment required to be disclosed by subsection (a), (b), (c), or (d) of this section.

(g) Form and language requirements

The information required to be disclosed by subsections (a) through (c) of this section to migrant agricultural workers shall be provided in written form. Such information shall be provided in English or, as necessary and reasonable, in Spanish or other language common to migrant agricultural workers who are not fluent or literate in English. The Department of Labor shall make forms available in English, Spanish,

and other languages, as necessary, which may be used in providing workers with information required under this section.

(Pub.L. 97-470, Title II, § 201, Jan. 14, 1983, 96 Stat. 2590; Pub.L. 104-49, § 4(a), Nov. 15, 1995, 109 Stat. 434.)

HISTORICAL AND STATUTORY NOTES**References in Text**

This chapter, referred to in subsec. (b), was in the original, "this Act", meaning Pub.L. 97-470, Jan. 14, 1983, 96 Stat. 2583, known as the Migrant and Seasonal Agricultural Worker Protection Act, which enacted this chapter and repealed chapter 52 (section 2041 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

Effective and Applicability Provisions

1995 Acts. Section 4(c) of Pub.L. 104-49 provided that: "The amendments made by subsections (a) and (b) [amending this section and section 1831 of this title] shall take effect upon the expiration of 90 days after the date final regulations are issued by the Secretary of Labor to implement such amendments."

[Final regulations implementing the amendments made by section 4(a) and (b) of Pub.L. 104-49 were issued on May 16, 1996, see 61 FR 24858.]

1983 Acts. Section effective ninety days from Jan. 14, 1983, see section 524 of Pub.L. 97-470, set out as a note under section 1801 of this title.

LIBRARY REFERENCES**American Digest System**

Labor Relations ⇐ 1673.

Corpus Juris Secundum

CJS Agriculture § 5, Migrant and Seasonal Agricultural Worker Protection Act.

§ 1822. Wages, supplies, and other working arrangements**(a) Payment of wages**

Each farm labor contractor, agricultural employer, and agricultural association which employs any migrant agricultural worker shall pay the wages owed to such worker when due.

(b) Purchase of goods or services by worker

No farm labor contractor, agricultural employer, or agricultural association shall require any migrant agricultural worker to purchase any goods or services solely from such farm labor contractor, agricultural employer, or agricultural association.

(c) Violation of terms of working arrangement

No farm labor contractor, agricultural employer, or agricultural association shall, without justification, violate the terms of any working arrangement made by that contractor, employer, or association with any migrant agricultural worker.

(Pub.L. 97-470, Title II, § 202, Jan. 14, 1983, 96 Stat. 2591.)

HISTORICAL AND STATUTORY NOTES

Effective and Applicability Provisions

1983 Acts. Section effective ninety days from Jan. 14, 1983, see section 524 of Pub.L. 97-470, set out as a note under section 1801 of this title.

CODE OF FEDERAL REGULATIONS

Temporary agricultural workers, contractual obligations, see 29 CFR § 501.0 et seq.

LIBRARY REFERENCES

Corpus Juris Secundum

CJS Agriculture § 5, Migrant and Seasonal Agricultural Worker Protection Act.

§ 1823. Safety and health of housing

(a) Compliance with substantive Federal and State safety and health standards

Except as provided in subsection (c) of this section, each person who owns or controls a facility or real property which is used as housing for migrant agricultural workers shall be responsible for ensuring that the facility or real property complies with substantive Federal and State safety and health standards applicable to that housing.

(b) Certification that applicable safety and health standards met; posting of certificate of occupancy; retention of certificate and availability for inspection and review; occupancy prior to inspection

(1) Except as provided in subsection (c) of this section and paragraph (2) of this subsection, no facility or real property may be occupied by any migrant agricultural worker unless either a State or local health authority or other appropriate agency has certified that the facility or property meets applicable safety and health standards. No person who owns or controls any such facility or property shall permit it to be occupied by any migrant agricultural worker unless a copy of the certification of occupancy is posted at the site. The receipt and posting of a certificate of occupancy does not relieve any person of responsibilities under subsection (a) of this section. Each such person shall retain the original certification for three years and shall make it available for inspection and review in accordance with section 1862 of this title.

(2) Notwithstanding paragraph (1) of this subsection, if a request for the inspection of a facility or real property is made to the appropriate State or local agency at least forty-five days prior to the date on which it is occupied by migrant agricultural workers and such agency has not conducted an inspection by such date, the facility or property may be so occupied.

(c) Applicability to providers of housing on a commercial basis to the general public

This section does not apply to any person who, in the ordinary course of that person's business, regularly provides housing on a commercial basis to the general public and who provides housing to migrant agricultural workers of the same character and on the same or comparable terms and conditions as is provided to the general public.

(Pub.L. 97-470, Title II, § 203, Jan. 14, 1983, 96 Stat. 2591.)

HISTORICAL AND STATUTORY NOTES

Effective and Applicability Provisions

1983 Acts. Section effective ninety days from Jan. 14, 1983, see section 524 of Pub.L. 97-470, set out as a note under section 1801 of this title.

LIBRARY REFERENCES

American Digest System

Labor Relations ⇌ 1675.

Corpus Juris Secundum

CJS Agriculture § 5, Migrant and Seasonal Agricultural Worker Protection Act.

SUBCHAPTER III—SEASONAL AGRICULTURAL WORKER PROTECTIONS

§ 1831. Information and recordkeeping requirements

(a) Written disclosure requirements imposed upon recruiters

(1) Each farm labor contractor, agricultural employer, and agricultural association which recruits any seasonal agricultural worker (other than day-haul workers described in section 1802(10)(A)(ii) of this title) shall ascertain and, upon request, disclose in writing the following information when an offer of employment is made to such worker:

(A) the place of employment;

(B) the wage rates to be paid;

(C) the crops and kinds of activities on which the worker may be employed;

(D) the period of employment;

(E) the transportation and any other employee benefit to be provided, if any, and any costs to be charged for each of them;

(F) the existence of any strike or other concerted work stoppage, slowdown, or interruption of operations by employees at the place of employment;

(G) the existence of any arrangements with any owner or agent of any establishment in the area of employment under which the farm labor contractor, the agricultural employer, or the agricultural association is to receive a commission or any other benefit

Complete Annotation Materials, see Title 29 U.S.C.A.

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resulting from any sales by such establishment to the workers; and

(H) whether State workers' compensation insurance is provided, and, if so, the name of the State workers' compensation insurance carrier, the name of the policyholder of such insurance, the name and the telephone number of each person who must be notified of an injury or death, and the time period within which such notice must be given.

Compliance with the disclosure requirement of subparagraph (H) may be met if such worker is given, upon request, a photocopy of any notice regarding workers' compensation insurance required by law of the State in which such worker is employed.

(2) Each farm labor contractor, agricultural employer, and agricultural association which recruits seasonal agricultural workers through use of a day-haul operation described in section 1802(10)(A)(ii) of this title shall ascertain and disclose in writing to the worker at the place of recruitment the information described in paragraph (1).

(b) Posting requirements imposed upon employers

Each farm labor contractor, agricultural employer, and agricultural association which employs any seasonal agricultural worker shall, at the place of employment, post in a conspicuous place a poster provided by the Secretary setting forth the rights and protections afforded such workers under this chapter, including the right of a seasonal agricultural worker to have, upon request, a written statement provided by the farm labor contractor, agricultural employer, or agricultural association, of the information described in subsection (a) of this section. Such employer shall provide, upon request, a written statement of the information described in subsection (a) of this section.

(c) Recordkeeping and information requirements imposed upon employers

Each farm labor contractor, agricultural employer, and agricultural association which employs any seasonal agricultural worker shall—

(1) with respect to each such worker, make, keep, and preserve records for three years of the following information:

- (A) the basis on which wages are paid;
- (B) the number of piecework units earned, if paid on a piecework basis;
- (C) the number of hours worked;
- (D) the total pay period earnings;
- (E) the specific sums withheld and the purpose of each sum withheld; and
- (F) the net pay; and

(2) provide to each such worker for each pay period, an itemized written statement of the information required by paragraph (1) of this subsection.

(d) Furnishing of records by farm labor contractor; maintenance of records by recipient

(1)¹ Each farm labor contractor shall provide to any other farm labor contractor and to any agricultural employer and agricultural association to which such farm labor contractor has furnished seasonal agricultural workers, copies of all records with respect to each such worker which such farm labor contractor is required to retain by subsection (c)(1) of this section. The recipient of these records shall keep them for a period of three years from the end of the period of employment.

(e) Prohibition on knowingly providing false or misleading information to workers

No farm labor contractor, agricultural employer, or agricultural association shall knowingly provide false or misleading information to any seasonal agricultural worker concerning the terms, conditions, or existence of agricultural employment required to be disclosed by subsection (a), (b), or (c) of this section.

(f) Form and language requirements

The information required to be disclosed by subsections (a) and (b) of this section to seasonal agricultural workers shall be provided in written form. Such information shall be provided in English or, as necessary and reasonable, in Spanish or other language common to seasonal agricultural workers who are not fluent or literate in English. The Department of Labor shall make forms available in English, Spanish, and other languages, as necessary, which may be used in providing workers with information required under this section.

(Pub.L. 97-470, Title III, § 301, Jan. 14, 1983, 96 Stat. 2592; Pub.L. 104-49, § 4(b), Nov. 15, 1995, 109 Stat. 434.)

¹ So in original. Subsection enacted without a par. (2).

HISTORICAL AND STATUTORY NOTES

References in Text

This chapter, referred to in subsec. (b), was in the original, "this Act", meaning Pub.L. 97-470, Jan. 14, 1983, 96 Stat. 2583, known as the Migrant and Seasonal Agricultural Worker Protection Act, which enacted this chapter and repealed chapter 52 (section 2041 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

Effective and Applicability Provisions

1995 Acts. Amendment by section 4(b) of Pub.L. 104-49 effective upon expiration of 90 days after date final regulations are issued by Secretary of Labor to implement such amendment, see section 4(c) of Pub.L. 104-49, set out as a note under section 1821 of this title.

[Final regulations implementing the amendment made by section 4(b) of Pub.L. 104-49 were issued on May 16, 1996, see 61 FR 24858.]

1983 Acts. Section effective ninety days from Jan. 14, 1983, see section 524 of Pub.L. 97-470, set out as a note under section 1801 of this title.

CODE OF FEDERAL REGULATIONS

Labor certification, permanent employment of aliens, see 20 CFR § 656.1 et seq.

LIBRARY REFERENCES

American Digest System
Labor Relations ⇌ 1673.

§ 1832. Wages, supplies, and other working arrangements

(a) Payment of wages

Each farm labor contractor, agricultural employer, and agricultural association which employs any seasonal agricultural worker shall pay the wages owed to such worker when due.

(b) Purchase of goods or services by worker

No farm labor contractor, agricultural employer, or agricultural association shall require any seasonal agricultural worker to purchase any goods or services solely from such farm labor contractor, agricultural employer, or agricultural association.

(c) Violation of terms of working arrangement

No farm labor contractor, agricultural employer, or agricultural association shall, without justification, violate the terms of any working arrangement made by that contractor, employer, or association with any seasonal agricultural worker.

(Pub.L. 97-470, Title III, § 302, Jan. 14, 1983, 96 Stat. 2593.)

HISTORICAL AND STATUTORY NOTES

Effective and Applicability Provisions

1983 Acts. Section effective ninety days from Jan. 14, 1983, see section 524 of Pub.L. 97-470, set out as a note under section 1801 of this title.

CODE OF FEDERAL REGULATIONS

Labor certification, permanent employment of aliens, see 20 CFR 656.1 et seq.

Temporary agricultural workers, contractual obligations, see 29 CFR 501.0 et seq.

LIBRARY REFERENCES

Corpus Juris Secundum

CJS Agriculture § 5, Migrant and Seasonal Agricultural Worker Protection Act.

SUBCHAPTER IV—FURTHER PROTECTIONS FOR MIGRANT AND SEASONAL AGRICULTURAL WORKERS

§ 1841. Motor vehicle safety

(a) Mode of transportation subject to coverage

(1) Except as provided in paragraph (2), this section applies to the transportation of any migrant or seasonal agricultural worker.

(2) This section does not apply to the transportation of any migrant or seasonal agricultural worker on a tractor, combine, harvester, picker, or other similar machinery and equipment while such worker is actually engaged in the planting, cultivating, or harvesting of any agricultural commodity or the care of livestock or poultry.

(b) Applicability of standards, licensing, and insurance requirements; promulgation of regulations for standards; criteria, etc., for regulations; amount of insurance required

(1) When using, or causing to be used, any vehicle for providing transportation to which this section applies, each agricultural employer, agricultural association, and farm labor contractor shall—

(A) ensure that such vehicle conforms to the standards prescribed by the Secretary under paragraph (2) of this subsection and other applicable Federal and State safety standards,

(B) ensure that each driver has a valid and appropriate license, as provided by State law, to operate the vehicle, and

(C) have an insurance policy or a liability bond that is in effect which insures the agricultural employer, the agricultural association, or the farm labor contractor against liability for damage to persons or property arising from the ownership, operation, or the causing to be operated, of any vehicle used to transport any migrant or seasonal agricultural worker.

(2)(A) For purposes of paragraph (1)(A), the Secretary shall prescribe such regulations as may be necessary to protect the health and safety of migrant and seasonal agricultural workers.

(B) To the extent consistent with the protection of the health and safety of migrant and seasonal agricultural workers, the Secretary shall, in promulgating regulations under subparagraph (A), consider, among other factors—

(i) the type of vehicle used,

(ii) the passenger capacity of the vehicle,

(iii) the distance which such workers will be carried in the vehicle,

(iv) the type of roads and highways on which such workers will be carried in the vehicle,

(v) the extent to which a proposed standard would cause an undue burden on agricultural employers, agricultural associations, or farm labor contractors.

(C) Standards prescribed by the Secretary under subparagraph (A) shall be in addition to, and shall not supersede or modify, any standard under part B of subtitle IV of Title 49, or regulations issued thereunder, which is independently applicable to transportation to which this section applies. A violation of any such standard shall also constitute a violation under this chapter.

(D) In the event that the Secretary fails for any reason to prescribe standards under subparagraph (A) by the effective date of this chapter, the standards prescribed under section 31502 of Title 49, relating to the transportation of migrant workers, shall, for purposes of paragraph (1)(A), be deemed to be the standards prescribed by the Secretary under this paragraph, and shall, as appropriate and reasonable in the circumstances, apply (i) without regard to the mileage and boundary line limitations contained in such section, and (ii) until superseded by standards actually prescribed by the Secretary in accordance with this paragraph.

(3) The level of insurance required under paragraph (1)(C) shall be determined by the Secretary considering at least the factors set forth in paragraph (2)(B) and similar farmworker transportation requirements under State law.

(c) Adjustments of insurance requirements in the event of workers' compensation coverage

If an agricultural employer, agricultural association, or farm labor contractor is the employer of any migrant or seasonal agricultural worker for purposes of a State workers' compensation law and such employer provides workers' compensation coverage for such worker in the case of bodily injury or death as provided by such State law, the following adjustments in the requirements of subsection (b)(1)(C) of this section relating to having an insurance policy or liability bond apply:

(1) No insurance policy or liability bond shall be required of the employer, if such workers are transported only under circumstances for which there is coverage under such State law.

(2) An insurance policy or liability bond shall be required of the employer for circumstances under which coverage for the transportation of such workers is not provided under such State law.

(d) Time for promulgation of regulations for standards implementing requirements; revision of standards

The Secretary shall, by regulations promulgated in accordance with section 1861 of this title not later than the effective date of this chapter, prescribe the standards required for the purposes of implementing this section. Any subsequent revision of such standards

shall also be accomplished by regulation promulgated in accordance with such section.

(Pub.L. 97-470, Title IV, § 401, Jan. 14, 1983, 96 Stat. 2594; Pub.L. 104-49, § 5(a), Nov. 15, 1995, 109 Stat. 434; Pub.L. 104-88, Title III, § 333, Dec. 29, 1995, 109 Stat. 953.)

HISTORICAL AND STATUTORY NOTES

References in Text

This chapter, referred to in subsec. (b)(2)(C), was in the original, "this Act", meaning Pub.L. 97-470, Jan. 14, 1983, 96 Stat. 2583, known as the Migrant and Seasonal Agricultural Worker Protection Act, which enacted this chapter and repealed chapter 52 (section 2041 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

The effective date of this chapter, referred to in subsecs. (b)(2)(D) and (d), is the effective date of Pub.L. 97-470, which is ninety days from the date of the enactment of Pub.L. 97-470, which was approved Jan. 14, 1983.

Codifications

In subsec. (b)(2)(D), "section 31502 of Title 49" was substituted for "section 3102 of Title 49" on authority of Pub.L. 103-272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitle VI (§ 30101 et seq.) of Title 49, Transportation. Previously, "section 3102 of Title 49" had been substituted for "section 204(a)(3a) of the Interstate Commerce Act (49 U.S.C. 304(a)(3a))" on authority of Pub.L. 97-449, § 6(b), Jan. 12, 1983, 96 Stat. 2443, the first section of which enacted subtitle I (section 101 et seq.) and chapter 31 (section 3101 et seq.) of subtitle II of Title 49, Transportation.

Effective and Applicability Provisions

1995 Acts. Section 5(c) of Pub.L. 104-49 provided that: "The amendment made by subsection (a) [amending subsec. (b)(3) of this section] takes effect upon the expiration of 180 days after the date of enactment of this Act [Nov. 15, 1995] or upon the issuance of final regulations under subsection (b) [set out as a note under this section], whichever occurs first."

[Final regulations were issued under section 5(b) of Pub.L. 104-49, see 61 FR 24858, May 16, 1996.]

Amendment of this section by section 333 of Pub.L. 104-88 effective Jan. 1, 1996, see section 2 of Pub.L. 104-88, set out as a note under section 701 of Title 49, Transportation.

1983 Acts. Section effective ninety days from Jan. 14, 1983, see section 524 of Pub.L. 97-470, set out as a note under section 1801 of this title.

Regulations

Section 5(b) of Pub.L. 104-49 provided that: "Within 180 days of the date of the enactment of this Act [Nov. 15, 1995], the Secretary of Labor shall promulgate regulations establishing insurance levels under section 401(b)(3) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1841(b)(3)) as amended by subsection (a)."

CODE OF FEDERAL REGULATIONS

Insurance requirements, workers' transportation, see 29 CFR § 500.120 et seq.

Motor vehicle safety, workers' transportation, see 29 CFR § 500.100 et seq.

LIBRARY REFERENCES

Corpus Juris Secundum

CJS Agriculture § 5, Migrant and Seasonal Agricultural Worker Protection Act.

§ 1842. Confirmation of registration

No person shall utilize the services of any farm labor contractor to supply any migrant or seasonal agricultural worker unless the person first takes reasonable steps to determine that the farm labor contractor possesses a certificate of registration which is valid and which authorizes the activity for which the contractor is utilized. In making that determination, the person may rely upon either possession of a certificate of registration, or confirmation of such registration by the Department of Labor. The Secretary shall maintain a central public registry of all persons issued a certificate of registration.

(Pub.L. 97-470, Title IV, § 402, Jan. 14, 1983, 96 Stat. 2595.)

HISTORICAL AND STATUTORY NOTES

Effective and Applicability Provisions

1983 Acts. Section effective ninety days from Jan. 14, 1983, see section 524 of Pub.L. 97-470, set out as a note under section 1801 of this title.

CODE OF FEDERAL REGULATIONS

Registration of farm labor contractors, obligations, see 29 CFR § 500.40 et seq.

§ 1843. Information on employment conditions

Each farm labor contractor, without regard to any other provisions of this chapter, shall obtain at each place of employment and make available for inspection to every worker he furnishes for employment, a written statement of the conditions of such employment as described in sections 1821(b) and 1831(b) of this title.

(Pub.L. 97-470, Title IV, § 403, Jan. 14, 1983, 96 Stat. 2595.)

HISTORICAL AND STATUTORY NOTES

References in Text

This chapter, referred to in text, was in the original, "this Act", meaning Pub.L. 97-470, Jan. 14, 1983, 96 Stat. 2583, known as the Migrant and Seasonal Agricultural Worker Protection Act, which enacted this chapter and repealed chapter 52 (section 2041 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

Effective and Applicability Provisions

1983 Acts. Section effective ninety days from Jan. 14, 1983, see section 524 of Pub.L. 97-470, set out as a note under section 1801 of this title.

§ 1844. Compliance with written agreements

(a) Applicability to contracting activity or worker protection

No farm labor contractor shall violate, without justification, the terms of any written agreements made with an agricultural employer or an agricultural association pertaining to any contracting activity or worker protection under this chapter.

(b) Statutory liability

Written agreements under this section do not relieve a person of any responsibility that such person would otherwise have under this chapter.

(Pub.L. 97-470, Title IV, § 404, Jan. 14, 1983, 96 Stat. 2596.)

HISTORICAL AND STATUTORY NOTES

References in Text

This chapter, referred to in text, was in the original, "this Act", meaning Pub.L. 97-470, Jan. 14, 1983, 96 Stat. 2583, known as the Migrant and Seasonal Agricultural Worker Protection Act, which enacted this chapter and repealed chapter 52 (section 2041 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

Effective and Applicability Provisions

1983 Acts. Section effective ninety days from Jan. 14, 1983, see section 524 of Pub.L. 97-470, set out as a note under section 1801 of this title.

SUBCHAPTER V—GENERAL PROVISIONS

PART A—ENFORCEMENT PROVISIONS

§ 1851. Criminal sanctions

(a) Violations of chapter or regulations

Any person who willfully and knowingly violates this chapter or any regulation under this chapter shall be fined not more than \$1,000 or sentenced to prison for a term not to exceed one year, or both. Upon conviction for any subsequent violation of this chapter or any regulation under this chapter, the defendant shall be fined not more than \$10,000 or sentenced to prison for a term not to exceed three years, or both.

(b) Violations of section 1324a(a) of title 8

If a farm labor contractor who commits a violation of paragraph (1) or (2) of section 1324a(a) of Title 8 has been refused issuance or renewal of, or has failed to obtain, a certificate of registration or is a farm labor contractor whose certificate has been suspended or revoked, the contractor shall, upon conviction, be fined not more than \$10,000 or sentenced to prison for a term not to exceed three years, or both.

(Pub.L. 97-470, Title V, § 501, Jan. 14, 1983, 96 Stat. 2596; Pub.L. 99-603, Title I, § 101(b)(1)(D), Nov. 6, 1986, 100 Stat. 3372.)

Complete Annotation Materials, see Title 29 U.S.C.A.

HISTORICAL AND STATUTORY NOTES

References in Text

This chapter, referred to in subsec. (a), was in the original, "this Act", meaning Pub.L. 97-470, Jan. 14, 1983, 96 Stat. 2583, known as the Migrant and Seasonal Agricultural Worker Protection Act, which enacted this chapter and repealed chapter 52 (section 2041 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

Effective and Applicability Provisions

1986 Acts. Amendment by Pub.L. 99-603 applicable to the employment, recruitment, referral, or utilization of the services of individuals occurring on or after the first day of the seventh month beginning after Nov. 6, 1986, except that if section 1324a of Title 8, Aliens and Nationality, is terminated as of a date under section 1324a(l) of Title 8, then amendments by Pub.L. 99-603, § 101(b)(1), no longer to apply as of such date, see section 101(b)(2) of Pub.L. 99-603, set as a note under section 1802 of this title.

1983 Acts. Section effective ninety days from Jan. 14, 1983, see section 524 of Pub.L. 97-470, set out as a note under section 1801 of this title.

LIBRARY REFERENCES

American Digest System

Labor Relations ⇌ 1661, 1685.

Corpus Juris Secundum

CJS Agriculture § 5, Migrant and Seasonal Agricultural Worker Protection Act.

§ 1852. Judicial enforcement

(a) Injunctive relief

The Secretary may petition any appropriate district court of the United States for temporary or permanent injunctive relief if the Secretary determines that this chapter, or any regulation under this chapter, has been violated.

(b) Control of civil litigation

Except as provided in section 518(a) of Title 28, relating to litigation before the Supreme Court, the Solicitor of Labor may appear for and represent the Secretary in any civil litigation brought under this chapter, but all such litigation shall be subject to the direction and control of the Attorney General.

(Pub.L. 97-470, Title V, § 502, Jan. 14, 1983, 96 Stat. 2596.)

HISTORICAL AND STATUTORY NOTES

References in Text

This chapter, referred to in text, was in the original, "this Act", meaning Pub.L. 97-470, Jan. 14, 1983, 96 Stat. 2583, known as the Migrant and Seasonal Agricultural Worker Protection Act, which enacted this chapter and repealed chapter 52 (section 2041 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

Effective and Applicability Provisions

1983 Acts. Section effective ninety days from Jan. 14, 1983, see section 524 of Pub.L. 97-470, set out as a note under section 1801 of this title.

CODE OF FEDERAL REGULATIONS

Enforcement of worker protection requirements, see 29 CFR § 500.140 et seq.

§ 1853. Administrative sanctions

(a) Civil money penalties for violations; criteria for assessment

(1) Subject to paragraph (2), any person who commits a violation of this chapter or any regulation under this chapter, may be assessed a civil money penalty of not more than \$1,000 for each violation.

(2) In determining the amount of any penalty to be assessed under paragraph (1), the Secretary shall take into account (A) the previous record of the person in terms of compliance with this chapter and with comparable requirements of the Farm Labor Contractor Registration Act of 1963 [7 U.S.C.A. § 2041 et seq.], and with regulations promulgated under this chapter and such Act, and (B) the gravity of the violation.

(b) Administrative review

(1) The person assessed shall be afforded an opportunity for agency hearing, upon request made within thirty days after the date of issuance of the notice of assessment. In such hearing, all issues shall be determined on the record pursuant to section 554 of Title 5. If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

(2) If a hearing is requested, the initial agency decision shall be made by an administrative law judge, and such decision shall become the final order unless the Secretary modifies or vacates the decision. Notice of intent to modify or vacate the decision of the administrative law judge shall be issued to the parties within thirty days after the decision of the administrative law judge. A final order which takes effect under this paragraph shall be subject to review only as provided under subsection (c) of this section.

(c) Judicial review

Any person against whom an order imposing a civil money penalty has been entered after an agency hearing under this section may obtain review by the United States district court for any district in which he is located or the United States District Court for the District of Columbia by filing a notice of appeal in such court within thirty days from the date of such order, and simultaneously sending a copy of such notice by registered mail to the Secretary. The Secretary shall promptly certify and file in such court the record upon which the penalty was imposed. The

findings of the Secretary shall be set aside only if found to be unsupported by substantial evidence as provided by section 706(2)(E) of Title 5. Any final decision, order, or judgment of such District Court concerning such review shall be subject to appeal as provided in chapter 83 of Title 28.

(d) Failure to pay assessment; maintenance of action

If any person fails to pay an assessment after it has become a final and unappealable order, or after the court has entered final judgment in favor of the agency, the Secretary shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

(e) Payment of penalties into Treasury of United States

All penalties collected under authority of this section shall be paid into the Treasury of the United States.

(Pub.L. 97-470, Title V, § 503, Jan. 14, 1983, 96 Stat. 2596.)

HISTORICAL AND STATUTORY NOTES

References in Text

This chapter, referred to in subsec. (a), was in the original, "this Act", meaning Pub.L. 97-470, Jan. 14, 1983, 96 Stat. 2583, known as the Migrant and Seasonal Agricultural Worker Protection Act, which enacted this chapter and repealed chapter 52 (section 2041 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

The Farm Labor Contractor Registration Act of 1963, referred to in subsec. (a)(2), is Pub.L. 88-582, Sept. 7, 1964, 78 Stat. 920, as amended, which was classified generally to chapter 52 (section 2041 et seq.) of Title 7, Agriculture and was repealed by Pub.L. 97-470, Title V, § 253, Jan. 14, 1983, 96 Stat. 2600. See section 1801 et seq. of this title.

Effective and Applicability Provisions

1983 Acts. Section effective ninety days from Jan. 14, 1983, see section 524 of Pub.L. 97-470, set out as a note under section 1801 of this title.

LIBRARY REFERENCES

American Digest System

Labor Relations ⇌ 1685.

§ 1854. Private right of action

(a) Maintenance of civil action in district court by aggrieved person

Any person aggrieved by a violation of this chapter or any regulation under this chapter by a farm labor contractor, agricultural employer, agricultural association, or other person may file suit in any district court of the United States having jurisdiction of the parties,

without respect to the amount in controversy and without regard to the citizenship of the parties and without regard to exhaustion of any alternative administrative remedies provided herein.

(b) Appointment of attorney and commencement of action

Upon application by a complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action.

(c) Award of damages or other equitable relief; amount; criteria; appeal

(1) If the court finds that the respondent has intentionally violated any provision of this chapter or any regulation under this chapter, it may award damages up to and including an amount equal to the amount of actual damages, or statutory damages of up to \$500 per plaintiff per violation, or other equitable relief, except that (A) multiple infractions of a single provision of this chapter or of regulations under this chapter shall constitute only one violation for purposes of determining the amount of statutory damages due a plaintiff; and (B) if such complaint is certified as a class action, the court shall award no more than the lesser of up to \$500 per plaintiff per violation, or up to \$500,000 or other equitable relief.

(2) In determining the amount of damages to be awarded under paragraph (1), the court is authorized to consider whether an attempt was made to resolve the issues in dispute before the resort to litigation.

(3) Any civil action brought under this section shall be subject to appeal as provided in chapter 83 of Title 28.

(d) Workers' compensation benefits; exclusive remedy

(1) Notwithstanding any other provision of this chapter, where a State workers' compensation law is applicable and coverage is provided for a migrant or seasonal agricultural worker, the workers' compensation benefits shall be the exclusive remedy for loss of such worker under this chapter in the case of bodily injury or death in accordance with such State's workers' compensation law.

(2) The exclusive remedy prescribed by paragraph (1) precludes the recovery under subsection (c) of this section of actual damages for loss from an injury or death but does not preclude recovery under subsection (c) of this section for statutory damages or equitable relief, except that such relief shall not include back or front pay or in any manner, directly or indirectly, expand or otherwise alter or affect (A) a recovery under a State workers' compensation law or (B) rights conferred under a State workers' compensation law.

Complete Annotation Materials, see Title 29 U.S.C.A.

(e) Expansion of statutory damages

If the court finds in an action which is brought by or for a worker under subsection (a) of this section in which a claim for actual damages is precluded because the worker's injury is covered by a State workers' compensation law as provided by subsection (d) of this section that—

(1)(A) the defendant in the action violated section 1841(b) of this title by knowingly requiring or permitting a driver to drive a vehicle for the transportation of migrant or seasonal agricultural workers while under the influence of alcohol or a controlled substance (as defined in section 802 of Title 21) and the defendant had actual knowledge of the driver's condition, and

(B) such violation resulted in injury to or death of the migrant or seasonal worker by or for whom the action was brought and such injury or death arose out of and in the course of employment as determined under the State workers' compensation law,

(2)(A) the defendant violated a safety standard prescribed by the Secretary under section 1841(b) of this title which the defendant was determined in a previous judicial or administrative proceeding to have violated, and

(B) such safety violation resulted in an injury or death described in paragraph (1)(B),

(3)(A)(i) the defendant willfully disabled or removed a safety device prescribed by the Secretary under section 1841(b) of this title, or

(ii) the defendant in conscious disregard of the requirements of section 1841(b) of this title failed to provide a safety device required under such section, and

(B) such disablement, removal, or failure to provide a safety device resulted in an injury or death described in paragraph (1)(B), or

(4)(A) the defendant violated a safety standard prescribed by the Secretary under section 1841(b) of this title,

(B) such safety violation resulted in an injury or death described in paragraph (1)(B), and

(C) the defendant at the time of the violation of section 1841(b) of this title also was—

(i) an unregistered farm labor contractor in violation of section 1811(a) of this title, or

(ii) a person who utilized the services of a farm labor contractor of the type specified in clause (i) without taking reasonable steps to determine that the farm labor contractor possessed a valid certificate of registration authorizing the performance of the farm labor contracting activities which the

contractor was requested or permitted to perform with the knowledge of such person,

the court shall award not more than \$10,000 per plaintiff per violation with respect to whom the court made the finding described in paragraph (1), (2), (3), or (4), except that multiple infractions of a single provision of this chapter shall constitute only one violation for purposes of determining the amount of statutory damages due to a plaintiff under this subsection and in the case of a class action, the court shall award not more than the lesser of up to \$10,000 per plaintiff or up to \$500,000 for all plaintiffs in such class action.

(f) Tolling of statute of limitations

If it is determined under a State workers' compensation law that the workers' compensation law is not applicable to a claim for bodily injury or death of a migrant or seasonal agricultural worker, the statute of limitations for bringing an action for actual damages for such injury or death under subsection (a) of this section shall be tolled for the period during which the claim for such injury or death under such State workers' compensation law was pending. The statute of limitations for an action for other actual damages, statutory damages, or equitable relief arising out of the same transaction or occurrence as the injury or death of the migrant or seasonal agricultural worker shall be tolled for the period during which the claim for such injury or death was pending under the State workers' compensation law.

(Pub.L. 97-470, Title V, § 504, Jan. 14, 1983, 96 Stat. 2597; Pub.L. 102-392, Title III, § 325(a), Oct. 6, 1992, 106 Stat. 1728; Pub.L. 104-49, §§ 1(a)(2), 2(a), 3, Nov. 15, 1995, 109 Stat. 432, 433.)

HISTORICAL AND STATUTORY NOTES**References in Text**

This chapter, referred to in subsecs. (a), (c)(1), and (d)(1), was in the original, "this Act", meaning Pub.L. 97-470, Jan. 14, 1983, 96 Stat. 2583, known as the Migrant and Seasonal Agricultural Worker Protection Act, which enacted this chapter and repealed chapter 52 (section 2041 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

Effective and Applicability Provisions

1995 Acts. Section 1(b) of Pub.L. 104-49 provided that: "The amendment made by subsection (a)(2) [amending subsec. (d) of this section] shall apply to all cases in which a final judgment has not been entered."

Section 2(b) of Pub.L. 104-49 provided that: "The amendment made by subsection (a) [enacting subsec. (e) of this section] shall apply to all cases in which a final judgment has not been entered."

1992 Acts. Section 325(c) of Pub.L. 102-392, which provided that the amendment made by section 325(a) of Pub.L. 102-392, adding subsec. (d), would apply to actions com-

menced after Oct. 6, 1992, but not after the expiration of 9 months after such date, with waiver and extension provisions for certain actions, was repealed by Pub.L. 104-49, § 1(a)(1), Nov. 15, 1995, 109 Stat. 432.

1983 Acts. Section effective ninety days from Jan. 14, 1983, see section 524 of Pub.L. 97-470, set out as a note under section 1801 of this title.

Repeals

Pub.L. 102-392, Title III, § 325(a), Oct. 6, 1992, 106 Stat. 1728, cited as a credit to this section, was repealed by Pub.L. 104-49, § 1(a)(1), Nov. 15, 1995, 109 Stat. 432.

CODE OF FEDERAL REGULATIONS

Enforcement of worker protection requirements, see 29 CFR § 500.140 et seq.

LIBRARY REFERENCES

Corpus Juris Secundum

CJS Agriculture § 5, Migrant and Seasonal Agricultural Worker Protection Act.

CJS Labor Relations § 1359, Migrant and Seasonal Agricultural Worker Protection Act.

§ 1855. Discrimination prohibited

(a) Prohibited activities

No person shall intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any migrant or seasonal agricultural worker because such worker has, with just cause, filed any complaint or instituted, or caused to be instituted, any proceeding under or related to this chapter; or has testified or is about to testify in any such proceedings, or because of the exercise, with just cause, by such worker on behalf of himself or others of any right or protection afforded by this chapter.

(b) Proceedings for redress of violations

A migrant or seasonal agricultural worker who believes, with just cause, that he has been discriminated against by any person in violation of this section may, within 180 days after such violation occurs, file a complaint with the Secretary alleging such discrimination. Upon receipt of such complaint, the Secretary shall cause such investigation to be made as he deems appropriate. If upon such investigation, the Secretary determines that the provisions of this section have been violated, the Secretary shall bring an action in any appropriate United States district court against such person. In any such action the United States district courts shall have jurisdiction, for cause shown, to restrain violation of subsection (a) of this section and order all appropriate relief, including rehiring or reinstatement of the worker, with back pay, or damages.

(Pub.L. 97-470, Title V, § 505, Jan. 14, 1983, 96 Stat. 2598.)

HISTORICAL AND STATUTORY NOTES

References in Text

This chapter, referred to in subsec. (a), was in the original, "this Act", meaning Pub.L. 97-470, Jan. 14, 1983, 96 Stat. 2583, known as the Migrant and Seasonal Agricultural Worker Protection Act, which enacted this chapter and repealed chapter 52 (section 2041 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

Effective and Applicability Provisions

1983 Acts. Section effective ninety days from Jan. 14, 1983, see section 524 of Pub.L. 97-470, set out as a note under section 1801 of this title.

§ 1856. Waiver of rights

Agreements by employees purporting to waive or to modify their rights under this chapter shall be void as contrary to public policy, except that a waiver or modification of rights in favor of the Secretary shall be valid for purposes of enforcement of this chapter. (Pub.L. 97-470, Title V, § 506, Jan. 14, 1983, 96 Stat. 2598.)

HISTORICAL AND STATUTORY NOTES

References in Text

This chapter, referred to in text, was in the original, "this Act", meaning Pub.L. 97-470, Jan. 14, 1983, 96 Stat. 2583, known as the Migrant and Seasonal Agricultural Worker Protection Act, which enacted this chapter and repealed chapter 52 (section 2041 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

Effective and Applicability Provisions

1983 Acts. Section effective ninety days from Jan. 14, 1983, see section 524 of Pub.L. 97-470, set out as a note under section 1801 of this title.

PART B—ADMINISTRATIVE PROVISIONS

§ 1861. Rules and regulations

The Secretary may issue such rules and regulations as are necessary to carry out this chapter, consistent with the requirements of chapter 5 of Title 5. (Pub.L. 97-470, Title V, § 511, Jan. 14, 1983, 96 Stat. 2598.)

HISTORICAL AND STATUTORY NOTES

References in Text

This chapter, referred to in text, was in the original, "this Act", meaning Pub.L. 97-470, Jan. 14, 1983, 96 Stat. 2583, known as the Migrant and Seasonal Agricultural Worker Protection Act, which enacted this chapter and repealed chapter 52 (section 2041 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

Effective and Applicability Provisions

1983 Acts. Section effective ninety days from Jan. 14, 1983, see section 524 of Pub.L. 97-470, set out as a note under section 1801 of this title.

Complete Annotation Materials, see Title 29 U.S.C.A.

CODE OF FEDERAL REGULATIONS

Seasonal agricultural services, reporting and employment requirements for employers, see 29 CFR § 502.1 et seq.

§ 1862. Authority to obtain information

(a) Investigation and inspection authority concerning places, records, etc.

To carry out this chapter the Secretary, either pursuant to a complaint or otherwise, shall, as may be appropriate, investigate, and in connection therewith, enter and inspect such places (including housing and vehicles) and such records (and make transcriptions thereof), question such persons and gather such information to determine compliance with this chapter, or regulations prescribed under this chapter.

(b) Attendance and testimony of witnesses, and production of evidence; subpoena authority

The Secretary may issue subpoenas requiring the attendance and testimony of witnesses or the production of any evidence in connection with such investigations. The Secretary may administer oaths, examine witnesses, and receive evidence. For the purpose of any hearing or investigation provided for in this chapter, the authority contained in sections 49 and 50 of Title 15, relating to the attendance of witnesses and the production of books, papers, and documents, shall be available to the Secretary. The Secretary shall conduct investigations in a manner which protects the confidentiality of any complainant or other party who provides information to the Secretary in good faith.

(c) Prohibited activities

It shall be a violation of this chapter for any person to unlawfully resist, oppose, impede, intimidate, or interfere with any official of the Department of Labor assigned to perform an investigation, inspection, or law enforcement function pursuant to this chapter during the performance of such duties.

(Pub.L. 97-470, Title V, § 512, Jan. 14, 1983, 96 Stat. 2598.)

HISTORICAL AND STATUTORY NOTES

References in Text

This chapter, referred to in subsecs. (a) and (c), was in the original, "this Act", meaning Pub.L. 97-470, Jan. 14, 1983, 96 Stat. 2583, known as the Migrant and Seasonal Agricultural Worker Protection Act, which enacted this chapter and repealed chapter 52 (section 2041 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

Effective and Applicability Provisions

1983 Acts. Section effective ninety days from Jan. 14, 1983, see section 524 of Pub.L. 97-470, set out as a note under section 1801 of this title.

§ 1863. Agreements with Federal and State agencies

(a) Scope of agreements

The Secretary may enter into agreements with Federal and State agencies (1) to use their facilities and services, (2) to delegate, subject to subsection (b) of this section, to Federal and State agencies such authority, other than rulemaking, as may be useful in carrying out this chapter; and (3) to allocate or transfer funds to, or otherwise pay or reimburse, such agencies for expenses incurred pursuant to agreements under clause (1) or (2) of this section.

(b) Delegation of authority pursuant to written State plan

Any delegation to a State agency pursuant to subsection (a)(2) of this section shall be made only pursuant to a written State plan which—

(1) shall include a description of the functions to be performed, the methods of performing such functions, and the resources to be devoted to the performance of such functions; and

(2) provides assurances satisfactory to the Secretary that the State agency will comply with its description under paragraph (1) and that the State agency's performance of functions so delegated will be at least comparable to the performance of such functions by the Department of Labor.

(Pub.L. 97-470, Title V, § 513, Jan. 14, 1983, 96 Stat. 2599.)

HISTORICAL AND STATUTORY NOTES

References in Text

This chapter, referred to in subsec. (a), was in the original, "this Act", meaning Pub.L. 97-470, Jan. 14, 1983, 96 Stat. 2583, known as the Migrant and Seasonal Agricultural Worker Protection Act, which enacted this chapter and repealed chapter 52 (section 2041 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

Effective and Applicability Provisions

1983 Acts. Section effective ninety days from Jan. 14, 1983, see section 524 of Pub.L. 97-470, set out as a note under section 1801 of this title.

PART C—MISCELLANEOUS PROVISIONS

§ 1871. State laws and regulations

This chapter is intended to supplement State law, and compliance with this chapter shall not excuse any person from compliance with appropriate State law and regulation.

(Pub.L. 97-470, Title V, § 521, Jan. 14, 1983, 96 Stat. 2599.)

HISTORICAL AND STATUTORY NOTES

References in Text

This chapter, referred to in text, was in the original, "this Act", meaning Pub.L. 97-470, Jan. 14, 1983, 96 Stat. 2583,

known as the Migrant and Seasonal Agricultural Worker Protection Act, which enacted this chapter and repealed chapter 52 (section 2041 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

Effective and Applicability Provisions

1983 Acts. Section effective ninety days from Jan. 14, 1983, see section 524 of Pub.L. 97-470, set out as a note under section 1801 of this title.

§ 1872. Transition provision

The Secretary may deny a certificate of registration to any farm labor contractor, as defined in this chapter, who has a judgment outstanding against him under the Farm Labor Contractor Registration Act of 1963 (7 U.S.C. 2041 et seq.), or is subject to a final order of the Secretary under that Act assessing a civil money penalty which has not been paid. Any findings under the Farm Labor Contractor Registration Act of 1963 may also be applicable to determinations of willful and knowing violations under this chapter. (Pub.L. 97-470, Title V, § 522, Jan. 14, 1983, 96 Stat. 2599.)

HISTORICAL AND STATUTORY NOTES

References in Text

This chapter, referred to in text, was in the original, "this Act" meaning Pub.L. 97-470, Jan. 14, 1983, 96 Stat. 2583, known as the Migrant and Seasonal Agricultural Worker Protection Act, which enacted this chapter and repealed chapter 52 (section 2041 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

The Farm Labor Contractor Registration Act of 1963, referred to in text, is Pub.L. 88-582, Sept. 7, 1964, 78 Stat. 920, as amended, which was classified generally to chapter 52 (section 2041 et seq.) of Title 7, Agriculture, and was repealed by Pub.L. 97-470, Title V, § 523, Jan. 14, 1983, 96 Stat. 2600. See section 1801 et seq. of this title.

Effective and Applicability Provisions

1983 Acts. Section effective ninety days from Jan. 14, 1983, see section 524 of Pub.L. 97-470, set out as a note under section 1801 of this title.

§§ 1873 to 1900. Reserved for future legislation

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- AUTHORITY:** Pub. L. 97-470, 96 Stat. 2563 (29 U.S.C. 1803-1872); Secretary's Order No. 4-2001, 66 FR 29656.

SOURCE: 48 FR 38741, Aug. 12, 1983, unless otherwise noted.

Subpart A—General Provisions

§ 500.0 Introduction.

(a) The Migrant and Seasonal Agricultural Worker Protection Act (MSPA), hereinafter referred to as MSPA or the Act, repeals and replaces the Farm Labor Contractor Registration Act of 1963, as amended, hereinafter referred to as FLORA or the Farm Labor Contractor Registration Act. Prior judgments and final orders obtained under FLORA continue in effect as stated in § 500.4.

(b) These regulations include provisions necessitated by the Immigration Reform and Control Act's (IRCA) amendment to the Immigration and Nationality Act (INA). IRCA amended MSPA to remove section 106 thereof prohibiting the employment of illegal aliens. Matters concerning certificate actions or the assessment of civil money penalties, for a violation of section 106 of MSPA which occurred prior to June 1, 1987, continue through final administrative determination as stated in § 500.147.

[48 FR 38741, Aug. 12, 1983, as amended at 54 FR 13328, Mar. 31, 1989]

§ 500.1 Purpose and scope.

(a) Congress stated, in enacting the Migrant and Seasonal Agricultural Worker Protection Act that "[I]t is the purpose of this Act to remove the restraints on commerce caused by activities detrimental to migrant and seasonal agricultural workers; to register farm labor contractors; to register under this Act; and to assure necessary protections for migrant and seasonal agricultural workers, agricultural associations, and agricultural employees." It authorized the Secretary to issue such rules and regulations as are necessary to carry out the Act consistent with the requirements of chapter 5 of title 5, United States Code.

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(b) These regulations implement this purpose and policy. The regulations contained in this part are issued in accordance with section 511 of the Act and establish the rules and regulations necessary to carry out the Act.

(c) Any farm labor contractor, as defined in the Act, is required to obtain a Certificate of Registration issued pursuant to the Act from the Department of Labor or from a State agency authorized to issue such certificates on behalf of the Department of Labor. Such a farm labor contractor must ensure that any individual whom he employs to perform any farm labor contracting activities also obtains a Certificate of Registration. The farm labor contractor is responsible, as well, for any violation of the Act or these regulations by any such employee whether or not the employee obtains a certificate. In addition to registering, farm labor contractors must comply with all other applicable provisions of the Act when they recruit, solicit, hire, employ, furnish or transport or, in the case of migrant agricultural workers, provide housing.

(d) Agricultural employers and agricultural associations which are subject to the Act must comply with all of the worker protections which are applicable under the Act to migrant or seasonal agricultural workers whom they recruit, solicit, hire, employ, furnish, or transport or, in the case of migrant agricultural workers, provide housing. The obligations will vary, depending on the types of activities affecting migrant or seasonal agricultural workers. Agricultural employers and agricultural associations and their employees need not obtain Certificates of Registration in order to engage in these activities, even if the workers they obtain are utilized by other persons or on the premises of another.

(e) The Act empowers the Secretary of Labor to enforce the Act, conduct investigations, issue subpoenas and, in the case of designated violations of the Act, impose sanctions. As provided in the Act, the Secretary is empowered, among other things, to impose an assessment and to collect a civil money penalty of not more than \$1,000 for each violation, to seek a temporary or permanent restraining order in a U.S.

District Court, and to seek the imposition of criminal penalties on persons who willfully and knowingly violate the Act or any regulation under the Act. In accordance with the Act and with these regulations, the Secretary may refuse to issue or to renew, or may suspend or revoke a certificate of registration issued to a farm labor contractor or to a person who engages in farm labor contracting as an employee of a farm labor contractor.

(f) The facilities and services of the U.S. Employment Service, including State agencies, authorized by the Wagner-Peyser Act may be denied to a person found by a final determination by an appropriate enforcement agency to have violated any employment-related laws including MSPA when notification of this final determination has been provided to the Job Service by that enforcement agency. See 20 CFR 658.501(a)(4). The facilities and services of the U.S. Employment Service shall be restored immediately upon compliance with 20 CFR 658.502(a)(4).

(g) Subpart A through E set forth the substantive regulations relating to farm labor contractors, agricultural employers and agricultural associations. These subparts cover the applicability of the Act, registration requirements applicable to farm labor contractors, the obligations of persons who hold Certificates of Registration, the worker protections which must be complied with by all who are subject to the Act, and the enforcement authority of the Secretary.

(h) Subpart F sets forth the rules of practice for administrative hearings relating to actions involving Certificates of Registration. It also outlines the procedure to be followed for filing a challenge to a proposed administrative action relating to violations and summarizes the methods provided for collection and recovery of a civil money penalty.

(i)(1). The Act requires that farm labor contractors obtain a certificate of registration from the Department of Labor prior to engaging in farm labor contracting activities. The Act also requires registration by individuals who will perform farm labor contracting activities for a farm labor contractor. Form WH-510 and WH-512 are the appli-

cations used to obtain Farm Labor Contractor and Farm Labor Contractor Employee Certificates of Registration. These forms have been approved by the Office of Management and Budget (OMB) under control numbers 1215-0038 (WH-510) and 1215-0037 (WH-512). Forms WH-514 and WH-514a are used when applying for transportation authorization to furnish proof of compliance with vehicle safety requirements. These forms have been jointly cleared by OMB under control number 1215-0036.

(2) The Act further requires disclosure to migrant and seasonal agricultural workers regarding wages, hours and other working conditions and housing when provided to migrant workers. The Department of Labor has developed optional forms for use in making the required disclosure. OMB has approved the following: Worker Information (WH-516) 1215-0145 and Housing Terms and Conditions (WH-521) 1215-0146.

(3) The Act also requires that farm labor contractors, agricultural employers and agricultural associations make, keep, preserve and disclose certain payroll records. Forms WH-501 and WH-501a (Spanish version) are provided to assist in carrying out this requirement. In addition, farm labor contractors who are applying for housing authorization must submit information which identifies the housing to be used along with proof of compliance with housing safety and health requirements. There has been no form developed for this purpose. The Act further requires disclosure by the insurance industry of certain information pertaining to cancellation of vehicle liability insurance policies. The requirements concerning recordkeeping, housing, and insurance have been cleared by OMB under control number 1215-0148.

(4) The Act provides that no farm labor contractor shall knowingly employ or utilize the services of aliens not lawfully admitted for permanent residence or who have not been authorized by the Attorney General to accept employment. Form WH-509 is an optional form which may be used to self-certify that the applicant is a citizen of the U.S. This form has been cleared by

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OMB under control number 1215-0091. (See § 500.59(a)(11)).

[48 FR 36741, Aug. 12, 1983; 48 FR 36380, Aug. 23, 1983]

§ 500.2 Compliance with State laws and regulations.

The Act and these regulations are intended to supplement State law; compliance with the Act or these regulations shall not excuse any individual from compliance with appropriate State law or regulation.

§ 500.3 Effective date of the Act; transition period; repeal of the Farm Labor Contractor Registration Act.

(a) The provisions of the Migrant and Seasonal Agricultural Worker Protection Act are effective on April 14, 1983, and are codified in 29 U.S.C. 1801 et seq.

(b) The Migrant and Seasonal Agricultural Worker Protection Act repeals the Farm Labor Contractor Registration Act of 1963, as amended, (7 U.S.C. 2041, et seq.), effective April 14, 1983.

(c) Violations of the Farm Labor Contractor Registration Act occurring prior to April 14, 1983, may be pursued by the Department of Labor after that date.

§ 500.4 Effect of prior judgments and final orders obtained under the Farm Labor Contractor Registration Act.

The Secretary may refuse to issue or to renew, or may suspend or revoke, a Certificate of Registration under the Act, if the applicant or holder has failed to pay any court judgment obtained by the Secretary or any other person under the Farm Labor Contractor Registration Act, or has failed to comply with any final order issued by the Secretary under the Farm Labor Contractor Registration Act. The Secretary may deny a Certificate of Registration under the Act to a farm labor contractor who has a judgment outstanding against him, or is subject to a final order assessing a civil money penalty which has not been paid.

§ 500.5 Filing of applications, notices and documents.

Unless otherwise prescribed herein, all applications, notices and other documents required or permitted to be

filed by these regulations shall be filed in accordance with the provisions of subpart F of the regulations.

§ 500.6 Accuracy of information, statements and data.

Information, statements and data submitted in compliance with provisions of the Act or these regulations are subject to title 18, section 1001, of the United States Code, which provides:

Section 1001. Statements or entries generally.

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

§ 500.7 Investigation authority of the Secretary.

(a) The Secretary, either pursuant to a complaint or otherwise, shall, as may be appropriate, investigate and, in connection therewith, enter and inspect such places (including housing and vehicles) and such records (and make transcriptions thereof), question such persons and gather such information as he deems necessary to determine compliance with the Act, or these regulations.

(b) The Secretary may issue subpoenas requiring the attendance and testimony of witnesses or the production of any evidence in connection with such investigations. The Secretary may administer oaths, examine witnesses, and receive evidence. For the purpose of any hearing or investigation provided for in the Act, the Authority contained in sections 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 49, 50), relating to the attendance of witnesses and the production of books, papers, and documents, shall be available to the Secretary. The Secretary shall conduct investigations in a manner which protects the confidentiality of any complainant or other party who provides information to the Secretary in good faith.

(c) Any person may report a violation of the Act or these regulations to the Secretary by advising any local office of the Employment Service of the various States, or any office of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or any other authorized representative of the Administrator. The office or person receiving such a report shall refer it to the appropriate office of the Wage and Hour Division, Employment Standards Administration for the region or area in which the reported violation is alleged to have occurred.

(d) In case of disobedience to a subpoena, the Secretary may invoke the aid of a United States District Court which is authorized to issue an order requiring the person to obey such subpoena.

\$ 500.8 Prohibition on interference with Department of Labor officials.

It is a violation of section 512(c) of the Act for any person to unlawfully resist, oppose, impede, intimidate, or interfere with any official of the Department of Labor assigned to perform an investigation, inspection, or law enforcement function pursuant to the Act during the performance of such duties. (Other Federal statutes which prohibit persons from interfering with a Federal officer in the course of official duties are found at 18 U.S.C. 111 and 18 U.S.C. 1114.)

\$ 500.9 Discrimination prohibited.

(a) It is a violation of the Act for any person to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any migrant or seasonal agricultural worker because such worker has, with just cause:

- (1) Filed a complaint with reference to the Act with the Secretary of Labor; or
- (2) Instituted or caused to be instituted any proceeding under or related to the Act; or
- (3) Testified or is about to testify in any proceeding under or related to the Act; or
- (4) Exercised or asserted on behalf of himself or others any right or protection afforded by the Act.

(b) A migrant or seasonal agricultural worker who believes, with just cause, that he has been discriminated against by any person in violation of this section may, no later than 180 days after such violation occurs, file a complaint with the Secretary alleging such discrimination.

\$ 500.10 Waiver of rights prohibited.

Any agreement by an employee purporting to waive or modify any rights inuring to said person under the Act or these regulations shall be void as contrary to public policy, except that a waiver or modification of rights or obligations hereunder in favor of the Secretary shall be valid for purposes of enforcement of the provisions of the Act or these regulations. This does not prevent agreements to settle private litigation.

\$ 500.20 Definitions.

For purposes of this part:

(a) *Administrator* means the Administrator of the Wage and Hour Division, Employment Standards Administration, United States Department of Labor, and such authorized representatives as may be designated by the Administrator to perform any of the functions of the Administrator under this part.

(b) *Administrative Law Judge* means a person appointed as provided in title 5 U.S.C. and qualified to preside at hearings under 5 U.S.C. 557. *Chief Administrative Law Judge* means the Chief Administrative Law Judge, United States Department of Labor, 800 K Street, NW., Suite 400, Washington, DC 20001-8002.

(c) *Agricultural association* means any nonprofit or cooperative association of farmers, growers, or ranchers, incorporated or qualified under applicable State law, which recruits, solicits, hires, employs, furnishes, or transports any migrant or seasonal agricultural worker.

(d) *Agricultural employer* means any person who owns or operates a farm, ranch, processing establishment, cannery, gin, packing shed or nursery, or who produces or conditions seed, and who either recruits, solicits, hires, employs, furnishes, or transports any migrant or seasonal agricultural worker.

Produces seed means the planting, cultivation, growing and harvesting of seeds of agricultural or horticultural commodities. *Conditions seed* means the in-plant work done after seed production including the drying and aerating of seed.

(e) *Agricultural employment* means employment in any service or activity included within the provisions of section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), or section 3121(g) of the Internal Revenue Code of 1954 (26 U.S.C. 3121(g)) and the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state.

(f) *Convicted* means that a final judgment of guilty has been rendered by a court of competent jurisdiction from which no opportunity for appeal remains.

(g) *Day-haul operation* means the assembly of workers at a pick-up point waiting to be hired and employed, transportation of such workers to agricultural employment, and the return of such workers to a drop-off point on the same day. This term does not include transportation provided by an employer for individuals who are already employees at the time they are picked up nor does it include carpooling arrangements by such employees which are not specifically directed or requested by the employer, farm labor contractor or agent thereof.

(h)(1) The term *employ* has the meaning given such term under section 3(g) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(g)) for the purposes of implementing the requirements of that Act. As so defined, *employ* includes to suffer or permit to work.

(2) The term *employer* is given its meaning as found in the Fair Labor Standards Act. *Employer* under section 3(d) of that Act includes any person acting directly or indirectly in the interest of an employer in relation to an employee.

(3) The term *employee* is also given its meaning as found in the Fair Labor Standards Act. *Employee* under section 3(e) of that Act means any individual employed by an employer.

(4) The definition of the term *employ* may include consideration of whether or not an *independent contractor* or *employment* relationship exists under the Fair Labor Standards Act. Under MSPA, questions will arise whether or not a farm labor contractor engaged by an agricultural employer/association is a bona fide independent contractor or an employee. Questions also arise whether or not the worker is a bona fide independent contractor or an employee of the farm labor contractor and/or the agricultural employer/association. These questions should be resolved in accordance with the factors set out below and the principles articulated by the federal courts in *Rutherford Food Corp. v. McComb*, 331 U.S. 722 (1947), *Real v. Driscoll Strawberry Associates, Inc.*, 603 F.2d 748 (9th Cir. 1979), *Sec'y of Labor, U.S. Dept. of Labor v. Lauritzen*, 835 F.2d 1529 (7th Cir. 1987), *cert. denied*, 488 U.S. 898 (1988); *Beliz v. McLeod*, 765 F.2d 1317 (5th Cir. 1985), and *Castillo v. Givens*, 704 F.2d 181 (5th Cir.), *cert. denied*, 464 U.S. 850 (1983). If it is determined that the farm labor contractor is an *employee* of the agricultural employer/association, the agricultural workers in the farm labor contractor's crew who perform work for the agricultural employer/association are deemed to be employees of the agricultural employer/association and an inquiry into joint employment is not necessary or appropriate. In determining if the farm labor contractor or worker is an employee or an independent contractor, the ultimate question is the economic reality of the relationship—whether there is economic dependence upon the agricultural employer/association or farm labor contractor, as appropriate. *Lauritzen* at 1538; *Beliz* at 1329; *Castillo* at 192; *Real* at 758. This determination is based upon an evaluation of all of the circumstances, including the following:

- (i) The nature and degree of the putative employer's control as to the manner in which the work is performed;
- (ii) The putative employee's opportunity for profit or loss depending upon his/her managerial skill;
- (iii) The putative employee's investment in equipment or materials required for the task, or the putative employee's employment of other workers;

(iv) Whether the services rendered by the putative employee require special skill;

(v) The degree of permanency and duration of the working relationship;

(vi) The extent to which the services rendered by the putative employee are an integral part of the putative employer's business.

(5) The definition of the term *employment* includes the *joint employment* principles applicable under the Fair Labor Standards Act. The term *joint employment* means a condition in which a single individual stands in the relation of an employee to two or more persons at the same time. A determination of whether the employment is to be considered *joint employment* depends upon all the facts in the particular case. If the facts establish that two or more persons are completely disassociated with respect to the employment of a particular employee, a *joint employment* situation does not exist. When the putative employers share responsibility for activities set out in the following factors or in other relevant facts, this is an indication that the putative employers are not completely disassociated with respect to the employment and that the agricultural worker may be economically dependent on both persons:

(1) If it is determined that a farm labor contractor is an independent contractor, it still must be determined whether or not the employees of the farm labor contractor are also jointly employed by the agricultural employer/association. *Joint employment* under the Fair Labor Standards Act is *joint employment* under the MSPA. *Such joint employment* relationships, which are common in agriculture, have been addressed both in the legislative history and by the courts.

(ii) The legislative history of the Act (H. Rep. No. 97-885, 97th Cong., 2d Sess., 1982) states that the legislative purpose in enacting MSPA was "to reverse the historical pattern of abuse and exploitation of migrant and seasonal farm workers * * *," which would only be accomplished by "advancing * * * a completely new approach" (Rept. at 3). Congress's incorporation of the FLSA term *employment* was undertaken with the deliberate intent of adopting the FLSA *joint employer* doctrine as the "central

foundation" of MSPA and "the best means by which to insure that the purposes of this MSPA would be fulfilled" (Rept. at 6). Further, Congress intended that the *joint employer* test under MSPA be the formulation as set forth in *Hodgson v. Griffin & Brand of McAllen, Inc.*, 471 F.2d 235 (5th Cir., cert. denied, 414 U.S. 819 (1973)) (Rept. at 7). In endorsing *Griffin & Brand*, Congress stated that this formulation should be controlling in situations "where an agricultural employer * * * asserts that the agricultural workers in question are the *sole* employees of an independent contractor/crewleader," and that the "decision maker is found even if a farm labor contractor is found to be a bona fide independent contractor, * * * this status does not as a matter of law negate the possibility that an agricultural employer may be a joint employer * * * of the harvest workers" together with the farm labor contractor. Further, regarding the *joint employer* doctrine and the *Griffin & Brand* formulation, Congress stated that "the absence of evidence on any of the criteria listed does not preclude a finding that an agricultural association of agricultural employer was a joint employer along with the crewleader", and that "it is expected that the special aspects of agricultural employment be kept in mind" when applying the tests and criteria set forth in the case law and legislative history (Rept. at 8).

(iii) In determining whether or not an employment relationship exists between the agricultural employer/association and the agricultural worker, the ultimate question to be determined is the economic reality—whether the worker is so economically dependent upon the agricultural employer/association as to be considered its employee.

(iv) The factors set forth in paragraphs (h)(5)(iv)(A) through (G) of this section are analytical tools to be used in determining the ultimate question of economic dependency. The consideration of each factor, as well as the determination of the ultimate question of economic dependency, is a qualitative rather than quantitative analysis. The factors are not to be applied as a

checklist. No one factor will be dispositive of the ultimate question; nor must a majority or particular combination of factors be found for an employment relationship to exist. The analysis as to the existence of an employment relationship is not a strict liability or *per se* determination under which any agricultural employer/association would be found to be an employer merely by retaining or benefiting from the services of a farm labor contractor. The factors set forth in paragraphs (h)(5)(iv)(A) through (G) of this section are illustrative only and are not intended to be exhaustive; other factors may be significant and, if so, should be considered, depending upon the specific circumstances of the relationship among the parties. How the factors are weighed depends upon all of the facts and circumstances. Among the factors to be considered in determining whether or not an employment relationship exists are:

(A) Whether the agricultural employer/association has the power, either alone or through control of the farm labor contractor to direct, control, or supervise the worker(s) or the work performed (such control may be either direct or indirect, taking into account the nature of the work performed and a reasonable degree of contractor performance oversight and coordination with third parties);

(B) Whether the agricultural employer/association has the power, either alone or in addition to another employer, directly or indirectly, to hire or fire, modify the employment conditions, or determine the pay rates or the methods of wage payment for the worker(s);

(C) The degree of permanency and duration of the relationship of the parties, in the context of the agricultural activity at issue;

(D) The extent to which the services rendered by the worker(s) are repetitive, rote tasks requiring skills which are acquired with relatively little training;

(E) Whether the activities performed by the worker(s) are an integral part of the overall business operation of the agricultural employer/association;

(F) Whether the work is performed on the agricultural employer/association's

premises, rather than on premises owned or controlled by another business entity; and

(G) Whether the agricultural employer/association undertakes responsibilities in relation to the worker(s) which are commonly performed by employers, such as preparing and/or making payroll records, preparing and/or issuing pay checks, paying FICA taxes, providing workers' compensation insurance, providing field sanitation facilities, housing or transportation, or providing tools and equipment or materials required for the job (taking into account the amount of the investment).

(i) *Farm labor contracting activity* means recruiting, soliciting, hiring, employing, furnishing, or transporting any migrant or seasonal agricultural worker.

(j) *Farm labor contractor* means any person—other than an agricultural employer, an agricultural association, or an employee of an agricultural employer or agricultural association—who, for any money or other valuable consideration paid or promised to be paid, performs any farm labor contracting activity.

(k) *Farm Labor Contractor Certificate of Registration* or *Certificate of Registration* means the certificate issued by the Administrator which permits a farm labor contractor to engage in farm labor contracting activities.

(l) *Farm labor contractor employee* who is required to obtain a Certificate of Registration as an employee of a farm labor contractor means a person who performs farm labor contracting activity solely on behalf of a farm labor contractor holding a valid Certificate of Registration and is not an independent farm labor contractor who would be required to register under the Act in his own right.

(m) *Farm Labor Contractor Employee Certificate of Registration* or *Employee Certificate of Registration* means the certificate issued by the Administrator to an employee of a farm labor contractor authorizing the performance of farm labor contracting activities solely on behalf of such farm labor contractor and not as an independent farm labor

contractor who would be required to register in his own right.

(n) *Illegal alien* means any person who is not lawfully admitted for permanent residence in the United States or who has not been authorized by the Attorney General to accept employment in the United States.

(o) *Immediate family* includes only:

- (1) A spouse;
- (2) Children, stepchildren, and foster children;
- (3) Parents, stepparents, and foster parents; and
- (4) Brothers and sisters.

(p) *Migrant agricultural worker* means an individual who is employed in agricultural employment of a seasonal or other temporary nature, and who is required to be absent overnight from his permanent place of residence.

(1) *Migrant agricultural worker* does not include:

- (i) Any immediate family member of an agricultural employer or a farm labor contractor; or
- (ii) Any temporary nonimmigrant alien who is authorized to work in agricultural employment in the United States under sections 101(a)(15)(H)(ii)(a) and 214(c) of the Immigration and Nationality Act.

(2) *Permanent place of residence*, with respect to an individual, means a domicile or permanent home. Permanent place of residence does not include seasonal or temporary housing such as a labor camp. The term *permanent place of residence* for any nonimmigrant alien is that individual's country of origin.

(q) *Person* means any individual, partnership, association, joint stock company, trust, cooperative, or corporation.

(r) *Seasonal agricultural worker* means an individual who is employed in agricultural employment of a seasonal or other temporary nature and is not required to be absent overnight from his permanent place of residence:

- (1) When employed on a farm or ranch performing field work related to planting, cultivating, or harvesting operations; or
- (2) When employed in canning, packing, finning, seed conditioning or related research, or processing operations, and transported, or caused to be transported, to or from the place of

employment by means of a day-haul operation.

(i) *Seasonal agricultural worker* does not include:

- (A) Any migrant agricultural worker;
- (B) Any immediate family member of an agricultural employer or a farm labor contractor; or
- (C) Any temporary nonimmigrant alien who is authorized to work in agricultural employment in the United States under sections 101(a)(15)(H)(ii)(a) and 214(c) of the Immigration and Nationality Act.

(ii) *Field work related to planting, cultivating or harvesting operations* includes all farming operations on a farm or ranch which are normally required to plant, harvest or produce agricultural or horticultural commodities, including the production of a commodity which normally occurs in the fields of a farm or ranch as opposed to those activities which generally occur in a processing plant or packing shed. A worker engaged in the placing of commodities in a container in the field and on-field loading of trucks and similar transports is included. Nursery, mushroom and similar workers engaged in activities in connection with planting, cultivating or harvesting operations are intended to be covered. An individual operating a machine, such as a picker, or tractor is not included when performing such activity.

(s) *On a seasonal or other temporary basis* means:

- (1) Labor is performed on a seasonal basis where, ordinarily, the employment pertains to or is of the kind exclusively performed at certain seasons or periods of the year and which, from its nature, may not be continuous or carried on throughout the year. A worker who moves from one seasonal activity to another, while employed in agriculture or performing agricultural labor, is employed on a seasonal basis even though he may continue to be employed during a major portion of the year.
- (2) A worker is employed on *other temporary basis* where he is employed for a limited time only or his performance is contemplated for a particular piece of work, usually of short duration. Generally, employment, which is

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contemplated to continue indefinitely, is not temporary.

(3) *On a seasonal or other temporary basis* does not include the employment of any foreman or other supervisory employee who is employed by a specific agricultural employer or agricultural association essentially on a year round basis.

(4) *On a seasonal or other temporary basis* does not include the employment of any worker who is living at his permanent place of residence, when that worker is employed by a specific agricultural employer or agricultural association on essentially a year round basis to perform a variety of tasks for his employer and is not primarily employed to do field work.

(5) *Secretary* means the Secretary of Labor or the Secretary's authorized representative.

(u)(1) *Solicitor of Labor* means the Solicitor, United States Department of Labor, and includes attorneys designated by the Solicitor to perform functions of the Solicitor under these regulations.

(2) *Associate Solicitor for Fair Labor Standards* means the Associate Solicitor, who, among other duties, is in charge of litigation for the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210.

(3) *Regional Solicitors* means the attorneys in charge of the various regional offices of the Office of the Solicitor.

(v) *State* means any of the States of the United States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, and Guam. *State agency* means a State agency vested with all powers necessary to cooperate with the U.S.

Department of Labor for purposes of entering into agreements to carry out the Act as provided in section 513 thereof.

(w) *Temporary nonimmigrant alien* means a person who has a residence in a foreign country which he does not intend to abandon and who comes temporarily to the United States, with approval of the Attorney General, to perform temporary service or labor.

(x) The *Wagner-Peyser Act* is the Act of June 6, 1933 (48 Stat. 113; codified in 29 U.S.C. 49 *et seq.*), providing, *inter alia*, for the establishment of the U.S. Employment Service. *Employment Service of the various States* means a State agency vested with all powers necessary to cooperate with the U.S. Employment Service under the Wagner-Peyser Act.

(y) The *Immigration and Nationality Act* (INA) as amended by the *Immigration Reform and Control Act of 1986* (IRCA) to effectivly control unauthorized immigration to the United States and for other purposes, is set out in 8 U.S.C. 1101 *et seq.*

[48 FR 36741, Aug. 12, 1983; 48 FR 36374, Aug. 23, 1983, as amended at 54 FR 13329, Mar. 31, 1989; 56 FR 54708, Oct. 22, 1991; 62 FR 11737, Mar. 12, 1997]

APPLICABILITY OF THE ACT: EXEMPTIONS

§ 500.30 **Persons not subject to the Act.**

(a) *Family business exemption.* Any individual who engages in a farm labor contracting activity on behalf of a farm, processing establishment, seed conditioning establishment, cannery, gin, packing shed, or nursery, which is owned or operated exclusively by such individual or an immediate family member of such individual, if such activities are performed only for such operation and exclusively by such individual or an immediate family member, but without regard to whether such individual has incorporated or otherwise organized for business purposes.

(b) *Small business exemption.* Any person, other than a farm labor contractor, for whom the man-days exemption for agricultural labor provided under section 13(a)(6)(A) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(6)(A)) is applicable. That exemption applies to an agricultural employer who did not, during any calendar quarter of the preceding calendar year, use more man-days of agricultural labor than the limit specified under that statute.

(1) Currently the limit for exemption is 500 man-days.

(2) A *man-day* means any day during which an employee performs agricultural labor for not less than one (1)

hour. Agricultural labor performed by an employer's parent, spouse, child, or other member of his immediate family, i.e., step-children, foster children, step-parents and foster parents, brothers, and sisters is not counted as man-days.

(3) The man-days of agricultural labor rendered in a joint employment relationship are counted toward the man-days of such labor of each employer for purposes of the man-day test of this exemption.

(c) *Common carriers.* Any common carrier which would be a farm labor contractor solely because the carrier is engaged in the farm labor contracting activity of transporting any migrant or seasonal agricultural worker. A "common carrier" by motor vehicle is one which holds itself out to the general public to engage in transportation of passengers for hire, whether over regular or irregular routes, and which holds a valid certificate of authorization for such purposes from an appropriate local, State or Federal agency.

(d) *Labor organizations.* Any labor organization, as defined in section 2(5) of the Labor Management Relations Act (29 U.S.C. 152(5)) (without regard to the exclusion of agricultural employees in that Act) or as defined under applicable State labor relations law.

(e) *Nonprofit charitable organizations.* Any nonprofit charitable organization or public or private nonprofit educational institution.

(f) *Local short-term contracting activity.* Any person who engages in any farm labor contracting activity solely within a twenty-five mile intrastate radius of such person's permanent place of residence and for not more than thirteen weeks per year.

(1) *Twenty-five mile intrastate radius* as used in section 4(a)(3)(D) of the Act means that engagement in a farm labor contracting activity may not go beyond a twenty-five mile intrastate geographical radius. Once this limit is transcended, the exemption no longer applies and the person becomes subject to the requirements of the Act. If, for example, a person or his employee solicits workers from a distance greater than twenty-five miles from his permanent residence or from across a State line, then the person has engaged in a named activity outside of the per-

mitted scope of the exemption, and is subject to the requirements of the Act. A person who uses lines of communication (such as U.S. Mail, telephone, or advertising) to recruit, solicit, hire, or furnish workers over a distance greater than twenty-five miles from his permanent residence or from across a State line for agricultural employment is also engaged in a named activity beyond the specified limit of the exemption and is subject to the Act. In the case of a corporation its permanent place of residence for these purposes shall be a single designated location.

(2) *For not more than thirteen weeks per year* as used in section 4(a)(3)(D) of the Act means that farm labor contracting activities may not be engaged in for more than thirteen weeks in a year. This does not mean, however, that persons who engage in intrastate and short-range farm labor contracting activities are exempt for the first thirteen weeks of their farm labor contracting activities each year. The number of weeks of contracting activity during the prior year is also a factor. When the limit of weeks for the exemption is exceeded in a calendar year, the person is subject immediately to the Act and is also presumed subject to the Act in the next calendar year, unless it can be shown that the tests of section 4(a)(3)(D) are met.

(g) *Custom combine.* Any custom combine, hay harvesting, or sheep shearing operation. *Custom combine, hay harvesting, and sheep shearing operation* means the agricultural services and activities involved in combining grain, harvesting hay and shearing sheep which are provided to a farmer on a contract basis by a person who provides the necessary equipment and labor and who specializes on providing such services and activities.

(h) *Custom poultry operations.* Any custom poultry harvesting, breeding, debarking, desexing, or health service operation, provided the employees of the operation are not regularly required to be away from their permanent place of residence other than during their normal working hours.

(i) *Seed production exemption.* (1) Any person whose principal occupation or

business is not agricultural employment, when supplying full-time students or other individuals whose principal occupation is not agricultural employment to detassel, rogue, or otherwise engage in the production of seed and to engage in related and incidental agricultural employment, unless such full-time students or other individuals are required to be away from their permanent place of residence overnight or there are individuals under eighteen years of age who are providing transportation on behalf of such person.

(2) Any person to the extent he is supplied with students or other individuals for agricultural employment in accordance with paragraph (1)(1) of this section by a person who is exempt thereunder.

(3) *Shade grown tobacco.* (1) Any person whose principal occupation or business is not agricultural employment, when supplying full-time students or other individuals whose principal occupation is not agricultural employment to string or harvest shade grown tobacco and to engage in related and incidental agricultural employment, unless there are individuals under eighteen years of age who are providing transportation on behalf of such person.

(2) Any person to the extent he is supplied with students or other individuals for agricultural employment in accordance with paragraph (3)(1) of this section by a person who is exempt thereunder.

(k) *Employees of exempt employers.* Any employee of any person described in paragraphs (c) through (j) of this section when performing farm labor contracting activities within the scope of such exemptions and exclusively for such person.

Subpart B—Registration of Farm Labor Contractors and Employees of Farm Labor Contractors Engaged in Farm Labor Contracting Activities

REGISTRATION REQUIREMENTS; GENERAL

§ 500.40 Registration in general.

Any person who desires to engage in any activity as a farm labor contractor, as defined in the Act and these

regulations, and is not exempt, is required first to obtain a Certificate of Registration authorizing each such activity. Any employee of a registered farm labor contractor who performs farm labor contracting activities solely on behalf of such contractor, and who is not an independent contractor, must obtain a Farm Labor Contractor Employee Certificate of Registration authorizing each such activity. The employee's certificate must show the name of the farm labor contractor for whom the activities are to be performed. The contractor whose name appears on the employee's certificate must hold a valid Certificate of Registration covering the entire period shown on the employee's certificate.

§ 500.41 Farm labor contractor is responsible for actions of his farm labor contractor employee.

(a) A farm labor contractor is responsible for assuring that every employee who is performing farm labor contracting activities on behalf of such contractor has obtained either a Farm Labor Contractor Employee Certificate of Registration or a Certificate of Registration as an independent farm labor contractor, as required by the Act and these regulations, prior to such employee's engagement in any activity enumerated in section 3(6) of the Act. A farm labor contractor who utilizes the services of another farm labor contractor who is not his employee must also comply with the provisions of § 500.71. The farm labor contractor is responsible for any violations of the Act or these regulations committed by his employee, whether or not the employee has registered as required by the Act.

(b) A Farm Labor Contractor Employee Certificate of Registration is valid only during the period in which the holder is an employee of the registered farm labor contractor named on the Farm Labor Contractor Employee Certificate. If prior to the expiration of the Employee Certificate, the holder, through a change in employment, should become an employee of a different registered farm labor contractor, a replacement Employee Certificate which names the new employer may be obtained by submitting to the

regional office that issued the original employee certificate or to any regional office of the Wage and Hour Division, Employment Standards Administration, a written statement that includes the date of the change in employment status and the name, the permanent place of residence and certificate registration number of the new employer. Any such change should be reported immediately.

§ 500.42 Certificate of Registration to be carried and exhibited.

Each registered farm labor contractor and registered farm labor contractor employee shall carry at all times while engaging in farm labor contracting activities, a Certificate of Registration or a Farm Labor Contractor Employee Certificate as appropriate and, upon request, shall exhibit that certificate to representatives of the U.S. Department of Labor and State Employment Service Agencies and to all persons with whom he intends to deal as a farm labor contractor or farm labor contractor employee.

§ 500.43 Effect of failure to produce certificate.

The facilities and the services authorized by the Wagner-Peyser Act shall be denied to any farm labor contractor upon refusal or failure to produce, when asked, a Certificate of Registration. Services shall be provided upon presentation of a valid Certificate of Registration.

APPLICATIONS AND RENEWAL OF FARM LABOR CONTRACTOR AND FARM LABOR CONTRACTOR EMPLOYEE CERTIFICATES

§ 500.44 Form of application.

An application for issuance or renewal of a Farm Labor Contractor Certificate of Registration or Farm Labor Contractor Employee Certificate shall be made on forms designated by the Secretary.

§ 500.45 Contents of application.

The application shall set forth the information required thereon which shall include the following:

- (a) A declaration, subscribed and sworn to by the applicant, stating the

applicant's permanent place of residence, the farm labor contracting activities for which the certificate is requested, and the address to which official documents should be mailed;

- (b) A statement identifying each vehicle to be used to transport any migrant or seasonal agricultural worker and, if the vehicle is or will be owned or controlled by the applicant, documentation showing that the applicant for a Farm Labor Contractor Certificate of Registration is in compliance with the requirements of section 401 of the Act with respect to each such vehicle;

- (c) A statement identifying each facility or real property to be used to house any migrant agricultural worker and, if the facility or real property is or will be owned or controlled by the applicant, documentation showing that the applicant for a Farm Labor Contractor Certificate of Registration is in compliance with section 203 of the Act with respect to each such facility or real property;

- (d) A set of fingerprints of the applicant on Form FD 258 as prescribed by the U.S. Department of Justice;

- (e) A declaration, subscribed and sworn to by the applicant, consenting to the designation by a court of the Secretary as an agent available to accept service of summons in any action against the applicant, if the applicant has left the jurisdiction in which the action is commenced or otherwise has become unavailable to accept service; and
- (f) Such other relevant information as the Secretary may require.

§ 500.46 Filing an application.

Registration under the Act is required whether or not licensing or registration is required under State law.

§ 500.47 Place for filing application.

Application forms may be filed in any State Employment Service Office or in any office of the Wage and Hour Division, U.S. Department of Labor.

ACTION ON APPLICATION

§ 500.48 Issuance of certificate.

The Administrator or authorized representative shall:

- (a) Review each application received and determine whether such application is complete and properly executed;
- (b) When appropriate, notify the applicant in writing of any incompleteness or error in the application and return the application for correction and completion;

- (c) Determine, after appropriate investigation, whether the applicant has complied with the requirements of the Act and these regulations, and if appropriate, issue a Certificate of Registration or a Farm Labor Contractor Employee Certificate of Registration authorizing the performance of one or more activities permitted under the Act;

- (d) Authorize the activity of transporting a migrant or seasonal agricultural worker, subject to the maximum number of workers authorized to be transported under the vehicle liability policy and as indicated on the face of the Certificate of Registration, only upon receipt of:

- (1) A statement in the manner prescribed by the Secretary identifying each vehicle to be used, or caused to be used, by the applicant for the transportation of any migrant or seasonal agricultural worker during the period for which registration is sought;

- (2) Written proof that every such vehicle which is under the applicant's ownership or control, is in compliance with the vehicle safety requirements of the Act and these regulations; and

- (3) Written proof that every such vehicle is in compliance with the insurance requirements of the Act and these regulations;

- (e) Authorize the activity of driving a vehicle to transport a migrant or seasonal agricultural worker only upon receipt of (1) A doctor's certificate on the prescribed form, with an initial application for a Certificate of Registration or a Farm Labor Contractor Employee Certificate, and, when applying for a renewal, a new completed doctor's certificate if the previous doctor's certificate is more than three years old; and (2) evidence of a valid and appropriate license, as provided by State law, to operate the vehicle; and

- (f) Authorize the activity of housing a migrant agricultural worker only upon receipt of (1) A statement identifying

each facility or real property to be used for housing a migrant agricultural worker during the period for which registration is sought; and (2) if the facility or real property is or will be owned or controlled by the applicant, written proof that the facility or real property complies with the applicable Federal and State standards of health and safety. Such written proof may be either a certification issued by a State or local health authority or other appropriate agency, or a copy of a written request for the inspection of a facility or real property made to the appropriate State or local agency at least forty-five days prior to the date on which the facility or real property is to be occupied by migrant agricultural workers, dated and signed by the applicant or other person who owns or controls the facility or real property. If housing authorization is issued based on a written request for inspection and the housing facility or real property is subsequently inspected and does not meet the appropriate standards, the housing authorization is null and void. Should the required written proof for housing authorization be unavailable at the time of filing an application, the applicant must attest in writing that the applicant will not house any migrant agricultural worker in any facility or real property owned or controlled by the applicant, until such applicant shall have submitted all necessary written proof and obtained a Farm Labor Contractor Certificate of Registration showing that housing in the facility or real property is authorized by the Secretary of Labor. In such event, if otherwise eligible, the applicant will be issued a Certificate of Registration without a housing authorization. This certificate may be amended to include an authorization to house at such time as the required proof is forthcoming.

[48 FR 36741, Aug. 12, 1983, as amended at 61 FR 24865, May 16, 1996]

§ 500.50 Duration of certificate.

(a) Initial certificates of farm labor contractor and farm labor contractor employees. (1) An initial certificate issued under the Act and these regulations shall expire twelve months from the

date of issuance unless earlier suspended or revoked.

(2) Certificates applied for during the period beginning April 14, 1983, and ending November 30, 1983, may be issued for a period of up to twenty-four months for the purpose of an orderly transition to registration under the Act.

(3) Certificates issued to employees of farm labor contractors shall expire at the suspension, revocation or expiration of the farm labor contractor's Certificate of Registration under which such employee was authorized.

(b) Certificate renewal of farm labor contractors and farm labor contractor employees. (1) A certificate issued under the Act and these regulations may be temporarily extended by the filing of a properly completed and signed application with the Secretary at least thirty days prior to the expiration date. "Filing" may be accomplished by hand delivery, certified mail, or regular mail.

(4) If the application for renewal is filed by regular mail or if it is delivered in person by the applicant, it must be received by the Department of Labor or an authorized representative of the Department of Labor at least 30 days prior to the expiration date shown on the current certificate.

(ii) If the application for renewal is filed by certified mail, it must be mailed at least 30 days prior to the expiration date shown on the current certificate.

Where timely application for renewal has been filed, the authority to operate pursuant to a valid certificate under the Act and these regulations shall continue until the renewed application has been finally determined by the Secretary.

(2) A certificate issued under the Act and these regulations may be renewed by the Secretary for additional twelve-month periods or for periods in excess of twelve months but not in excess of twenty-four months.

(3) Eligibility for renewals of certificates for more than twelve months under the Act and these regulations shall be limited to those farm labor contractors and farm labor contractor employees who have not been cited during the preceding five years for a violation of the Act or any regulation

under the Act, or the Farm Labor Contractor Registration Act or any regulation under such Act.

(c) Continuation of certain FLCRA certificates. (1) Certificates issued under FLCRA, and in effect on April 14, 1983, that are valid for the services performed under FLCRA, will be continued in effect and be accepted as authorized to perform like services under the Act and these regulations for the remainder of calendar year 1983. Such certificates will be subject to the Act and these regulations with respect to determinations to suspend, revoke or refuse renewal.

(2) Actions pending related to the suspension, revocation, or refusal to issue or renew FLCRA certificates shall continue through to a final determination. Any such certificate which is considered to be in effect under title 29 CFR 40.21 pending a final determination, will be considered valid under MSPA, provided application for a certificate under MSPA is made no later than November 30, 1983.

[48 FR 36741, Aug. 12, 1983, as amended at 54 FR 13329, Mar. 31, 1989]

§ 500.51 Refusal to issue or to renew, or suspension or revocation of certificate.

The Secretary may suspend or revoke or refuse to issue or to renew a Certificate of Registration (including a Farm Labor Contractor Employee Certificate) if the applicant or holder:

(a) Has knowingly made any misrepresentation in the application for such certificate;

(b) Is not the real party in interest in the application or Certificate of Registration and the real party in interest is a person who has been refused issuance or renewal of a certificate, has had a certificate suspended or revoked, or does not qualify under this section for a certificate;

(c) Has failed to comply with the Act or these regulations;

(d) Has failed to pay any court judgment obtained by the Secretary or any other person under the Act or these regulations or under the Farm Labor Contractor Registration Act of 1963 or any regulation under such Act;

(e) Has failed to comply with any final order issued by the Secretary as a

result of a violation of the Act or these regulations or a violation of the Farm Labor Contractor Registration Act of 1963 or any regulation under such Act:

(f) Has been convicted within the preceding five years:

(1) Of any crime under State or Federal law relating to gambling, or to the sale, distribution or possession of alcoholic beverages, in connection with or incident to any farm labor contracting activities; or

(2) Of any felony under State or Federal law involving robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury, prostitution, peonage, or smuggling or harboring individuals who have entered the United States illegally.

(g) Has been found to have violated paragraph (1) or (2) of section 274A(a) of the Immigration and Nationality Act (INA) by hiring, recruiting, or referring for a fee, for employment in the United States, (1) An alien knowing the alien is an unauthorized alien as defined in section 274A(h)(3) of INA with respect to such employment, or (2) an individual without complying with the requirements concerning verification of the person's identity and employment authorization as stated in section 274A(b) of INA.

[48 FR 36741, Aug. 12, 1983, as amended at 54 FR 13329, Mar. 31, 1989]

§ 500.52 Right to hearing.

Any applicant or holder who desires an administrative hearing on the determination to refuse to issue or to renew, or to suspend or to revoke, a Certificate of Registration or a Farm Labor Contractor Employee Certificate of Registration shall make a request in accordance with § 500.212, no later than thirty (30) days after service of the notice referred to in § 500.210.

§ 500.53 Nontransfer of certificate.

A Certificate of Registration may not be transferred or assigned.

§ 500.54 Change of address.

During the period for which the Certificate of Registration or Employee Certificate is in effect, each farm labor

contractor or farm labor contractor employee shall provide to the Secretary, within thirty (30) days, a notice of each change of permanent place of residence in accordance with § 500.215.

§ 500.55 Changes to or amendments of certificate authority.

(a) During the period for which the Certificate of Registration is in effect, a farm labor contractor must apply to the Secretary to amend the Certificate of Registration whenever he intends to: (1) Engage in another farm labor contracting activity;

(2) Use, or cause to be used, another vehicle than that covered by the certificate to transport any migrant or seasonal agricultural worker; or

(3) Use, or cause to be used, another real property or facility to house any migrant agricultural worker than that covered by the certificate.

(b) Whenever another vehicle or housing facility or real property is or will be owned, operated, or controlled by the farm labor contractor, the farm labor contractor must submit the appropriate information to obtain transportation, driving or housing authorization, as applicable, as described in § 500.46, within 10 days after the contractor obtains or learns of the intended use of such vehicle or housing facility or real property.

(c) Notwithstanding submission of the appropriate information, the farm labor contractor must comply with all applicable motor safety, insurance, and housing safety and health provisions of the Act and these regulations. With regard to housing, the farm labor contractor must submit the appropriate housing documentation as well as comply with the housing safety and health provisions of the Act and these regulations, prior to occupancy by a migrant agricultural worker.

§ 500.56 Replacement of Certificate of Registration or Farm Labor Contractor Employee Certificate.

If a Certificate of Registration or a Farm Labor Contractor Employee Certificate is lost or destroyed, a duplicate certificate may be obtained by the submission to the regional office that issued it or to any regional office of the Wage and Hour Division, Employment

Standards Administration, of a written statement explaining its loss or destruction, indicating where the original application was filed and requesting that a duplicate be issued.

ADDITIONAL OBLIGATIONS OF FARM LABOR CONTRACTORS AND FARM LABOR CONTRACTOR EMPLOYEES

§ 500.60 Farm labor contractors' recruitment, contractual and general obligations.

The Act imposes certain specific recruitment, contractual and general obligations on farm labor contractors and farm labor contractor employees. The contractor is responsible for any violations under the Act committed by his employee. Each of the following obligations applies to both farm labor contractors and farm labor contractor employees.

(a) Each farm labor contractor shall provide to any other farm labor contractor and to any agricultural employer and agricultural association to which such farm labor contractor has furnished any migrant or seasonal agricultural worker, copies of all records for that place of employment which such farm labor contractor is required to retain for each worker furnished or supplied. The recipient of these records shall keep them for a period of three years.

(b) Each farm labor contractor, without regard to any other provisions of this Act, shall obtain at each place of employment and make available for inspection to every worker he furnishes for employment, a written statement of the conditions of such employment as described in sections 201(b) and 301(b) of the Act and §§500.75 and 500.76 of these regulations. As with the written disclosure statements under §§500.76 and 500.77, these statements must be provided to the workers in English or, as necessary and reasonable, in Spanish or another language common to migrant or seasonal agricultural workers who are not fluent in English.

(c)(1) No farm labor contractor shall violate, without justification, the terms of any written agreements made with an agricultural employer or an agricultural association pertaining to any contracting activity or worker

protection under the Act. Normally, "without justification" would not include situations in which failure to comply with the terms of any written agreements was directly attributable to Acts of God, due to conditions beyond the control of the person or to conditions which he could not reasonably foresee.

(2) Written agreements do not relieve a farm labor contractor of any responsibility that such contractor would otherwise have under the Act and these regulations.

(d) All payroll records made by the farm labor contractor must be retained by him for a period of three years.

§ 500.61 Farm labor contractors must comply with all worker protections and all other provisions.

Every farm labor contractor must comply with all of the provisions of titles I through V of the Act and all of the subjects of these regulations, unless subject to a specific statutory exemption. In addition to complying with all of the standards stated in subparts A and B of these regulations, every farm labor contractor must comply with each provision stated in subpart C and the motor vehicle safety and insurance and housing standards stated in subpart D.

§ 500.62 Obligations of a person holding a valid Farm Labor Contractor Employee Certificate of Registration.

Any person holding a valid Farm Labor Contractor Employee Certificate of Registration in accordance with the Act and these regulations is required to comply with the Act and these regulations to the same extent as if said person had been required to obtain a Certificate of Registration in such person's own name as a farm labor contractor.

Subpart C—Worker Protections

GENERAL

§ 500.70 Scope of worker protections.

(a) General. The Act provides protections for migrant and seasonal agricultural workers irrespective of whether

they are employed by a farm labor contractor, an agricultural employer or an agricultural association, or, in the case where there is joint responsibility, by more than one of these persons. The Act's provisions include standards relating to vehicle safety, housing safety and health, disclosure of wages, hours and other conditions of employment, and recordkeeping. When any person not otherwise exempt from the Act recruits, solicits, hires, employs, furnishes or transports workers, that person is required to comply with the applicable protective provisions of the Act. In addition, any person not specifically exempt from coverage of the Act (irrespective of whether that person is an agricultural employer, an agricultural association or farm labor contractor) who owns or controls a facility or real property which is used as housing for any migrant agricultural workers must ensure that the facility or real property complies with all substantive Federal and State safety and health standards made applicable to that type of housing. (See §500.132)

(b) Wage related protections. Joint employment under the Fair Labor Standards Act, which establishes responsibility for the maintenance of payroll records, payment of wages and posting of notices under that law, is joint employment under MSPA for establishing responsibility for the maintenance of records, payment of wages and the posting of required posters under MSPA. In such joint employment situations the responsibility for assuring these MSPA protections may be carried out by one of the joint employers. While under a joint employment relationship all joint employers are equally responsible for assuring that the appropriate protections are provided, the creation of such a joint employment relationship does not also require unnecessary duplication of effort as, for example, in relation to the posting of posters (see §§500.75(e) and 500.76(e)) or the provision of an itemized written statement of the worker's pay (see §500.80(d)). Failure to provide protections coming within the joint employment relationship, however, will result in all joint employers being responsible for that failure.

(c) Transportation related protections. Responsibility for compliance with the housing safety and health provisions of section 203 of the Act and §§500.130 through 500.135 of these regulations is imposed upon the person (or persons) who owns or controls a facility or real property used as housing for migrant agricultural workers. Any agricultural employer or agricultural association which has a farm labor contractor operate housing which it owns or controls is responsible, as well as the farm labor contractor, for insuring compliance with the housing safety and health provisions of these regulations. When the owner or operator of the housing is not an agricultural employer, agricultural

(d) Housing related protections. Responsibility for compliance with the housing safety and health provisions of section 203 of the Act and §§500.130 through 500.135 of these regulations is imposed upon the person (or persons) who owns or controls a facility or real property used as housing for migrant agricultural workers. Any agricultural employer or agricultural association which has a farm labor contractor operate housing which it owns or controls is responsible, as well as the farm labor contractor, for insuring compliance with the housing safety and health provisions of these regulations. When the owner or operator of the housing is not an agricultural employer, agricultural

association or farm labor contractor, the owner is responsible for that housing meeting the safety and health provisions under the Act and these regulations. This is subject to the exclusion stated in § 500.131 of these regulations which provides that the housing safety and health requirements do not apply to any person who, in the ordinary course of that person's business, regularly provides housing on a commercial basis to the general public and who provides housing to any migrant agricultural worker of the same character and on the same or comparable terms and conditions as provided to the general public.

§ 500.71 Utilization of only registered farm labor contractors.

The Act prohibits any person from utilizing the services of a farm labor contractor to supply migrant or seasonal agricultural workers without first taking reasonable steps to determine that the farm labor contractor possesses a valid Certificate of Registration, issued pursuant to the Act, which authorizes the activity for which the contractor is to be utilized. This prohibition also applies to a farm labor contractor who wishes to utilize the services of another farm labor contractor (see § 500.41). In making the determination about a contractor's registration status, a person may rely upon the contractor's possession of a Certificate of Registration which on its face is valid and which authorizes the activity for which the contractor is utilized. A person has the alternative to confirm the contractor's registration through the central registry maintained by the United States Department of Labor.

§ 500.72 Agreements with workers.

(a) The Act prohibits farm labor contractors, agricultural employers and agricultural associations from violating, without justification, the terms of any working arrangements they have made with migrant or seasonal agricultural workers. Normally, "without justification" would not include situations in which failure to comply with the terms of any working arrangements was directly attributable to acts of God, due to conditions be-

yond the control of the person or to conditions which he could not reasonably foresee.

(b) Written agreements do not relieve any person of any responsibility that the person would otherwise have under the Act or these regulations.

§ 500.73 Required purchase of goods or services solely from any person prohibited.

The Act prohibits a farm labor contractor, agricultural employer or agricultural association from requiring a migrant or seasonal agricultural worker to purchase goods or services solely from such farm labor contractor, agricultural employer, or agricultural association, or any other person acting as an agent for any person subject to this prohibition.

RECRUITING, HIRING AND PROVIDING INFORMATION TO MIGRANT AGRICULTURAL WORKERS

§ 500.75 Disclosure of information.

(a) Where disclosure is required, Department of Labor optional forms may be used to satisfy the requirements of disclosure under the Act.

(b) Each farm labor contractor, agricultural employer, and agricultural association which recruits any migrant agricultural worker shall ascertain to the best of his ability and disclose, in writing to the extent that he has obtained such information, to such worker at the time of recruitment, the following information:

(1) The place of employment (with as much specificity as practical, such as the name and address of the employer or the association);

(2) The wage rates (including piece rates) to be paid;

(3) The crops and kinds of activities on which the worker may be employed;

(4) The period of employment, and any other employee benefits to be provided, if any, and any costs to be charged for each of them;

(5) Whether state workers' compensation or state unemployment insurance is provided;

(6) If workers' compensation is provided, the required disclosure must include the name of the workers' compensation insurance carrier, the

name(s) of the policyholder(s), the name and telephone number of each person who must be notified of an injury or death, and the time period within which such notice must be given.

(ii) The information requirement in paragraph (b)(6)(i) of this section may be satisfied by giving the worker a photocopy of any workers' compensation notice required by State law.

(7) The existence of any strike or other concerted work stoppage, slowdown, or interruption of operations by employees at the place of employment; and

(8) The existence of any arrangement with any owner or agent of any establishment in the area of employment under which the farm labor contractor, the agricultural employer, or the agricultural association is to receive a commission or any other benefit resulting from any sales by such establishment to the workers.

(c) Each farm labor contractor, agricultural employer and agricultural association which employs any migrant agricultural worker shall post (and maintain) in a conspicuous place at the place of employment a poster provided by the Secretary of Labor, which sets out the rights and protections for workers required under the Act.

(d) The employer (other than a farm labor contractor) of any migrant agricultural worker, shall provide at the place of employment on request of the worker, a written statement of the conditions of employment. A farm labor contractor shall provide such information in accordance with § 500.60(b) of these regulations.

(e) In a joint employment situation, each employer is equally responsible for displaying and maintaining the poster and for responding to worker requests for written statements of the conditions of employment which are made during the course of employment. This joint responsibility, however, does not require needless duplication, such as would occur if each employer posted the same poster or provided the same written statement with respect to the same employment conditions. Failure to provide the information required by a joint employment relationship, how-

ever, will result in all joint employers being responsible for that failure.

(f) Each farm labor contractor, agricultural employer and agricultural association which provides housing for any migrant agricultural worker shall post in a conspicuous place (at the site of the housing) or present in the form of a written statement to the worker the following information on the terms and conditions of occupancy of such housing, if any:

(1) The name and address of the farm labor contractor, agricultural employer or agricultural association providing the housing;

(2) The name and address of the individual in charge of the housing;

(3) The mailing address and phone number where persons living in the housing facility may be reached;

(4) Who may live at the housing facility;

(5) The charges to be made for housing;

(6) The meals to be provided and the charges to be made for them;

(7) The charges for utilities; and

(8) Any other charges or conditions of occupancy.

(g) If the terms and conditions of occupancy are posted, the poster shall be displayed and maintained during the entire period of occupancy. If the terms and conditions of occupancy are disclosed to the worker through a statement (rather than through a posting), such statement shall be provided to the worker prior to occupancy. Department of Labor optional forms may be used to satisfy this requirement.

[46 FR 36741, Aug. 12, 1983, as amended at 61 FR 24866, May 16, 1996]

HIRING AND PROVIDING INFORMATION TO SEASONAL AGRICULTURAL WORKERS

§ 500.76 Disclosure of information.

(a) Where disclosure is required, Department of Labor optional forms may be used to satisfy the requirements of disclosure under the Act.

(b) Each farm labor contractor, agricultural employer and agricultural association, which recruits any seasonal agricultural worker for employment on a farm or ranch to perform field work

related to planting, cultivating or harvesting operations, shall ascertain and, upon request, disclose in writing the following information to such worker when an offer of employment is made:

- (1) The place of employment (with as much specificity as practical, such as the name and address of the employer or the association);
- (2) The wage rates (including piece rates) to be paid;
- (3) The crops and kinds of activities on which the worker may be employed;
- (4) The period of employment;
- (5) The transportation and any other employee benefits to be provided, if any, and any costs to be charged for each of them;
- (6) Whether state workers' compensation or state unemployment insurance is provided.

(i) If workers' compensation is provided, the required disclosure must include the name of the workers' compensation insurance carrier, the name(s) of the policyholder(s), the name and telephone number of each person who must be notified of an injury or death, and the time period within which such notice must be given.

(ii) The information requirement in paragraph (b)(6)(i) of this section may satisfied giving the worker a photocopy of any workers' compensation notice required by State law;

(7) The existence of any strike or other concerted work stoppage, slowdown, or interruption of operations by employees at the place of employment; and

(8) The existence of any arrangements with any owner or agent of any establishment in the area of employment under which the farm labor contractor, the agricultural employer, or the agricultural association is to receive a commission or any other benefit resulting from any sales by such establishment to the workers.

(c) Each farm labor contractor, agricultural employer and agricultural association which recruits any seasonal agricultural worker for employment through the use of day-haul operation in canning, packing, ginning, seed conditioning or related research, or processing operations, shall ascertain and disclose in writing to the worker at the

time of recruitment the information on employment conditions set out in paragraph (b) of this section.

(d)(1) Each farm labor contractor, agricultural employer and agricultural association which employs any seasonal agricultural worker shall post (and maintain) at the place of employment in a conspicuous place readily accessible to the worker a poster provided by the Secretary of Labor which sets out the rights and protections for such worker required under the Act.

(2) Such employer shall provide, on request of the worker, a written statement of the information described in paragraph (b) of this section.

(e) In a joint employment situation, each employer is equally responsible for displaying and maintaining the poster and for responding to worker requests for written statements of the conditions of employment which are made during the course of employment. This joint responsibility, however, does not require needless duplication, such as would occur if each employer posted the same poster or provided the same written statement with respect to the same employment conditions.

[48 FR 36741, Aug. 12, 1983, as amended at 61 FR 24866, May 16, 1996]

EMPLOYMENT INFORMATION FURNISHED

§ 500.77 Accuracy of information furnished.

No farm labor contractor, agricultural employer or agricultural association shall knowingly provide false or misleading information on the terms, conditions or existence of agricultural employment and housing required to be disclosed by the Act and these regulations to any migrant or seasonal agricultural worker.

§ 500.78 Information in foreign language.

Each farm labor contractor, agricultural employer and agricultural association shall make all required written disclosures to the worker, including the written disclosures of the terms and conditions of occupancy of housing to be provided to any migrant worker, in English or, as necessary and reasonable, in Spanish or another language

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common to migrant or seasonal agricultural workers who are not fluent or literate in English. The Department of Labor shall make forms available in English, Spanish, Haitian-Creole and other languages, as necessary, which may be used in providing workers with such information.

WAGES AND PAYROLL STANDARDS

§ 500.80 Payroll records required.

(a) Each farm labor contractor, agricultural employer and agricultural association which employs any migrant or seasonal agricultural worker shall make and keep the following records with respect to each worker including the name, permanent address, and Social Security number:

- (1) The basis on which wages, are paid;
- (2) The number of piecework units earned, if paid on a piecework basis;
- (3) The number of hours worked;
- (4) The total pay period earnings;
- (5) The specific sums withheld; and
- (6) The net pay.

(b) Each farm labor contractor, agricultural employer and agricultural association which employs any migrant or seasonal agricultural worker shall preserve all payroll records with respect to each such worker for a period of three years.

(c) When a farm labor contractor furnishes any migrant or seasonal agricultural worker, and the farm labor contractor is the employer, the farm labor contractor must furnish the agricultural employer, agricultural association or other farm labor contractor to whom the workers are furnished, a copy of all payroll records required under paragraph (a) of this section which the farm labor contractor has made regarding such worker for that place of employment. The person receiving such records shall maintain them for a period of three years.

(d) In addition to making records of this payroll information, the farm labor contractor, agricultural employer and agricultural association shall provide each migrant or seasonal agricultural worker employed with an itemized written statement of this information at the time of payment for

each pay period which must be no less often than every two weeks (or semi-monthly). Such statement shall also include the employer's name, address, and employer identification number as signed by the Internal Revenue Service. This responsibility does not require needless duplication such as would occur if each provided the worker with a written itemized statement for the same work.

§ 500.81 Payment of wages when due.

Each farm labor contractor, agricultural employer and agricultural association which employs any migrant or seasonal agricultural worker must pay the wages owed such worker when due. In meeting this responsibility, the farm labor contractor, agricultural employer and agricultural association shall pay the worker no less often than every two weeks (or semi-monthly).

Subpart D—Motor Vehicle Safety and Insurance for Transportation of Migrant and Seasonal Agricultural Workers, Housing Safety and Health for Migrant Workers

MOTOR VEHICLE SAFETY

§ 500.100 Vehicle safety obligations.

(a) *General obligations.* Each farm labor contractor, agricultural employer and agricultural association which uses, or causes to be used, any vehicle to transport a migrant or seasonal agricultural worker shall ensure that such vehicle conforms to vehicle safety standards prescribed by the Secretary of Labor under the Act and with other applicable Federal and State safety standards. Each farm labor contractor, agricultural employer and agricultural association shall also ensure that each driver of any such vehicle has a currently valid motor vehicle operator's permit or license, as provided by applicable State law, to operate the vehicle.

(b) *Proof of compliance with vehicle safety standards.* Prima facie evidence that safety standards have been met will be shown by the presence of a current State vehicle inspection sticker. Such sticker will not, however, relieve

the farm labor contractor, agricultural employer or agricultural association from responsibility for maintaining the vehicle in accordance with § 500.104 or § 500.105, as applicable.

(c) *Uses or causes to be used.* The term "uses or causes to be used" as set forth in paragraph (a) of this section does not include carpooling arrangements made by the workers themselves, using one of the workers' own vehicles. However, carpooling does not include any transportation arrangement in which a farm labor contractor participates or which is specifically directed or requested by an agricultural employer or an agricultural association.

§ 500.101 Promulgation and adoption of vehicle standards.

(a) *General.* All transportation of migrant and seasonal agricultural workers, whether on the farm or on the road, shall be subject to the vehicle safety standards of the Act, except for activities under the circumstances set out in § 500.103.

(b) *Compliance required.* Any violation of the standards promulgated by the Secretary in § 500.104 or adopted by the Secretary in § 500.105 shall be a violation of the Act and these regulations.

(c) *Development of Department of Labor Standards.* In developing the regulations in § 500.104, the Secretary has considered among other factors: (1) The type of vehicle used, (2) the passenger capacity of the vehicle, (3) the distance which such workers will be carried in the vehicle, (4) the type of roads and highways on which such workers will be carried in the vehicle, and (5) the extent to which a proposed standard would cause an undue burden on agricultural employers, agricultural associations, or farm labor contractors.

(d) *Adoption of Department of Transportation (DOT) Standards.* In accordance with section 401(b)(2)(C) of the Act, the Secretary has adopted in § 500.105 of these regulations, the DOT standards, without regard to the mileage and boundary limitations established in 49 U.S.C. 3102(c).

§ 500.102 Applicability of vehicle safety standards.

(a) Any passenger automobile or station wagon used or caused to be used

by any farm labor contractor, agricultural employer or agricultural association to transport any migrant or seasonal agricultural worker shall meet the vehicle safety standards prescribed in § 500.104.

(b) Any vehicle, other than a passenger automobile or station wagon, used or caused to be used by any farm labor contractor, agricultural employer or agricultural association to transport any migrant or seasonal agricultural worker pursuant to a day-haul operation shall be subject to the safety standards prescribed under § 500.105.

(c) Any vehicle, other than a passenger automobile or station wagon, which has been or is being used or caused to be used for any trip of a distance greater than 75 miles by a farm labor contractor, agricultural employer or agricultural association to transport any migrant or seasonal agricultural worker, shall be subject to the safety standards prescribed under § 500.106. One trip may have numerous intermediate stops.

(d) Any vehicle, other than a passenger automobile or station wagon, used or caused to be used by any farm labor contractor, agricultural employer or agricultural association to transport any migrant or seasonal agricultural worker in any manner not addressed by paragraphs (a), (b), or (c) of this section shall meet the vehicle safety standards prescribed in § 500.104.

(e) The use or intended use of a vehicle, other than a passenger automobile or station wagon, for transportation of the type identified in § 500.102(b) or § 500.102(c) will make the vehicle subject to the standards prescribed under § 500.105, so long as the vehicle is used for transportation subject to the Act and these regulations.

(f) Any pickup truck used only for transportation subject to § 500.104 when transporting passengers only within the cab shall be treated as a station wagon.

(g) Pursuant to section 401(b)(2)(C) of the Act, standards prescribed by the Secretary shall be in addition to, and shall not supersede nor modify, any standards prescribed under part II of the Interstate Commerce Act and any successor provision of subtitle IV of

title 49, U.S. Code or the regulations issued thereunder which is independently applicable to transportation to which this section applies. A violation of any such standard shall also constitute a violation of the Act and these regulations.

[48 FR 36741, Aug. 12, 1983; 48 FR 36830, Aug. 23, 1983]

§ 500.103 Activities not subject to vehicle safety standards.

(a) *Agricultural machinery and equipment excluded.* Vehicle safety standards or insurance requirements issued under the Act and these regulations do not apply to the transportation of any seasonal or migrant agricultural worker on a tractor, combine, harvester, picker, or other similar machinery and equipment while such worker is actually engaged in the planting, cultivating, or harvesting of any agricultural commodity or the care of livestock or poultry. This exclusion applies only to workers carrying out these activities on such machinery and equipment or being engaged in transportation incidental thereto. The exclusion does not include the use of such machinery for the transportation of any worker under any other circumstances.

(b) *Exclusion for immediate family transporting family members.* The standards of this subpart do not apply to an individual migrant or seasonal agricultural worker when the only other occupants of that individual's vehicle consist of his immediate family members as defined in § 500.20(o).

(c) *Carpooling.* Vehicle safety standards or insurance requirements of the Act and these regulations do not apply to carpooling arrangements made by the workers themselves, using one of the workers' own vehicles and not specifically directed or requested by an agricultural employer or agricultural association. Carpooling, however, does not include any transportation arrangement in which a farm labor contractor participates. (See also § 500.120)

§ 500.104 Department of Labor standards for passenger automobiles and station wagons and transportation of seventy-five miles or less.

Any farm labor contractor, agricultural employer or agricultural association providing transportation in passenger automobiles and station wagons and other vehicles used only for transportation as provided in § 500.102(a) and (d) shall comply with the following vehicle safety standards:

(a) *External lights.* Head lights, tail lights, stop lights, back-up lights, turn signals and hazard warning lights shall be operable.

(b) *Brakes.* Every vehicle shall be equipped with operable brakes for stopping and holding on an incline. Brake systems shall be free of leaks.

(c) *Tires.* Tires shall have at least 2/32 inch tread depth, and have no cracks/defects in the sidewall.

(d) *Steering.* The steering wheel and associated mechanism shall be maintained so as to safely and accurately turn the vehicles.

(e) *Horn.* Vehicles shall have an operable horn or electric horn.

(f) *Mirrors.* Mirrors shall provide the driver full vision of the sides and to the rear of the vehicle.

(g) *Windshields/windshield wipers.* Windshields and windows may not have cracks or opaque obstructions which obscure vision. Vehicles shall be equipped with windshield wipers that are operational to allow the operator full frontal vision in all weather conditions.

(h) *Fuel system.* Fuel lines and the fuel tank shall be free of leaks. The tank shall be fitted with a cap to securely cover the filling opening.

(i) *Exhaust system.* The exhaust system shall discharge carbon monoxide away from the passenger compartment and be free of leaks beneath the passenger compartment.

(j) *Ventilation.* Windows will be operational to allow fresh air to the occupants of the vehicle.

(k) *Safe loading.* Vehicles will not be driven when loaded beyond the manufacturer's gross vehicle weight rating.

(l) *Seats.* A seat securely fastened to the vehicle will be provided for each occupant or rider in, or on, any vehicle, except that transportation which is

primarily on private farm roads will be excused from this requirement provided the total distance traveled does not exceed ten (10) miles, and so long as the trip begins and ends on a farm owned or operated by the same employer.

(m) *Handles and latches.* Door handles and latches shall be provided and maintained to allow exiting capability for vehicle occupants.

(n) *Passenger compartment.* Floor and sides of any part of the vehicle to be occupied by passengers must be free of openings, rusted areas or other defects which are likely to result in injury to passengers.

§ 500.105 DOT standards adopted by the Secretary.

(a) Any farm labor contractor, agricultural employer or agricultural association providing transportation in vehicles other than passenger automobiles and station wagons used for transportation as provided in § 500.102 (b), (c), and (e) shall comply with the motor carrier safety standards listed in paragraph (b) of this section.

(b) The Secretary for the purposes of this section has adopted from 49 CFR part 398 the following pertinent standards. (In adopting these standards, editorial changes necessitated by the Act and these regulations have been made to conform the language to these regulations):

(1) *Qualification of drivers or operators* (Source: 49 CFR 398.3)—(i) *Compliance required.* Every person subject to this Act who drives a motor vehicle or is responsible for the hiring, supervising, training, assignment or dispatching of drivers shall comply and be conversant with the requirements of this section.

(ii) *Minimum physical requirements.* No such person shall drive, nor shall any such person require or permit any person to drive, any motor vehicle unless such person possesses the following minimum qualifications:

(A) No loss of foot, leg, hand or arm, functional disease, likely to interfere with safe driving.

(B) No mental, nervous, organic, or functional disease, likely to interfere with safe driving.

(C) No loss of fingers, impairment of use of foot, leg, fingers, hand or arm, or other structural defect or limitation, likely to interfere with safe driving.

(D) *Eyesight.* Visual acuity of at least 20/40 (Snellen) in each eye either without glasses or by correction with glasses; form field of vision in the horizontal meridian shall not be less than a total of 140 degrees; ability to distinguish colors red, green and yellow; drivers requiring correction by glasses shall wear properly prescribed glasses at all times when driving.

(E) *Hearing.* Hearing shall not be less than 10/20 in the better ear, for conversational tones, without a hearing aid.

(F) *Liquor, narcotics and drugs.* Shall not be addicted to the use of narcotics or habit forming drugs, or the excessive use of alcoholic beverages or liquors.

(G) *Initial and periodic physical examination of drivers.* No such person shall drive nor shall any such person require or permit any person to drive any motor vehicle unless within the immediately preceding 96-month period such person shall have been physically examined and shall have been certified in accordance with the provisions of paragraph (b)(1)(ii)(H) of this section by a licensed doctor of medicine or osteopathy as meeting the requirements of this subsection.

(H) *Certificate of physical examination.* Every person shall have in his files at his principal place of business for every driver employed or used by him a legible certificate of a licensed doctor of medicine or osteopathy based on a physical examination as required by paragraph (b)(1)(i)(G) of this section or a legible photographically reproduced copy thereof, and every driver shall have in his possession while driving, such a certificate or a photographically reproduced copy thereof covering himself.

(I) *Doctor's certificate.* The doctor's certificate shall certify as follows:

DOCTOR'S CERTIFICATE

(Driver of Migrant Workers)

This is to certify that I have this day examined _____ in accordance with § 398.3(b) of the Federal Motor Carrier Safety Regulations of the Federal Highway Administration and that I find him _____
 Qualified under said rules
 Qualified only when wearing glasses

I have kept on file in my office a completed examination.

(Date) _____

(Place) _____

(Signature of examining doctor) _____

(Address of doctor) _____

(Signature of driver) _____

(Address of driver) _____

(iii) *Minimum age and experience requirements.* No person shall drive, nor shall any person require or permit any person to drive, any motor vehicle unless such person possesses the following minimum qualifications:

(A) *Age.* Minimum age shall be 21 years.

(B) *Driving skill.* Experience in driving some type of motor vehicle (including private automobiles) for not less than one year, including experience throughout the four seasons.

(C) *Knowledge of regulations.* Familiarity with the rules and regulations prescribed in this part pertaining to the driving of motor vehicles.

(D) *Knowledge of English.* Every driver shall be able to read and speak the English language sufficiently to understand highway traffic signs and signals and directions given in English and to respond to official inquiries.

(E) *Driver's permit.* Possession of a valid permit qualifying the driver to operate the type of vehicle driven by him in the jurisdiction by which the permit is issued.

(2) *Driving of motor vehicles* (Source: 49 CFR 398.4)—(i) *Compliance required.* Every person shall comply with the requirements of this section, shall instruct its officers, agents, representatives and drivers with respect thereto, and shall take such measures as are necessary to insure compliance therewith by such persons. All officers, agents, representatives, drivers, and employees of persons subject to this Act directly concerned with the management, maintenance, operation, or driving of motor vehicles, shall comply with and be conversant with the requirements of this section.

(ii) *Driving rules to be obeyed.* Every motor vehicle shall be driven in accordance with the laws, ordinances,

and regulations of the jurisdiction in which it is being operated, unless such laws, ordinances and regulations are at variance with specific regulations of the Federal Highway Administration, which impose a greater affirmative obligation or restraint.

(iii) [Reserved]

(iv) *Alcoholic beverages.* No driver shall drive or be required or permitted to drive a motor vehicle, be in active control of any such vehicle, or go on duty or remain on duty, when under the influence of any alcoholic beverage or liquor, regardless of its alcoholic content, nor shall any driver drink any such beverage or liquor while on duty.

(v) *Schedules to conform with speed limits.* No person shall permit nor require the operation of any motor vehicle between points in such period of time as would necessitate the vehicle being operated at speeds greater than those prescribed by the jurisdictions in or through which the vehicle is being operated.

(vi) *Equipment and emergency devices.* No motor vehicle shall be driven unless the driver thereof shall have satisfied himself that the following parts, accessories, and emergency devices are in good working order; nor shall any driver fail to use or make use of such parts, accessories, and devices when and as needed:

Service brakes, including trailer brake connections.

Parking (hand) brake.

Steering mechanism.

Lighting devices and reflectors.

Tires.

Horn.

Windshield wiper or wipers.

Rear-vision mirror or mirrors.

Coupling devices.

Fire extinguisher, at least one properly mounted.

Road warning devices, at least one red burning fusee and at least three flares (oil burning pot torches), red electric lanterns, or red emergency reflectors.

(vii) *Safe loading*—(A) *Distribution and securing of load.* No motor vehicle shall be driven nor shall any motor carrier permit or require any motor vehicle to be driven if it is so loaded, or if the load thereon is so improperly distributed or so inadequately secured, as to prevent its safe operation.

(B) *Doors, tarpaulins, tailgates and other equipment.* No motor vehicle shall be driven unless the tailgate, tailboard, tarpaulins, doors, all equipment and rigging used in the operation of said vehicle, and all means of fastening the load, are securely in place.

(C) *Interference with driver.* No motor vehicle shall be driven when any object obscures his view ahead, or to the right or left sides, or to the rear, or interferes with the free movement of his arms or legs, or prevents his free and ready access to the accessories required for emergencies, or prevents the free and ready exit of any person from the cab or driver's compartment.

(D) *Property on motor vehicles.* No vehicle transporting persons and property shall be driven unless such property is stowed in a manner which will assure: (1) Unrestricted freedom of motion to the driver for proper operation of the vehicle; (2) unobstructed passage to all exits by any person; and (3) adequate protection to passengers and others from injury as a result of the disengagement or falling of such articles.

(E) *Maximum passengers on motor vehicles.* No motor vehicle shall be driven if the total number of passengers exceeds the seating capacity which will be permitted on seats prescribed in § 500.105(b)(3)(vi). All passengers carried on such vehicle shall remain seated while the motor vehicle is in motion.

(viii) *Rest and meal stops.* Every person shall provide for reasonable rest stops at least once between meal stops. Meal stops shall be made at intervals not to exceed six hours and shall be for a period of not less than 30 minutes duration.

(ix) *Kinds of motor vehicles in which workers may be transported.* Workers may be transported in or on only the following types of motor vehicles: A bus, a truck with no trailer attached, or a semitrailer attached to a truck-tractor provided that no other trailer is attached to the semitrailer. Closed vans without windows or means to assure ventilation shall not be used.

(x) *Limitation on distance of travel in trucks.* Any truck when used for the transportation of migrant or seasonal agricultural workers, if such workers are being transported in excess of 600 miles, shall be stopped for a period of

not less than eight consecutive hours either before or upon completion of 600 miles travel, and either before or upon completion of any subsequent 600 miles travel to provide rest for drivers and passengers.

(xi) *Lighting devices and reflectors.* No motor vehicle shall be driven when any of the required lamps or reflectors are obscured by the tailboard, by any and all lighting devices required pursuant to 49 U.S.C. 3102(c) shall be lighted during darkness or at any other time when there is not sufficient light to render vehicles and persons visible upon the highway at a distance of 500 feet.

(xii) *Ignition of fuel; prevention.* No driver or other person shall: (A) Fuel a motor vehicle with the engine running, except when it is necessary to run the engine to fuel the vehicle; (B) smoke or expose any open flame in the vicinity of a vehicle being fueled; (C) fuel a motor vehicle unless the nozzle of the fuel hose is continuously in contact with the intake pipe of the fuel tank; (D) permit any other person to engage in such activities as would be likely to result in fire or explosion.

(xiii) *Reserve fuel.* No supply of fuel for the propulsion of any motor vehicle or for the operation of any accessory thereof shall be carried on the motor vehicle except in a properly mounted fuel tank or tanks.

(xiv) *Driving by unauthorized person.* Except in case of emergency, no driver shall permit a motor vehicle to which he is assigned to be driven by any person not authorized to drive such vehicle.

(xv) *Protection of passengers from weather.* No motor vehicle shall be driven while transporting passengers unless the passengers therein are protected from inclement weather conditions such as rain, snow, or sleet, by use of the top or protective devices required by § 500.105(b)(3)(vi)(E).

(xvi) *Unattended vehicles; precautions.* No motor vehicle shall be left unattended by the driver until the parking brake has been securely set, the wheels chocked, and all reasonable precautions have been taken to prevent the movement of such vehicle.

(xvii) *Railroad grade crossings; stopping required; sign on rear of vehicle.*

Every motor vehicle shall, upon approaching any railroad grade crossing, make a full stop not more than 50 feet, nor less than 15 feet from the nearest rail of such railroad grade crossing, and shall not proceed until due caution has been taken to ascertain that the course is clear, except that a full stop need not be made at:

(A) A street car crossing within a business or residence district of a municipality;

(B) A railroad grade crossing where a police officer or a traffic-control signal (not a railroad flashing signal) directs traffic to proceed;

(C) An abandoned or exempted grade crossing which is clearly marked as such by or with the consent of the proper state authority, when such marking can be read from the driver's position.

All such motor vehicles shall display a sign on the rear reading, "This Vehicle Stops at Railroad Crossings."

(3) *Parts and accessories necessary.* Every person and its officers, agents, drivers, representatives and employees directly concerned with the installation and maintenance of equipment and accessories shall comply and be conversant with the requirements and specifications of this part, and no person shall operate any motor vehicle, or cause or permit it to be operated, unless it is equipped in accordance with said requirements and specifications.

(ii) *Lighting devices.* Every motor vehicle shall be equipped with the lighting devices and reflectors required pursuant to 49 U.S.C. 3102 (c).

(iii) *Brakes.* Every motor vehicle shall be equipped with brakes as required pursuant to 49 U.S.C. 3102 (c).

(iv) *Coupling devices; fifth wheel mounting and locking.* The lower half of every fifth wheel mounted on any truck-tractor or dolly shall be securely affixed to the frame thereof by U-bolts of adequate size, securely tightened, or by other means providing at least equivalent security. Such U-bolts shall not be of welded construction. The installation shall be such as not to cause cracking, warping, or deformation of the frame. Adequate means shall be provided positively to prevent the shifting of the lower half of a fifth

wheel on the frame to which it is attached. The upper half of every fifth wheel shall be fastened to the motor vehicle with at least the security required for the securing of the lower half to a truck-tractor or dolly. Locking means shall be provided in every fifth wheel mechanism including adapters when used, so that the upper and lower halves may not be separated without the operation of a positive manual release. A release mechanism operated by the driver from the cab shall be deemed to meet this requirement. On fifth wheels designed and constructed so as to be readily separable, the fifth wheel locking devices shall apply automatically on coupling for any motor vehicle the date of manufacture of which is subsequent to December 31, 1962.

(v) *Tires.* Every motor vehicle shall be equipped with tires of adequate capacity to support its gross weight. No motor vehicle shall be operated on tires which have been worn so smooth as to expose any tread fabric or which have any other defect likely to cause failure. No vehicle shall be operated while transporting passengers while using any tire which does not have tread configurations on that part of the tire which is in contact with the road surface. No vehicle transporting passengers shall be operated with regrooved, re-capped, or re-treaded tires on front wheels.

(vi) *Passenger compartment.* Every motor vehicle transporting passengers, other than a bus, shall have a passenger compartment meeting the following requirements:

(A) *Floors.* A substantially smooth floor, without protruding obstructions more than two inches high, except as are necessary for securing seats or other devices to the floor, and without cracks or holes.

(B) *Sides.* Side walls and ends above the floor at least 60 inches high, by attachment of sideboards to the permanent body construction if necessary. Stake body construction shall be constructed to comply with this requirement only if all six-inch or larger spaces between stakes are suitably closed to prevent passengers from falling off the vehicle.

(C) Nails, screws, splinters. The floor and the interior of the sides and ends of the passenger-carrying space shall be free of inwardly protruding nails, screws, splinters, or other projecting objects likely to be injurious to passengers or their apparel.

(D) Seats. A seat shall be provided for each worker transported. The seats shall be: Securely attached to the vehicle during the course of transportation; not less than 16 inches nor more than 19 inches above the floor; at least 13 inches deep; equipped with backrests extending to a height of at least 36 inches above the floor, with at least 24 inches of space between the backrests or between the edges of the opposite seats when face to face; designed to provide at least 18 inches of seat for each passenger; without cracks more than two inches wide, and the exposed surfaces, if made of wood, planed or sanded smooth and free of splinters.

(E) Protection from weather. Whenever necessary to protect the passengers from inclement weather conditions, be equipped with a top at least 80 inches high above the floor and facilities for closing the sides and ends of the passenger-carrying compartment. Tarpaulins or other such removable devices for protection from the weather shall be secured in place.

(F) Exit. Adequate means of ingress and egress to and from the passenger space shall be provided on the rear or at the right side. Such means of ingress and egress shall be at least 18 inches wide. The top and the clear opening shall be at least 60 inches high, or as high as the side wall of the passenger space if less than 60 inches. The bottom shall be at the floor of the passenger space.

(G) Gates and doors. Gates or doors shall be provided to close the means of ingress and egress and each such gate or door shall be equipped with at least one latch or other fastening device of such construction as to keep the gate or door securely closed during the course of transportation, and readily operative without the use of tools.

(H) Ladders or steps. Ladders or steps for the purpose of ingress or egress shall be used when necessary. The maximum vertical spacing of footholds shall not exceed 12 inches, except that

the lowest step may be not more than 18 inches above the ground when the vehicle is empty.

(I) Hand holds. Hand holds or devices for similar purpose shall be provided to permit ingress and egress without hazard to passengers.

(J) Emergency exit. Vehicles with permanently affixed roofs shall be equipped with at least one emergency exit having a gate or door, latch and hand hold as prescribed in paragraphs (b)(3)(vi) (G) and (I) of this section and located on a side or rear not equipped with the exit prescribed in paragraph (b)(3)(vi)(F) of this section.

(K) Communication with driver. Means shall be provided to enable the passengers to communicate with the driver. Such means may include telephone, speaker tubes, buzzers, pull cords, or other mechanical or electrical means.

(vii) Protection from cold. Every motor vehicle shall be provided with a safe means of protecting passengers from cold or undue exposure, but in no event shall heaters of the following types be used:

(A) Exhaust heaters. Any type of exhaust heater in which the engine exhaust gases are conducted into or through any space occupied by persons or any heater which conducts engine compartment air into any such space.

(B) Unenclosed flame heaters. Any type of heater employing a flame which is not fully enclosed.

(C) Heaters permitting fuel leakage. Any type of heater from the burner of which there could be spillage or leakage of fuel upon the tilting or overturning of the vehicle in which it is mounted.

(D) Heaters permitting air contamination. Any heater taking air, heated or to be heated, from the engine compartment or from direct contact with any portion of the exhaust system; or any heater taking air in ducts from the outside atmosphere to be conveyed through the engine compartment, unless said ducts are so constructed and installed as to prevent contamination of the air so conveyed by exhaust or engine compartment gases.

(E) Any heater not securely fastened to the vehicle.

(4) Hours of service of drivers: maximum driving time (Source: 49 CFR 392.6). No

person shall drive nor shall any person permit or require a driver employed or used by it to drive or operate for more than 10 hours in the aggregate (excluding rest stops and stops for meals) in any period of 24 consecutive hours, unless such driver be afforded eight consecutive hours rest immediately following the 10 hours aggregate driving. The term "24 consecutive hours" as used in this part means any such period starting at the time the driver retires for duty.

(5) Inspection and maintenance of motor vehicles (Source: 49 CFR 392.7). Every person shall systematically inspect and maintain or cause to be systematically maintained, all motor vehicles and their accessories subject to its control, to insure that such motor vehicles and accessories are in safe and proper operating condition.

[48 FR 36741, Aug. 12, 1983; 48 FR 38380, Aug. 23, 1983]

INSURANCE

\$ 500.120 Insurance policy or liability bond is required for each vehicle used to transport any migrant or seasonal agricultural worker.

A farm labor contractor, agricultural employer or agricultural association shall not transport any migrant or seasonal agricultural worker or his property in any vehicle such contractor, employer or association owns, operates, controls, or causes to be operated unless he has an insurance policy or liability bond in effect which insures against liability for damage to persons or property arising from the ownership, operation, or causing to be operated of such vehicle. Generally, the owner or lessor of the vehicle will be responsible for providing the required insurance. The insurance requirements do not apply to vehicles involved in carpooling arrangements made by the workers themselves, using one of the workers' own vehicles and not specifically directed or requested by an agricultural employer or agricultural association. However, carpooling does not include any transportation arrangement in which a farm labor contractor participates. Activities exempt from transportation safety standards are

also exempt from insurance requirements. (See also § 500.103.)

\$ 500.121 Coverage and level of insurance required.

(a) Except where a liability bond pursuant to § 500.124 of this part has been approved by the Secretary, a farm labor contractor, agricultural employer or agricultural association shall, in order to meet the insurance requirements in § 500.120, obtain a policy of vehicle liability insurance.

(b) The amount of vehicle liability insurance shall not be less than \$100,000 for each seat in the vehicle, but in no event is the total insurance required to be more than \$5,000,000 for any one vehicle. The number of seats in the vehicle shall be determined by reference to § 500.105(b)(3)(vi). See § 500.122 regarding insurance requirements where State workers' compensation coverage is provided.

(c) The insurance to be obtained under paragraph (a) of this section shall be issued by an insurance carrier licensed or otherwise authorized to do business in the State in which the insurance is obtained.

(d) The vehicle liability insurance to be obtained under paragraph (a) of this section shall be endorsed to insure against liability for personal injury to employees whose transportation is not covered by workers' compensation insurance, and to persons who are not employees; and for property damage as specified in (b) of this section.

(e) An agricultural employer or agricultural association may evidence the purchase of liability insurance which covers the workers while being transported, as required under paragraph (a) by obtaining and making available upon request to the Department of Labor a completed liability certificate of insurance showing that insurance conforming to the limits required by paragraph (b) and the coverage required by paragraph (d) of this section is in effect. A farm labor contractor must obtain such a certificate and provide a copy to the Administrator when applying for authorization to transport migrant or seasonal agricultural workers.

(f) With respect to an agricultural employer or agricultural association,

in the absence of the insurance certificate referred to under paragraph (e) of this section, the Department of Labor will look to the actual policy of insurance in determining compliance with the insurance requirements.

[48 FR 36741, Aug. 12, 1983, as amended at 57 FR 3905, Jan. 31, 1992; 61 FR 24866, May 16, 1996]

§ 500.122 Adjustments in insurance requirements when workers' compensation coverage is provided under State law.

(a) If a farm labor contractor, agricultural employer or agricultural association referred to in § 500.120 is the employer of a migrant or seasonal agricultural worker for purposes of a State workers' compensation law and such employer provides workers' compensation coverage for such worker in the case of bodily injury or death as provided by such State law, the following adjustments in the insurance requirements relating to having an insurance policy or liability bond apply:

- (1) Except as provided in § 500.123, no vehicle liability insurance policy or liability bond shall be required of the employer, if such worker is transported only under circumstances for which there is coverage under such State law.
- (2) A liability insurance policy or liability bond shall be required of the employer for circumstances under which coverage for the transportation of such worker is not provided under such State law.

(b) [Reserved]

(c) A farm labor contractor, agricultural employer or agricultural association who is the employer of a migrant or seasonal agricultural worker may evidence the issuance of workers' compensation insurance and passenger insurance under paragraph (a) of this section by obtaining and making available upon request to the Department of Labor:

- (1) A workers' compensation coverage policy of insurance; and
- (2) A certificate of liability insurance covering transportation of all passengers who are not employees and of workers whose transportation by the employer is not covered by workers' compensation insurance. See § 500.121.

(d) In the absence of the insurance certificate referred to under paragraph (c)(2) of this section, the Department of Labor will look to the actual policy of insurance or liability bond in determining compliance with the Act and these regulations.

[48 FR 36741, Aug. 12, 1983, as amended at 56 FR 30627, July 2, 1991; 61 FR 24866, May 16, 1996]

§ 500.123 Property damage insurance required.

(a) When a person who is an employer of a migrant or seasonal agricultural worker provides workers' compensation insurance which protects such worker in the event of bodily injury or death while the worker is being transported, such person must also obtain insurance providing a minimum of \$50,000 for loss or damage in any one accident to the property of others (excluding cargo), or evidence of a general liability insurance policy that provides the same protection.

(b) Such person may evidence the purchase of motor carrier insurance or other appropriate insurance providing such property damage protection by obtaining and making available upon request to the Department of Labor a vehicle or other liability certificate of insurance showing that such person has obtained the property damage insurance required under paragraph (a) of this section.

(c) In the absence of the insurance certificate referred to in paragraph (b) of this section, the Department of Labor will look to the actual policy of insurance in determining compliance with paragraph (a) of this section.

§ 500.124 Liability bond in lieu of insurance policy.

Financial responsibility in lieu of insurance may be evidenced by a liability bond executed as the "principal" by the person who will be transporting a migrant or seasonal agricultural worker, together with a third party identified in the instrument as the "surety", to assure payment of any liability up to \$500,000 for damages to persons or property arising out of such person's ownership of, operation of, or causing to be operated any vehicle for the

transportation of such worker in connection with the person's business, activities, or operations. The "surety" shall be one which appears on the list contained in Treasury Department Circular 570, or which has been approved by the Secretary under the Employee Retirement Income Security Act of 1974 (Pub. L. 93-406). Treasury Department Circular 570 may be obtained from the U.S. Treasury Department, Audit Staff, Bureau of Government Financial Operations, Washington, DC 20226.

§ 500.125 Qualifications and eligibility of insurance carrier or surety.

A policy of insurance or liability bond does not satisfy the financial responsibility of requirements of the Act and these regulations unless the insurer or surety furnishing the policy or bond to any farm labor contractor, agricultural employer or agricultural association is:

- (a) Legally authorized to issue such policies or bonds in the State in which the transportation occurs; or
- (b) Legally authorized to issue such policies or bonds in the State in which the farm labor contractor, agricultural employer or agricultural association has its principal place of business or permanent residence and is willing to designate a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law or equity brought in any State in which the transportation occurs; or
- (c) Legally authorized to issue such policies or bonds in any State of the United States and eligible as an excess or surplus lines insurer in any State in which business is written and is willing to designate a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law or equity brought in any State in which the transportation occurs.

§ 500.126 Duration of insurance or liability bond.

Any insurance policy or liability bond which is obtained pursuant to the Act shall provide the required coverage

for the full period during which the person shall be engaged in transporting any migrant or seasonal agricultural worker within the meaning of the Act.

§ 500.127 Limitations on cancellation of insured or liability bond of registered farm labor contractors.

Any insurance policy or liability bond obtained by a farm labor contractor who is required to register with the Department of Labor shall provide that it shall not be cancelled, rescinded, or suspended, nor become void for any reason whatsoever during such period in which the insurance or liability bond is required by the Act to be effective, except upon the expiration of the term for which it is written; or unless the parties desiring to cancel shall have first given thirty (30) days notice to the Administrator. The notice will include a statement setting forth the reason for cancellation, rescission, suspension, or any other termination of such policy or bond. The notice shall be in writing and forwarded via certified or registered mail, addressed to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. Said thirty (30) days notice shall commence to run from the date notice is actually received by the Administrator.

§ 500.128 Cancellation of insurance policy or liability bond not relief from insurance requirements.

Cancellation, rescission, suspension, or any other termination of any insurance policy or liability bond required by the Act does not relieve a person who transports or causes to be transported any migrant or seasonal agricultural worker in any vehicle under his ownership or control of the responsibility to comply with the insurance requirements specified in §§ 500.121, 500.122 and 500.123.

HOUSING SAFETY AND HEALTH

§ 500.130 Application and scope of safety and health requirement.

(a) Each person who owns or controls a facility or real property which is used as housing for any migrant agricultural worker must ensure that the facility or real property complies with

all substantive Federal and State safety and health standards applicable to such housing. If more than one person is involved in providing the housing for any migrant agricultural worker (for example, when an agricultural employer owns it and a farm labor contractor or any other person operates it), both persons are responsible for ensuring that the facility or real property meets the applicable Federal and State housing standards.

(b) A farm labor contractor, agricultural employer, agricultural association or any other person is deemed an "owner" of a housing facility or real property if said person has a legal or equitable interest in such facility or real property.

(c) A farm labor contractor, agricultural employer, agricultural association or any other person is in "control" of a housing facility or real property, regardless of the location of such facility, if said person is in charge of or has the power or authority to oversee, manage, superintend or administer the housing facility or real property either personally or through an authorized agent or employee, irrespective of whether compensation is paid for engaging in any of the aforesaid capacities.

(d) The Occupational Safety and Health Administration (OSHA) is the agency of the U.S. Department of Labor which administers the Occupational Safety and Health Act (29 U.S.C. 651 et seq.) which provides for the establishment of safety and health standards generally.

(e) The Employment and Training Administration (ETA) is the agency of the U.S. Department of Labor which administers the U.S. Employment Service pursuant to the Wagner-Peyser Act (29 U.S.C. 49 et seq.) including the interstate clearance order system.

\$ 500.131 Exclusion from housing safety and health requirement.

The housing safety and health requirements do not apply to any person who, in the ordinary course of that person's business, regularly provides housing on a commercial basis to the general public and who provides housing to any migrant agricultural worker of the same character and on the same or

comparable terms and conditions as provided to the general public. Migrant labor housing shall not be brought within this exception simply by offering lodging to the general public.

\$ 500.132 Applicable Federal standards: ETA and OSHA housing standards.

(a) The Secretary has determined that the applicable Federal housing standards are the standards promulgated by the Employment and Training Administration, at 20 CFR 654.404 et seq. and the standards promulgated by the Occupational Safety and Health Administration, at 29 CFR 1910.142. Except as provided in § 500.131, all migrant housing is subject to either the ETA standards or the OSHA standards, as follows:

(1) A person who owns or controls a facility or real property to be used for housing any migrant agricultural worker, the construction of which was begun on or after April 3, 1980, and which was not under a contract for construction as of March 4, 1980, shall comply with the substantive Federal safety and health standards promulgated by OSHA at 29 CFR 1910.142. These OSHA standards are enforceable under MSPA, irrespective of whether housing is, at any particular point in time, subject to inspection under the Occupational Safety and Health Act.

(2) A person who owns or controls a facility or real property to be used for housing any migrant agricultural worker which was completed or under construction prior to April 3, 1980, or which was under a contract for construction prior to March 4, 1980, may elect to comply with either the substantive Federal safety and health standards promulgated by OSHA at 29 CFR 1910.142 or the standards promulgated by ETA at 20 CFR 654.404 et seq. The ETA standards were established to provide housing requirements for migrant housing used by an employer obtaining migrant workers through the U.S. Employment Service. The owner or operator of such housing may continue to rely on those standards, rather than OSHA standards, even if the housing is not currently being provided pursuant to a USES job placement program.

\$ 500.133 Substantive Federal and State safety and health standards defined.

Substantive safety and health standards include, but are not limited to, those that provide fire prevention, an adequate and sanitary supply of water, plumbing maintenance, structurally sound construction of buildings, effective maintenance of those buildings, provision of adequate heat as weather conditions require, and reasonable protections for inhabitants from insects and rodents. Substantive housing standards do not include technical or procedural violations of safety and health standards.

\$ 500.134 Compliance with State standards.

Compliance with the substantive Federal housing safety and health standards shall not excuse noncompliance with applicable substantive State housing safety and health standards.

\$ 500.135 Certificate of housing inspection.

(a) Except as provided in paragraph (c) of this section, a facility or real property to be used for housing a migrant agricultural worker shall not be occupied by any migrant agricultural worker unless either a State or local health authority or other appropriate agency, including a Federal agency, has certified that the facility or real property meets applicable safety and health standards.

(b) Except as provided in paragraph (c) of this section, the person who owns or controls a facility or real property shall not permit it to be occupied by any migrant agricultural worker unless a copy of a certificate of occupancy from the State, local or Federal agency which conducted the housing safety and health inspection is posted at the site of the facility or real property. The original of such certificate of occupancy shall be retained by such person for three years and made available for inspection in accordance with section 512 of the Act.

(c) If a request for an inspection of a facility or real property is made to the appropriate State, local or Federal agency at least forty-five (45) days prior to the date on which it is to be

occupied by a migrant agricultural worker but the agency has not conducted an inspection by such date, the facility or property may be occupied by migrant agricultural workers unless prohibited by State law.

(d) Receipt and posting of a certificate of occupancy as provided under paragraph (b) of this section, or the failure of an agency to inspect a facility or property within the forty-five (45) day time period, shall not relieve the person who owns or controls a facility or property from the responsibility of ensuring that such facility or property meets the applicable State and Federal safety and health standards. Once such facility or property is occupied, such person shall supervise and continually maintain such facility or property so as to ensure that it remains in compliance with the applicable safety and health standards.

Subpart E—Enforcement

\$ 500.140 General.

Whenever the Secretary believes that the Act or these regulations have been violated he shall take such action and institute such proceedings as he deems appropriate, including (but not limited to) the following:

(a) Recommend to the Attorney General the institution of criminal proceedings against any person who willfully and knowingly violates the Act or these regulations;

(b) Recommend to the Attorney General the institution of criminal proceedings against any farm labor contractor who recruits, hires, employs, or uses, with knowledge, the services of any illegal alien, as defined in § 500.20(n) of these regulations, if such farm labor contractor has:

- (1) Been refused issuance or renewal of, or has failed to obtain, a Certificate of Registration, or
- (2) Is a farm labor contractor whose certificate has been suspended or revoked;

(c) Petition any appropriate District Court of the United States for temporary or permanent injunctive relief to prohibit violation of the Act or these regulations by any person;

§ 500.141

(d) Assess a civil money penalty against any person for any violation of the Act or these regulations;

(e) Refer any unpaid civil money penalty which has become a final and unappealable order of the Secretary or a final judgment of a court in favor of the Secretary to the Attorney General for recovery;

(f) Revoke or suspend or refuse to issue or renew any Certificate of Registration authorized by the Act or these regulations;

(g) Deny the facilities and services afforded by the Wagner-Peyser Act to any farm labor contractor who refuses or fails to produce, when asked, a valid Certificate of Registration;

(h) Institute action in any appropriate United States District Court against any person who, contrary to the provisions of section 505(a) of the Act, discriminates against any migrant or seasonal agricultural worker.

§ 500.141 Concurrent actions.

The taking of any one of the actions referred to in § 500.140 shall not be a bar to the concurrent taking of any other action authorized by the Act and these regulations.

§ 500.142 Representation of the Secretary.

(a) Except as provided in section 518(a) of title 28, U.S. Code, relating to litigation before the Supreme Court, the Solicitor of Labor may appear for and represent the Secretary in any civil litigation brought under the Act; but all such litigation shall be subject to the direction and control of the Attorney General.

(b) The Solicitor of Labor, through the authorized representatives identified in § 500.231, shall represent the Secretary in all administrative hearings under the Act and these regulations.

§ 500.143 Civil money penalty assessment.

(a) A civil money penalty may be assessed for each violation of the Act or these regulations.

(b) In determining the amount of penalty to be assessed for any violation of the Act or these regulations the Secretary shall consider the type of violation committed and other relevant fac-

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tors, including but not limited to the following:

(1) Previous history of violation or violations of this Act and the Farm Labor Contractor Registration Act;

(2) The number of workers affected by the violation or violations;

(3) The gravity of the violation or violations;

(4) Efforts made in good faith to comply with the Act (such as when a joint employer agricultural employer/association provides employment-related benefits which comply with applicable law to agricultural workers, or takes reasonable measures to ensure farm labor contractor compliance with legal obligations);

(5) Explanation of person charged with the violation or violations;

(6) Commitment to future compliance, taking into account the public health, interest or safety, and whether the person has previously violated the Act;

(7) The extent to which the violator achieved a financial gain due to the violation, or the potential financial loss or potential injury to the workers. [48 FR 36741, Aug. 12, 1983, as amended at 62 FR 11748, Mar. 12, 1997]

§ 500.144 Civil money penalties—payment and collection.

Where the assessment is directed in a final order by the Secretary or in a final judgment issued by a United States District Court, the amount of the penalty is immediately due and payable to the United States Department of Labor. The person assessed such penalty shall remit promptly the amount thereof, as finally determined, to the Secretary by certified check or by money order, made payable to the order of "Wage and Hour Division, Labor." The remittance shall be delivered or mailed either to the Administrator, in Washington, DC, or to the Wage and Hour Division Regional Office for the area in which the violations occurred.

§ 500.145 Registration determinations.

Section 500.51 set forth the standards under which the Secretary may refuse to issue or to renew, or may suspend or revoke, a Certificate of Registration

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(including a Farm Labor Contractor Employee Certificate of Registration).

§ 500.146 Continuation of matters involving violations of FLCRA.

(a) Any matter involving the revocation, suspension, or refusal to renew a Certificate of Registration issued under FLCRA and any matter involving the refusal to issue a certificate authorized under FLCRA shall continue through final administrative determination in accordance with the provisions of FLCRA and the regulations issued thereunder.

(b) Any matter involving the assessment of a civil money penalty for a violation of FLCRA will continue through final administrative determination in accordance with the provisions of FLCRA and the regulations issued thereunder.

(c) The rules of practice for implementation of administrative enforcement for violations of FLCRA referred to the Office of the Chief Administrative Law Judge on or after April 14, 1983, shall be the rules of practice provided in §§ 500.220 through 500.262 and the official record shall be maintained in accordance with §§ 500.270 and 500.271 of these regulations.

(d) The rules of practice for implementation of administrative enforcement for violations of FLCRA referred to the Office of the Chief Administrative Law Judge prior to April 14, 1983 shall be the rules of practice provided in 29 CFR 40.201 through 40.262.

§ 500.147 Continuation of matters involving violations of section 106 of MSPA.

Any matter involving the revocation, suspension, refusal to issue or to renew a certificate of registration or any matter involving the assessment of a civil money penalty, for a violation of section 106 of MSPA, which occurred prior to June 1, 1987, shall continue through final administrative determination in accordance with the provisions of MSPA and these regulations.

[54 FR 13329, Mar. 31, 1989]

§ 500.157

AGREEMENTS WITH FEDERAL AND STATE AGENCIES

§ 500.155 Authority.

Section 513 of the Act authorizes the Secretary to enter into agreements with Federal and State agencies (a) to use their facilities and services, (b) to delegate (subject to subsection 513(b) of the Act) to Federal and State agencies such authority (other than rule-making) as he determines may be useful in carrying out the purposes of the Act, and (c) to allocate or transfer funds to, or otherwise pay or reimburse, such agencies for expenses incurred pursuant to paragraphs (a) or (b) of this section.

§ 500.156 Scope of agreements with Federal agencies.

Every agreement between the Secretary and any other Federal agency under the authority referred to in § 500.155 of this part shall contain terms and conditions mutually agreeable to both parties, and shall contain such delegation of authority as the Secretary deems useful.

§ 500.157 Scope of agreements with State agencies.

(a) Every agreement between the Secretary and any State agency under the authority referred to in § 500.155 of this part shall be in writing.

(b) Any delegation to a State agency by the Secretary under such authority shall be made pursuant to approval of a written State plan submitted in accordance with § 500.159 which shall: (1) Include a description of each function to be performed, the method of performing each such function, and the resources to be devoted to the performance of each such function, (2) provide assurances satisfactory to the Secretary that the State agency will comply with its description under paragraph (b)(1) of this section and that the State agency's performance of the delegated functions will be at least comparable to the performance of such functions by the Department of Labor; and (3) contain a certification of the Attorney General of such State, or, if the Attorney General is not authorized to make such a statement, the State official who is so authorized, that an

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agreement pursuant to such State plan is valid under the laws of that State.

§ 500.158 Functions delegatable.

The Secretary may delegate to the State such functions as he deems useful including the

- (a) Receipt, handling and processing of applications for certificates of registration;
- (b) Issuance of certificates of registration;
- (c) Conduct of various investigations; and
- (d) Enforcement of the Act.

§ 500.159 Submission of plan.

(a) Any State agency desiring to enter into an agreement pursuant to section 513 of the Act shall submit a State plan in such form and in such detail as the Secretary shall direct.

(b) Each such plan shall include, at least, the following:

- (1) The delegation sought;
- (2) The State authority for performing such delegated functions;
- (3) A description of the manner in which the State intends to carry out such functions; and
- (4) The estimated cost of carrying out such functions.

§ 500.160 Approved State plans.

(a) The Secretary, in accordance with the authority referred to in § 500.155 of this part, has delegated the following functions to the States listed herein below:

State	Function
Florida	Receive, handle, process applications and issue certificates of registration.
New Jersey	Receive, handle, process applications and issue certificates of registration.
Virginia	Receive, handle, process applications and issue certificates of registration.

(b) Every State agreement entered into pursuant to the authority referred to in § 500.155 of this part shall be available for public inspection and copying in accordance with 29 CFR part 70.

(c) Every enumerated delegated function shall be valid in all states.

[48 FR 36741, Aug. 12, 1983, as amended at 49 FR 5112, Feb. 10, 1984; 50 FR 42163, Oct. 18, 1985]

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§ 500.161 Audits.

The Secretary shall conduct audits as he deems necessary of the State plans, but on not less than an annual basis.

§ 500.162 Reports.

The Secretary shall require such reports as he deems necessary of activities conducted pursuant to State plans, but on not less than an annual basis.

CENTRAL PUBLIC REGISTRY

§ 500.170 Establishment of registry.

The Administrator shall establish a central public registry of all persons issued a Certificate of Registration or a Farm Labor Contractor Employee Certificate. The central public registry shall be available at the Regional Offices of the Wage and Hour Division and its National Office in Washington, DC. Information filed therein shall be made available upon request. Requests for information contained in the registry may also be directed by mail to the Administrator, Wage and Hour Division, Attn: MSPA, U.S. Department of Labor, Washington, DC 20210. Alternatively, requests for registry information may be made by telephone by calling 1-866-4US-WAGE (1-866-487-9248), a toll-free number, during the hours of 8 a.m. to 5 p.m., in your time zone, Monday through Friday.

[57 FR 76986, Dec. 16, 2002]

Subpart F—Administrative Proceedings

GENERAL

§ 500.200 Establishment of procedures and rules of practice.

This subpart codifies and establishes the procedures and rules of practice necessary for the administrative enforcement of the Act.

§ 500.201 Applicability of procedures and rules.

(a) The procedures and rules contained herein prescribe the administrative process necessary for a determination:

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- (1) A description of each violation; and
- (2) The amount assessed for each violation.

(c) Set forth the right to request a hearing on such determination.

(d) Inform any affected person or persons that in the absence of a timely request for a hearing, the determination of the Secretary shall become final and unappealable.

(e) Set forth the time and method for requesting a hearing, and the procedures relating thereto, as set forth in § 500.212.

§ 500.212 Request for hearing.

(a) Any person desiring to request an administrative hearing on a determination referred to in § 500.210 shall make such request in writing to the official who issued the determination, at the Wage and Hour Division address appearing on the determination notice. Such request must be made no later than thirty (30) days after the date of issuance of the notice referred to in § 500.210.

(b) The request for such hearing shall be delivered in person or by mail to the Wage and Hour Division office at the address appearing on the determination notice upon which the request for a hearing is based, within the time set forth in paragraph (a) of this section. For the affected person's protection, if the request is by mail, it should be by certified mail.

(c) No particular form is prescribed for any request for hearing permitted by this part. However, any such request shall:

- (1) Be typewritten or legibly written on size 8½"×11" paper;
- (2) Specify the issue or issues stated in the notice of determination giving rise to such request;
- (3) State the specific reason or reasons why the person requesting the hearing believes such determination is in error;
- (4) Be signed by the person making the request or by an authorized representative of such person; and
- (5) Include the address at which such person or authorized representative desires to receive further communications relating thereto.

(c) No particular form is prescribed for any request for hearing permitted by this part. However, any such request shall:

- (1) Be typewritten or legibly written on size 8½"×11" paper;
- (2) Specify the issue or issues stated in the notice of determination giving rise to such request;
- (3) State the specific reason or reasons why the person requesting the hearing believes such determination is in error;
- (4) Be signed by the person making the request or by an authorized representative of such person; and
- (5) Include the address at which such person or authorized representative desires to receive further communications relating thereto.

(1) To suspend or revoke, or to refuse to issue or renew, a Certificate of Registration authorized under the Act and these regulations; and

(2) To impose an assessment of civil money penalties for violations of the Act or of these regulations.

(b) The procedures and rules contained herein also specify the administrative responsibility under section 102(f) of the Act with regard to a designation by a court of the Secretary as an agent of an applicant for a certificate of registration in any action against such applicant, if said applicant has left the jurisdiction in which the action is commenced or otherwise has become unavailable to accept service.

PROCEDURES RELATING TO HEARING

§ 500.210 Written notice of determination required.

(a) Whenever the Secretary determines to suspend or revoke, or to refuse to issue or renew, a Certificate of Registration, the applicant for or the holder of such certificate shall be notified in writing of such determination.

(1) In cases involving a determination relating to a Certificate of Registration applied for by, or issued to, a farm labor contractor, written notice shall also be given to every applicant for or holder of a Certificate of Registration as an employee of such contractor.

(2) In cases involving a determination relating to a Farm Labor Contractor Employee Certificate of Registration, written notice shall also be given to the farm labor contractor of such applicant or certificate holder.

(b) Whenever the Secretary determines to assess a civil money penalty for a violation of the Act or these regulations, the person against whom such penalty is assessed shall be notified in writing of such determination.

§ 500.211 Contents of notice.

The notice required by § 500.210 shall:

(a) Set forth the determination of the Secretary and the reason or reasons therefor.

(b) Set forth, in the case of a civil money penalty assessment:

(d) Civil money penalties under FLCRA shall be treated as follows:

(1) Determinations to assess civil money penalties for violations of FLCRA made prior to April 14, 1983 shall continue until a final administrative determination shall have been made in accordance with 29 CFR part 40.

(2) Determinations to assess civil money penalties for violations of FLCRA arising prior to April 14, 1983, shall be made on or after April 14, 1983, shall continue until a final administrative determination shall have been made in accordance with these regulations.

[48 FR 36741, Aug. 12, 1983, as amended at 54 FR 13329, Mar. 31, 1989; 57 FR 5942, Feb. 19, 1992; 71 FR 16665, Apr. 3, 2006]

PROCEDURES RELATING TO SUBSTITUTED SERVICE

§ 500.215 Change of address.

(a) Pursuant to section 105(l) of the Act, every holder of a Certificate of Registration shall notify the Secretary within thirty (30) days of each change of permanent place of residence. Said persons may also furnish additional mailing addresses.

(b) The notification required in paragraph (a) of this section shall be in writing, by certified mail and addressed to the Administrator, Wage and Hour Division, Employment Standards Administration, 200 Constitution Avenue, NW., Washington, DC 20210.

(c) Such change of address shall be deemed effective upon receipt by the Administrator, unless a later date is specified in the notice.

§ 500.216 Substituted service.

(a) Pursuant to section 102(5) of the Act, the Secretary, when so designated by a court, shall accept service of summons in any action arising under the Act or these regulations against any applicant for or any holder of a Certificate of Registration who has left the jurisdiction in which such action is commenced or otherwise has become unavailable to accept such service.

(b) Acceptance of service of summons referred to in paragraph (a) of this section shall be under such terms and conditions as are set by the court in its

designation of the Secretary for the purpose of section 102(5) of the Act.

(c) To be effective, such service shall be made by delivery personally or by certified mail, either to the Administrator of the Wage and Hour Division in Washington, DC, or to the Administrator's authorized representative located in the area in which the action has been commenced.

§ 500.217 Responsibility of Secretary for service.

Upon receipt of any substituted service, as described in § 500.216, the same shall be forwarded by certified mail to the permanent address furnished by the person for whom service is accepted and to such other address as may be determined appropriate by the Secretary. Such mailing shall complete the Secretary's responsibility in connection with the substituted service requirement of the Act.

RULES OF PRACTICE

§ 500.219 General.

Except as specifically provided in these regulations, the "Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges" established by the Secretary at 29 CFR part 18 shall apply to administrative proceedings under MSPA.

[48 FR 36741, Aug. 21, 1983. Redesignated at 54 FR 13329, Mar. 31, 1989]

§ 500.220 Service of determinations and computation of time.

(a) Service of determinations to suspend, revoke, refuse to issue, or refuse to renew a certificate of registration or to assess a civil money penalty shall be made by personal service to the individual, officer of a corporation, or attorney of record or by mailing the determination to the last known address of the individual, officer, or attorney. If done by certified mail, service is complete upon mailing. If done by regular mail or in person, service is complete upon receipt by the addressee or the addressee's representative.

(b) Time will be computed beginning with the day following the action and

includes the last day of the period unless it is a Saturday, Sunday, or Federally observed holiday, in which case the time period includes the next business day; and

(c) When a request for hearing is filed by mail, five (5) days shall be added to the prescribed period during which the party has the right to request a hearing on the determination.

[54 FR 13329, Mar. 31, 1989]

§ 500.221 Commencement of proceeding.

Each administrative proceeding permitted under the Act and these regulations shall be commenced upon receipt of a timely request for hearing filed in accordance with § 500.212.

§ 500.222 Designation of record.

Except as provided in paragraph (c) of this section:

(a) Each administrative proceeding instituted under the Act and these regulations shall be identified by record by a number preceded by the year and the letters "MSPA," and followed by one or more of the following designations:

(1) Proceedings involving the "refusal to issue or to renew, or to suspend or to revoke Certificate of Registration" shall be designated as "R";

(2) Proceedings involving the "assessment of civil money penalties" shall be designated as "P";

(3) Proceedings involving both Certificate of Registration and assessment of civil money penalties shall be designated as "R and P";

(b) The number, letter(s), and designation assigned to each such proceeding shall be clearly displayed on formal document filed and docketed of record.

(c) Each administrative proceeding involving violations of FLCRA prior to April 14, 1983 and filed with the Office of the Chief Administrative Law Judge on or after April 14, 1983, shall be identified by record by a number preceded by the year and the letters "FLORA-MSPA" and followed by one or more of the letter designations provided in paragraphs (a)(1) through (a)(3) of this section, i.e., (year)-FLORA-MSPA-(#)-(R and/or P).

§ 500.223 Caption of proceeding.

(a) Each administrative proceeding instituted under the Act and these regulations shall be captioned in the name of the person requesting such hearing, and shall be styled as follows:

In The Matter of _____, Respondent.

(b) For the purposes of such administrative proceeding the "Secretary of Labor" shall be identified as plaintiff and the person requesting such hearing shall be named as respondent.

REFERRAL FOR HEARING

§ 500.224 Referral to Administrative Law Judge.

(a) Upon receipt of a timely request for a hearing filed pursuant to and in accordance with § 500.212, the Secretary, by the Associate Solicitor for the Division of Fair Labor Standards or by the Regional Solicitor for the Region in which the action arose, shall, by Order of Reference, promptly refer an authenticated copy of the notice of administrative determination complained of, and the original or a duplicate copy of the request for hearing signed by the person requesting such hearing or by the authorized representative of such person, to the Chief Administrative Law Judge, for a determination in an administrative proceeding as provided herein. The notice of administrative determination and request for hearing shall be filed of record in the Office of the Chief Administrative Law Judge and shall, respectively, be given the effect of a complaint and answer thereto for purposes of the administrative proceeding, subject to any amendment that may be permitted under these regulations.

(b) In cases involving a denial, suspension, or revocation of a Certificate of Registration (Farm Labor Contractor Certificate; Farm Labor Contractor Employee Certificate) or "certificate action," including those cases where the farm labor contractor has requested a hearing on civil money penalties) as well as on the certificate action, the date of the hearing shall be not more than sixty (60) days from the date on which the Order of Reference is filed. No request for postponement

shall be granted except for compelling reasons.

(c) A copy of the Order of Reference, together with a copy of these regulations, shall be served by counsel for the Secretary upon the person requesting the hearing, in the manner provided in 29 CFR 18.3.

[48 FR 36741, Aug. 12, 1983, as amended at 61 FR 24866, May 16, 1996]

§ 500.225 Notice of docketing.

The Chief Administrative Law Judge shall promptly notify the parties of the docketing of each matter.

§ 500.226 Service upon attorneys for the Department of Labor—number of copies.

Two copies of all pleadings and other documents required for any administrative proceeding provided herein shall be served on the attorneys for the Department of Labor. One copy shall be served on the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, and one copy on the Attorney representing the Department in the proceeding.

PROCEDURES BEFORE ADMINISTRATIVE LAW JUDGE

§ 500.231 Appearance; representation of the Department of Labor.

The Associate Solicitor, Division of Fair Labor Standards, and such other counsel, as designated, shall represent the Secretary in any proceeding under these regulations.

§ 500.232 Consent findings and order.

(a) General. At any time after the commencement of a proceeding under this part, but prior to the reception of evidence in any such proceeding, a party may move to defer the receipt of any evidence for a reasonable time to permit negotiation of an agreement containing consent findings and an order disposing of the whole or any part of the proceeding. The allowance thereof shall be at the discretion of the Administrative Law Judge, after consideration of the nature of the proceeding, the requirements of the public

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(c) The decision of the Administrative Law Judge shall be limited to a determination whether the respondent has violated the Act or these regulations, and the appropriateness of the remedy or remedies imposed by the Secretary. The Administrative Law Judge shall not render determinations on the legality of a regulatory provision or the constitutionality of a statutory provision.

(d) The decision of the Administrative Law Judge, for purposes of the Equal Access to Justice Act (5 U.S.C. 504), shall be limited to determinations of attorney fees and/or other litigation expenses in adversary proceedings requested pursuant to § 500.212 which involve the modification, suspension or revocation of a Certificate of Registration issued under the Act and these Regulations, and/or the imposition of a civil money penalty assessed for a violation of the Act or these Regulations. The Administrative Law Judge shall have no power or authority to award attorney fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act or Regulations issued thereunder in any proceeding under MSPA or these Regulations involving the refusal to issue or renew a Certificate of Registration.

(e) The decision of the Administrative Law Judge shall include a statement of findings and conclusions, with reasons and basis therefor, upon each material issue presented on the record. The decision shall also include an appropriate order which may be to affirm, deny, reverse, or modify, in whole or in part, the determination of the Secretary. The reason or reasons for such order shall be stated in the decision.

(f) The Administrative Law Judge shall transmit to the Chief Administrative Law Judge the entire record including the decision. The Chief Administrative Law Judge shall serve copies of the decision on each of the parties.

(g) The decision when served shall constitute the final order of the Secretary unless the Secretary, pursuant to section 103(b)(2) or section 503(b)(2) of the Act, modifies or vacates the decision and order of the Administrative Law Judge.

(h) Except as provided in §§ 500.263 through 500.268, the administrative remedies available to the parties under the Act will be exhausted upon service of the decision of the Administrative Law Judge.

[48 FR 36741, Aug. 12, 1983, as amended at 61 FR 24866, May 16, 1996]

MODIFICATION OR VACATION OF ORDER OF ADMINISTRATIVE LAW JUDGE

§ 500.263 Authority of the Secretary.

The Secretary may modify or vacate the Decision and Order of the Administrative Law Judge whenever he concludes that the Decision and Order:

(a) Is inconsistent with a policy or precedent established by the Department of Labor.

(b) Encompasses determinations not within the scope of the authority of the Administrative Law Judge.

(c) Awards attorney fees and/or other litigation expenses pursuant to the Equal Access to Justice Act which are unjustified or excessive, or

(d) Otherwise warrants modifying or vacating.

[54 FR 13330, Mar. 31, 1989]

§ 500.264 Procedures for initiating review.

(a) Within twenty (20) days after the date of the decision of the Administrative Law Judge, the respondent, the Administrator, or any other party desiring review thereof, may file with the Secretary an original and two copies of a petition for issuance of a Notice of Intent as described under § 500.265. The petition shall be in writing and shall contain a concise and plain statement specifying the grounds on which review is sought. A copy of the Decision and Order of the Administrative Law Judge shall be attached to the petition.

(b) Copies of the petition shall be served upon all parties to the proceeding and on the Chief Administrative Law Judge.

[54 FR 13330, Mar. 31, 1989]

§ 500.265 Implementation by the Secretary.

(a) Whenever, on the Secretary's own motion or upon acceptance of a party's petition, the Secretary believes that a

§ 500.266

Decision and Order may warrant modifying or vacating, the Secretary shall issue a Notice of Intent to modify or vacate.

(b) The Notice of Intent to Modify or Vacate a Decision and Order shall specify the issue or issues to be considered, the form in which submission shall be made (i.e., briefs, oral argument, etc.), and the time within which such presentation shall be submitted. The Secretary shall closely limit the time within which the briefs must be filed or oral presentations made, so as to avoid unreasonable delay.

(c) The Notice of Intent shall be issued within thirty (30) days after the date of the Decision and Order in question.

(d) Service of the Notice of Intent shall be made upon each party to the proceeding, and upon the Chief Administrative Law Judge, in person or by certified mail.

[54 FR 13330, Mar. 31, 1989]

§ 500.266 Responsibility of the Office of Administrative Law Judges.

Upon receipt of the Secretary's Notice of Intent to Modify or Vacate a Decision and Order of an Administrative Law Judge, the Chief Administrative Law Judge shall, within fifteen (15) days, index, certify and forward a copy of the complete hearing record to the Secretary.

[48 FR 36741, Aug. 21, 1983. Redesignated at 54 FR 13330, Mar. 31, 1989]

§ 500.267 Filing and service.

(a) *Filing.* All documents submitted to the Secretary shall be filed with the Secretary of Labor, U.S. Department of Labor, Washington, DC 20210.

(b) *Number of copies.* An original and two copies of all documents shall be filed.

(c) *Computation of time for delivery by mail.* Documents are not deemed filed with the Secretary until actually received by that office. All documents, including documents filed by mail, must be received by the Secretary either on or before the due date.

(d) *Manner and proof of service.* A copy of all documents filed with the Secretary shall be served upon all other parties involved in the proceeding.

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Service under this section shall be by personal delivery or by mail. Service by mail is deemed effected at the time of mailing to the last known address.

[54 FR 13330, Mar. 31, 1989]

§ 500.268 Final decision of the Secretary.

(a) The Secretary's final Decision and Order shall be issued within 120 days from the notice of intent granting the petition, except that in cases involving the review of an Administrative Law Judge decision in a certificate action as described in § 500.224(b), the Secretary's final decision shall be issued within ninety (90) days from the date such notice. The Secretary's Decision and Order shall be served upon all parties and the Chief Administrative Law Judge, in person or by certified mail.

(b) Upon receipt of an Order of the Secretary modifying or vacating the Decision and Order of an Administrative Law Judge, the Chief Administrative Law Judge shall substitute such Order for the Decision and Order of the Administrative Law Judge.

[54 FR 13330, Mar. 31, 1989, as amended at 61 FR 24866, May 16, 1996]

§ 500.269 Stay pending decision of the Secretary.

(a) The filing of a petition seeking review by the Secretary of a Decision and Order of an Administrative Law Judge, pursuant to § 500.264, does not stop the running of the thirty-day time limit in which respondent may file an appeal to obtain a review in the United States District Court of an administrative order, as provided in section 103(b)(2) or section 503(b)(2) of the Act, unless the Secretary issues a Notice of Intent pursuant to § 500.265.

(b) In the event a respondent has filed a notice of appeal of the Administrative Law Judge's Decision and Order in a United States District Court and the Secretary issues a Notice of Intent, the Secretary will seek a stay of proceedings in the Court until such time as the Secretary issues the final decision, as provided in § 500.268.

(c) Where the Secretary has issued a Notice of Intent, the time for filing an appeal under sections 103(b)(2) or 503(b)(2) of the Act shall commence

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from the date of the issuance of the Secretary's final decision, as provided in § 500.268.

[54 FR 13330, Mar. 31, 1989]

RECORD

§ 500.270 Retention of official record.

The official record of every completed administrative hearing provided by these regulations shall be maintained and filed under the custody and control of the Chief Administrative Law Judge.

§ 500.271 Certification of official record.

Upon receipt of timely notice of appeal to a United States District Court pursuant to section 103(c) or 503(c) of the Act, the Chief Administrative Law Judge shall promptly certify and file with the appropriate United States District Court, a full, true, and correct copy of the entire record, including the transcript of proceedings.

PART 501—ENFORCEMENT OF CONTRACTUAL OBLIGATIONS FOR TEMPORARY ALIEN AGRICULTURAL WORKERS ADMITTED UNDER SECTION 216 OF THE IMMIGRATION AND NATIONALITY ACT

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AUTHORITY: 8 U.S.C. 1101(a)(15)(H)(i)(a), 1184(c), and 1186.

SOURCE: 52 FR 20527, June 1, 1987, unless otherwise noted.

Subpart A—General Provisions

§ 501.0 Introduction.

These regulations cover the enforcement of all contractual obligations provisions applicable to the employment of H-2A workers under section 216 of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986 (IRCA). These regulations are also applicable to the employment of other

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
Atlanta
ATLANTA DIVISION

HECTOR LUNA, JULIAN GARCIA,
FRANCISCO JAVIER LORENZO,
SANTOS G. MALDONADO, PATRICIA
WOODARD and BARTOLO NUNEZ,
Individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

DEL MONTE FRESH PRODUCE
(SOUTHEAST), INC., and DEL
MONTE FRESH PRODUCE N.A.,
INC.,

Defendants.

CIVIL ACTION NO.
1:06-CV-2000-JEC

MAR 19 2008
JAMES N. HAYDEN, Clerk
Deputy Clerk

O R D E R & O P I N I O N

This case is presently before the Court on defendant Del Monte Fresh Produce N.A.'s ("DMNA") Motion for Summary Judgment [197], defendant Del Monte Fresh Produce Southeast's ("DMSE") Motions for Summary Judgment [198], [200], and [201], plaintiffs' Motion for Summary Judgment with respect to DMSA [202], plaintiffs' Motion for Summary Judgment with respect to DMNE [203], plaintiffs' Motions to Strike and to Determine the Validity of Defendants' Offers of Judgment [199] and [216], and Attorney Mary Bauer's unopposed Motion to Withdraw [229].

The Court has reviewed the record and the arguments of the

parties and, for the reasons set out below, concludes that defendant DMNA's Motion for Summary Judgment [197] should be **GRANTED**; defendant DMSE's Motions for Summary Judgment [198], [200], and [201] should be **DENIED**; plaintiffs' Motion to Strike Defendants' Offers of Judgment [199] should be **GRANTED**; plaintiffs' Motion for Summary Judgment with respect to DMSE [202] should be **GRANTED**; plaintiffs' Motion for Summary Judgment with respect to DMNA [203] should be **DENIED**; plaintiffs' Motion to Determine the Validity of Defendants' Offers of Judgment [216] should be **DENIED as moot**; and Attorney Mary Bauer's unopposed Motion to Withdraw [229] should be **GRANTED**.

BACKGROUND

Plaintiffs are migrant and seasonal agricultural laborers who worked on defendant DMSE's Helena, Georgia farms at various times during the 2003, 2004, 2005 and 2006 harvest seasons. (Second Amended Compl. [106] at ¶ 1.) Plaintiffs were recruited to work on DMSE's farms by third-party farm labor contractors ("FLCs"). (Id. at ¶ 3.) Plaintiffs Luna, Garcia, and Lorenzo were recruited from Mexico pursuant to the temporary agricultural work visa program commonly known as the "H-2A program." (Id. at ¶ 4.) Plaintiffs Maldonado, Woodard and Nunez were recruited from within the United States. (Id. at ¶ 5.)

Plaintiffs allege that DMSE: (1) failed to pay the promised wage

rate for all hours worked on its Helena farms; (2) failed to reimburse plaintiffs for costs that they incurred in order to work on the farms; and (3) violated federal laws governing the wages and working conditions of migrant and seasonal agricultural workers. (*Id.* at ¶ 6.) They filed this lawsuit as a class action on behalf of two distinct classes of workers: (1) H-2A guest-workers recruited from Mexico; and (2) non-H-2A migrant and seasonal agricultural workers recruited from within the United States. (Second Amended Compl. [106] at ¶¶ 4-5.)

All of the plaintiffs assert claims under the Fair Labor Standards Act, 29 U.S.C. §§ 201-219 ("FLSA"). (*Id.* at ¶ 7.) The H-2A workers also assert claims for breach of contract. (*Id.*) The non-H-2A workers assert claims for breach of the Migrant and Seasonal Agricultural Workers Protection Act, 29 U.S.C. §§ 1801-1871 ("AWPA"). (*Id.*) Plaintiffs assert these claims against DMSE as well as DMSE's parent corporation, DMNA.¹

Liability under the AWPA and the FLSA is predicated on the existence of an employer-employee relationship.² *Patel v. Wargo*, 803

¹ DMSE is a wholly-owned subsidiary of DMNA (DMNA's Statement of Material Facts in Supp. of Summ. J. [197] at ¶ 5.)

² The AWPA and the FLSA use the same definition of the term "employ." See 29 U.S.C. § 203(g) and 29 U.S.C. § 1802(5). An entity that employs workers under the FLSA therefore necessarily employs the workers for purposes of the AWPA, and vice versa. *Antenor v. D & S Farms*, 88 F.3d 925, 929 (11th Cir. 1996).

F.2d 632, 635 (11th Cir. 1986). Defendants contend that plaintiffs were employed solely by the FLCs who recruited and directly hired plaintiffs. (Answer [112] at ¶¶ 3-4; Answer [113] at ¶¶ 3-4.) Because the employment issue is potentially dispositive of this case, the parties agreed to a bifurcated discovery schedule, with the first stage of discovery to be focused on the issue of defendants' status as plaintiffs' employer. (Scheduling Order [66].)

The parties have completed the first phase of discovery, and have filed cross-motions for summary judgment on the employment issue. (Pls.' Mot. for Summ. J. [202] and [203]; Defs.' Mot. for Summ. J. [197], [198], [200], and [201].) Plaintiffs have also filed a motion to strike and a motion to determine the validity of defendants' recent offers of judgment to several opt-in plaintiffs. (Pls.' Mot. to Strike [199] and Mot. to Determine Validity of Offers of J. [216].) All of these motions are presently before the Court.

DISCUSSION

I. Summary judgment motions pertaining to DMSE

A. Summary judgment standard

Summary judgment is appropriate when the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FED. R. Civ. P. 56(c). A fact's

materiality is determined by the controlling substantive law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). An issue is genuine when the evidence is such that a reasonable jury could return a verdict for the nonmovant. (*Id.* at 249-50.)

Summary judgment is not properly viewed as a device that the trial court may, in its discretion, implement in lieu of a trial on the merits. Instead, Rule 56 of the Federal Rules of Civil Procedure mandates the entry of summary judgment against a party who fails to make a showing sufficient to establish the existence of every element essential to that party's case on which that party will bear the burden of proof at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). In such a situation, there can be no genuine issue as to any material fact, as a complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial. (*Id.* at 322-23 (quoting Fed. R. Civ. P. 56(c)).)

The movant bears the initial responsibility of asserting the basis for his motion. (*Id.* at 323.) However, the movant is not required to negate his opponent's claim. The movant may discharge his burden by merely "showing"--that is, pointing out to the district court--that there is an absence of evidence to support the non-moving party's case." (*Id.* at 325.) After the movant has carried his burden, the non-moving party is then required to "go

beyond the pleadings" and present competent evidence designating "specific facts showing that there is a genuine issue for trial." (*Id.* at 324.) While the court is to view all evidence and factual inferences in a light most favorable to the non-moving party, *Samples v. City of Atlanta*, 846 F.2d 1328, 1330 (11th Cir. 1988), "the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." *Anderson*, 477 U.S. at 247-48 (1986).

The parties have engaged in extensive discovery, and compiled a voluminous record of evidence, related specifically to the employment issue. They urge the Court to review the facts submitted and determine as a matter of law whether DMSE and/or DMNA is an employer for purposes of the AWPAA and the FLSA. (See DMNA's Mot. for Summ. J. [197] at 2 and Pls.' Mot. for Summ. J. [202] at 4.) The Eleventh Circuit has consistently held that "[a] determination of employment status under the FLSA and the AWPAA is a question of law." *Antenor v. D & S Farms*, 88 F.3d 925, 929 (11th Cir. 1996). See also *Charles v. Burton*, 169 F.3d 1322, 1329 (11th Cir. 1999) (holding same). The underlying facts that are essential to the employment inquiry are not in dispute. Accordingly, summary judgment on this issue is proper.

B. Employer liability under the AWPFA and FLSA

It is undisputed that plaintiffs were directly hired and paid by the various FLCs who recruited them to work on DMSE's Helena farms. (Pls.' Consol. Statement of Material Facts in Supp. of Mot. for Summ. J. ("PSMF") [204] at ¶ 59.) The FLCs were ostensibly independent contractors who functioned as plaintiffs' employers. (*Id.*) That fact does not, however, preclude DMSE's liability as an employer under the AWPFA and the FLSA. See *Martinez-Mendoza v. Champion Int'l Corp.*, 340 F.3d 1200, 1208-09 (11th Cir. 2003).

Both the AWPFA and the FLSA broadly define "employer" to include any entity that "suffers or permits" an individual to work. 29 U.S.C. § 203(g) and 29 U.S.C. § 1802(5). The "suffers or permits" standard gives rise to liability against an entity that, as a matter of economic reality: (1) jointly employs the workers supplied by the FLC; or (2) utilizes an FLC as an employee, rather than as an independent contractor. 29 C.F.R. § 500.20(h)(4)-(5) and 29 C.F.R. § 791.2(a). See also *Charles*, 169 F.3d at 1334 (holding that growers and labor contractor jointly employed farmworkers) and *Beliz v. W.H. McLeod & Sons Packing Co.*, 765 F.2d 1317, 1328 (5th Cir. 1985) (recognizing that where a grower employed a labor contractor, he necessarily employed the contractor's employees). The evidence in this case suggests that DMSE did both.

C. DMSE "jointly employed" plaintiffs.

The Eleventh Circuit has identified seven factors that are relevant to the joint employment inquiry, including: (1) the putative employer's power, directly or through the FLC, to direct, control, or supervise the work; (2) the putative employer's power to hire or fire, modify the employment conditions, or determine the pay rates or methods of pay for the workers; (3) the degree of permanency and duration of the parties' relationship; (4) whether the workers perform skilled or unskilled work; (5) whether the workers perform a task that is an integral part of the putative employer's overall business; (6) whether the putative employer owned or controlled the premises where the work occurred; and (7) whether the putative employer undertook responsibilities ordinarily performed by employers. *Charles*, 169 F.3d at 1329. These factors are designed to help the Court determine whether, as a matter of economic reality, plaintiffs were dependent on DMSE. *Id.* See also *Antenor*, 88 F.3d at 932 ("It is dependence that indicates employee status. Each [factor] must be applied with that ultimate notion in mind."). The undisputed evidence indicates that they were.

1. DMSE had substantial power to direct, control, and supervise the work of FLC workers.

This factor focuses on whether the putative employer takes an "overly active role" in overseeing the work performed by FLC workers.

Martinez-Mendoza, 340 F.3d at 1209-10 (quoting *Aimable v. Long and Scott Farms*, 20 F.3d 434, 441 (11th Cir. 1994)). An alleged employer engages in active oversight when it makes such decisions as: (1) whom and how many employees to hire; (2) whom to assign to specific tasks; (3) when work should begin or end each day; (4) when a particular field will be harvested or planted; and (5) whether a worker should be disciplined. *Id.* at 1210; *Charles*, 169 F.3d at 1329-30. Control is also exhibited when the employer provides the containers upon which piece rate earnings are based. *Charles*, 169 F.3d at 1330.

DMSE management instructed the FLCs on a daily basis regarding: how many workers were needed for specific tasks; how many workers should work in each field; which fields to work; how many workers to assign or reassign to specific lines or locations in the warehouse; which warehouse lines to run and at what speeds; and the days on which specific work would begin. (PSMF [204] at ¶¶ 210-11, 215-19, 302-03, 213-13, 317-22.) DMSE also provided the containers upon which the workers' piece rate earnings in certain crops were calculated. (*Id.* at ¶¶ 444-445.)

In addition, DMSE directly monitored and supervised the FLC workers throughout the workday. (*Id.* at ¶¶ 299, 325, 328-330.) DMSE General Manager Mike Kirby routinely walked through the warehouse for two to three hours each day to observe the progress of the work. (*Id.* at ¶ 331.) DMSE field supervisors similarly monitored the work

being done in the fields. (*Id.* at ¶¶ 352-358.) When they observed problems with particular workers, DMSE managers or supervisors either directly confronted the worker or contacted the responsible FLC to address the problem.³ (PSMF [204] at ¶¶ 335, 360.)

DMSE attempts to rebut the above evidence with the testimony of various plaintiffs that they did not experience or observe any direct supervision by DMSE personnel. (See DMSE's Response to Pls.' Mot. for Summ. J. [211] at 49-51.) This testimony is immaterial. Whether plaintiffs were personally aware of it or not, there is undisputed evidence in the record that DMSE managers frequently monitored and supervised FLC workers. (See PSMF [204] at ¶¶ 331, 335, 352-360.) Moreover, for purposes of this factor, control and supervision "may be either direct or indirect." 29 C.F.R. § 500.20(h)(5)(iv)(A). See *Charles*, 169 F.3d at 1330 ("[S]upervision is present whenever orders are communicated directly to the laborer or indirectly through the contractor."). The fact that DMSE may have generally effected supervision by speaking to the FLCs, rather than directly to the workers, "does not negate [DMSE's] apparent on-the-job control over the workers." *Hodgson v. Griffin & Brand of McAllen, Inc.*, 471 F.2d

³ DMSE also established and enforced uniform work rules that were applicable to FLC workers, and required the FLCs and their employees to attend safety and sanitation trainings. (PSMF [204] at ¶¶ 252-57.)

235, 238 (5th Cir. 1973).⁴

2. DMSE had the power to hire and fire workers, and to modify the conditions of their employment.

At the beginning of each season, DMSE required the FLCs to sign standardized "FLC Agreements" governing the services that the FLCs were to provide to DMSE. (PSMF [204] at ¶¶ 136-150.) DMSE presented the Agreements to the FLCs fully prepared, with jobs and corresponding pay rates and methods of payment (hourly or piece rate) already specified. (Id. at ¶ 150.)

DMSE's argument that the compensation rates in the FLC Agreements were only "estimates" of the amount that the FLCs should pay their workers is unpersuasive. (See DMSE's Response to PSMF [212] at ¶ 150.) The FLCs were not authorized to pay less than the specified rates and, as a practical matter, could not afford to pay more. (PSMF [204] at ¶ 147, 149.) Thus, with few exceptions, DMSE dictated the FLC workers' pay rates and method of payment through the standardized FLC Agreements. (Id. at ¶¶ 136-64.)

DMSE also retained and regularly exercised the right to approve employees selected to fill supervisory positions and positions involving dangerous equipment or machinery. (Id. at ¶ 141.) To that

⁴ Decisions of the former Fifth Circuit rendered prior to October 1, 1981, are binding precedent in the Eleventh Circuit. *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc).

end, DMSE managers identified specific FLC workers whom they wanted to be helpers, drivers, and quality control individuals. (Id. at ¶¶ 220-225.) DMSE managers also occasionally identified employees whom they wanted removed from certain positions. (Id. at ¶¶ 228-229.) On at least one occasion, a DMSE manager suggested to an FLC that a particular worker should be fired because she was pregnant. (PSMF [204] at ¶ 228.) The FLC fired the employee based on her understanding of DMSE's preference. (Id.) In several other instances, DMSE laid off employees and then suggested that these individuals be hired by an FLC. (Id. at ¶¶ 233-40.) The FLCs generally complied with these requests because they viewed DMSE management as their "bosses." (Id. at ¶¶ 246-51.)

3. The relationship between DMSE and the workers was relatively permanent.

Recognizing the inherently seasonal nature of most agricultural work, courts have generally found a sufficiently permanent relationship to indicate joint employment where labor contractors and their workers return to a farm year after year for a particular season of work, or where labor contractors supply their workers primarily to one grower during a specific harvest or planting period. See *United States v. Lauritzen*, 835 F.2d 1529, 1537 (7th Cir. 1987) ("One indication of permanency . . . is the fact that it is not uncommon for the migrant families to return year after year") and

Barrimentos v. Taylor, 917 F. Supp. 375, 384 (E.D.N.C. 1996) ("the relationship is permanent to the extent that the migrants worked only for defendants during the season").

Rojas Harvesting was DMSE's primary labor contractor, and supplied the majority of workers used in DMSE's Helena operations. (PSMF [204] at ¶ 60.) Rojas provided laborers to DMSE from 2000 or 2001 until 2006. (*Id.* at ¶ 62.) From 2003 until the close of DMSE's operations in 2006, approximately 90% of Rojas business each year derived from work performed for DMSE. (*Id.* at ¶ 64.) In 2003, 2004, and 2005, Rojas supplied labor nearly year-round to DMSE. (*Id.* at ¶ 89.) This suggests a somewhat permanent and exclusive relationship between Rojas and DMSE.

In addition, several of the plaintiffs testified that they returned to work for DMSE for multiple consecutive onion seasons, and that during those seasons they primarily worked for DMSE. Plaintiff Patricia Woodard worked exclusively for DMSE during each onion harvest season from April 2003 through June or July 2006. (*Id.* at ¶ 126.) Plaintiff Bartolo Nunez returned to DMSE's farms for the 2004, 2005, and 2006 onion harvests. (PSMF [204] at ¶ 127.) Opt-in plaintiffs George Allen, Sandreka Madison, Rosa Arias, and C.J. Mason also returned to DMSE's farms for multiple seasons. (*Id.* at ¶¶ 130-135.)

4. FLC workers performed unskilled work.

DMSE concedes that plaintiffs generally performed unskilled work. (DMSE's Response to PSMF at ¶ 373; DMSE's Mem. in Supp. of Mot. for Summ. J. [200] at 15.) This factor thus weighs in favor of a joint employment relationship. *Charles*, 169 F.3d at 1332 ("The lower the worker's skill level, the lower the value and marketability of his/her services and the greater the likelihood of his/her economic dependence on the person utilizing those services.").

5. DMSE owned or leased the premises where the work occurred.

DMSE also concedes that it owned or leased the land on which the work at issue was performed. (PSMF [204] at ¶¶ 438-39.) As the Eleventh Circuit explained in *Antenor*: "[A] business that owns or controls the worksite will likely be able to prevent labor law violations, even if it delegates hiring and supervisory responsibilities to labor contractors." *Antenor*, 88 F.3d at 937. Accordingly, this factor weighs in favor of joint employment. *Id.* See also *Charles*, 169 F.3d at 1333.

6. FLC workers performed tasks that are an integral part of DMSE's overall business.

During the relevant time period, DMSE was engaged in the business of growing and packaging fresh produce in the Helena, Georgia area. (PSMF [204] at ¶¶ 5, 21-24.) Plaintiffs and other FLC workers performed the planting, harvesting, and packing of DMSE's

produce. This work clearly was integral to DMSE's operations and overall business. See Charles, 169 F.3d at 1333 ("picking of snap beans was integral to both harvesting and producing of snap beans").

7. DMSE undertook at least some responsibilities that are ordinarily performed by employers.

Examples of tasks that are ordinarily performed by employers include: (1) preparing or making payroll records; (2) preparing or issuing paychecks; (3) paying FICA taxes; (4) providing workers' compensation insurance; (5) providing field sanitation facilities, housing, or transportation; and (6) providing tools, equipment, or materials required for the job. *Martinez-Mendoza*, 340 F.3d at 1214. The FLCs prepared their own payrolls and issued paychecks without assistance from DMSE. (DMSE's Statement of Undisputed Material Facts in Supp. of Summ. J. ("DMSE's SMF") [200] at ¶ 129.) The FLCs also performed their own tax calculations and independently made these deductions. (*Id.* at ¶ 130.) In addition, the FLCs independently obtained liability and workers' compensation insurance. (*Id.* at ¶ 137.)

On the other hand, DMSE maintained labor camps in which it provided free housing to numerous FLC workers between 2003 and 2006. (PSMF [204] at ¶¶ 461-68.) DMSE paid for most costs associated with the housing, including major repairs, routine maintenance, and utility bills. (*Id.* at ¶¶ 472-73.) DMSE also assisted Rojas in

obtaining housing for workers for whom there was no room at the camps during the 2006 onion harvest season. (*Id.* at ¶ 469.) As part of these efforts, DMSE executed a contract addendum with subsidies for outside housing, and suggested to Ms. Rojas where she should look for worker housing. (*Id.*)

In addition, DMSE provided FLC workers with the majority of the tools, materials, and equipment that were essential to their work. (*Id.* at ¶¶ 440-47.) DMSE provided and serviced all the forklifts, tractors, and other field and warehouse machinery used in the Helena operations. (PSMF [204] at ¶ 442.) DMSE also provided the fuel required for the equipment. (*Id.* at ¶ 443.) DMSE further provided sacks in which field workers placed harvested onions, and all the bins and boxes used to harvest, load, and pack onions and other produce. (*Id.* at ¶¶ 444-45.) In the 2006 onion harvest season, DMSE arranged and paid for sanitation facilities on its Helena farms. (*Id.* at ¶ 453.)

The evidence on this factor thus indicates that DMSE and its FLCs each performed discrete tasks routinely performed by an employer. Nevertheless, DMSE's provision of most of the tools, materials, and services critical to plaintiffs' work suggests that plaintiffs were economically dependent on DMSE. See Charles, 169 F.3d at 1333 n. 15 ("workers who use the services, materials or functions [provided by a putative employer] are in a very tangible

way economically dependent on the entity performing these functions”).

8. Conclusion

All of the relevant factors weigh in favor of joint employment, and the evidence in the record overwhelmingly suggests that plaintiffs were at least as economically dependent on DMSE as they were on their FLCs. Plaintiffs’ motion for partial summary judgment as to DMSE [202] is therefore **GRANTED**, and DMSE’s motions for summary judgment [198], [200], and [201] are **DENIED**.

D. DMSE utilized Rojas Harvesting as an employee.

In addition to its status as a joint employer of plaintiff, DMSE also effectively employed its primary labor contractor. This fact offers additional support to grant plaintiffs’ motion for summary judgment. Specifically, the evidence in the record further suggests that Letisia Rojas Salazar, DMSE’s primary labor contractor, functioned as an employee of DMSE as opposed to an independent contractor.⁵ The DOJ has identified six factors that are relevant to determine whether an FLC is a bona fide independent contractor or an employee. 29 C.F.R. § 500.20(h)(4). These factors, which overlap

⁵ In 2001 or 2002, DMSE offered Ms. Rojas a position as DSME’s primary labor contractor. (PSMF [204] at ¶ 63.) Ms. Rojas subsequently became, and at all relevant times was, the Rojas family member most actively involved in directing and overseeing Rojas Harvesting’s provision of workers to DMSE. (*Id.* at ¶¶ 63, 69-70-73.)

substantially with the factors discussed above, include: (1) the nature and degree of the putative employer’s control as to the manner in which the work is performed; (2) the putative employee’s opportunity for profit or loss depending on his/her managerial skill; (3) the putative employee’s investment in equipment or materials required for the task, or the putative employee’s employment of other workers; (4) whether the services rendered by the putative employee require special skill; (5) the degree of permanency and duration of the working relationship; and (6) the extent to which the services rendered by the putative employee are an integral part of the putative employer’s business.

As discussed, DMSE retained and regularly exercised substantial control over the work performed by the FLCs. In addition, Rojas had a relatively permanent and exclusive relationship with DMSE, and the work performed by Rojas’ FLC workers was unquestionably integral to DMSE’s business. The evidence on these factors therefore suggests that Rojas functioned as an employee of DMSE. The remaining factors also support an employment relationship.

1. Rojas had a limited opportunity for profit or loss based on her managerial skill.

Rojas earned a profit on her work for DMSE by means of a standard surcharge specified in the FLC Agreements. (PSMF [204] at ¶¶ 136-149.) As noted, the FLC Agreements listed various jobs and

their corresponding rates of pay, including whether payment would be made on an hourly or piece rate basis for specific jobs. (*Id.* at ¶¶ 142-146.) The total payment that Rojas received was calculated by applying a 32% surcharge to both hourly and piece rate work. (*Id.* at ¶¶ 144, 147.) The 32% surcharge was specifically calculated as a percentage necessary to cover the FLC's costs for insurance and employment taxes, as well as to provide some profit to the FLC. (*Id.* at ¶ 149.) As a practical matter, this arrangement provided very little if any opportunity for Rojas to apply her "managerial skill" to increase profit.

Rojas' opportunity for loss was similarly limited, because she did not make any significant investment in work-related equipment or materials. DMSE owned or leased all of the land on which the work occurred, and supplied all of the heavy equipment and machinery used in its operations, including tractors, forklifts, fuel, fertilizers and pesticides, irrigation equipment, and the components of the warehouse packing lines. (*Id.* at ¶¶ 438-47.) DMSE also paid most of the costs associated with maintaining two labor camps primarily used for housing Rojas workers. (PSMF [204] at ¶¶ 461-66.) Rojas only provided plastic buckets, basic hand tools such as onion clippers, and a few vehicles in which workers were transported. (*Id.* at ¶¶ 440-47, 454.) Given the limited nature of her investment, Rojas' opportunity for loss was practically nonexistent. See *Haywood v.*

Barnes, 109 F.R.D. 568, 588 (E.D.N.C. 1986) (noting that the labor contractors' investment in "some light tools and a few scattered buses and trucks" was minimal in comparison with the grower's investment in land, housing, storage facilities, equipment, tools, and supplies)

2. The vast majority of Rojas' workers primarily worked at DMSE's Helena operations.

Although Rojas supplied some workers to farms other than DMSE, 90% of Rojas' business between 2003 and 2006 derived from work performed at DMSE's Helena operations. (PSMF [204] at ¶ 64.) In a succession of letters supporting Rojas' applications for H-2A workers, DMSE indicated its intent to utilize all of the H-2A workers requested by Rojas in 2003, 2004, 2005, and 2006. (*Id.* at ¶ 278-281.) The number of workers that Rojas supplied to other farms, and the amount of time those workers spent working on other farms, were insignificant compared to the workers supplied to, and time spent on, DMSE's Helena farms.

3. Ms. Rojas had limited skills and training.

Ms. Rojas was 18 years old when DMSE offered her a position as its primary labor contractor. (*Id.* at ¶ 63.) Although she was experienced in farmwork when she accepted the labor contractor position, Rojas did not have any specialized training in agriculture or in farm labor contracting. (*Id.* at ¶ 78.) In fact, she dropped

out of school in the ninth grade. (*Id.* at ¶ 78.)

Ms. Rojas was undoubtedly proficient in performing numerous duties for DMSE, including recruiting, hiring, training, and supervising workers. (See DMSE's Response to Pls.' Mot. for Summ. J. [211] at 40.) She also showed initiative in communicating with the DOL regarding contracting and housing matters, working with an accounting firm to prepare her payroll, and consulting with an agricultural firm regarding the H-2A recruitment process. (*Id.*) However, there is no evidence that she brought a particularly specialized set of skills to DMSE. See *Beliz*, 765 F.2d at 1328 (holding that a contractor who provided "routine supervision of the kind commonly given by foremen" was an employee of the grower).

4. Conclusion

All of the relevant factors suggest that Rojas functioned as DMSE's employee. Accordingly, DMSE necessarily employed Rojas' workers for purposes of the AWPAA and the FLSA. See *Beliz*, 765 F.2d at 1328. For this additional reason, DMSE's motions for summary judgment [198], [200], and [201] are **DENIED**, and plaintiffs' motion for partial summary judgment with respect to DMSE [202] is **GRANTED**.

II. Summary judgment motions pertaining to DMNA

Plaintiffs have named DMSE's parent corporation DMNA as a defendant in this litigation. DMNA is in the business of marketing

and selling produce that it purchases from either its wholly-owned subsidiaries or from various third parties. (DMNA's Statement of Material Facts in Supp. of Summ. J. ("DMNA's SMF") [197] at ¶ 3.) In 1998, DMNA acquired Grimes Farm, an existing agricultural entity in Helena, Georgia. (*Id.* at ¶ 4.) At that time, DMSE was formed and incorporated, with its holdings containing the former Grimes Farm. (*Id.*) DMSE then became a wholly-owned subsidiary of DMNA. (*Id.* at ¶ 5.) DMSE and DMNA subsequently maintained a working relationship by which DMSE sold most of the produce it harvested to DMNA at a 3% markup. (*Id.* at ¶ 10.)

As discussed above, liability under the AWPAA and the FLSA is premised on an employment relationship. *Patel*, 803 F.2d at 636. DMNA cannot be held liable to plaintiffs under the AWPAA and FLSA simply because its wholly-owned subsidiary employed plaintiffs. *Id.* Plaintiffs must instead prove that DMNA also jointly employed plaintiffs, or that there is an alternative basis for holding DMNA liable for the actions of its subsidiary. Plaintiffs have not met this burden.

A. DMNA did not jointly employ plaintiffs.

Applying the seven-factor economic realities test described above, there is no evidence in the record to suggest that DMNA jointly employed plaintiffs.

1. DMNA did not control, direct, or supervise plaintiffs.

DMNA was not at all involved in supervising either the FLCs or their employees. (DMNA's SMF [197] at ¶ 69.) Plaintiffs concede that DMNA personnel did not directly communicate with the FLC workers. (Pls.' Response to DMNA's SMF [208] at ¶ 69.) In addition, the FLCs testified that they had never communicated with DMNA or any member of its management. (DMNA's SMF [197] at ¶ 69.) There is thus no evidence that DMNA controlled or supervised the workers indirectly via the FLCs. The only evidence on this factor is that a small number of DMNA employees visited DMSE's facilities on an infrequent basis for meetings with DMSE employees to discuss sales, production, accounting, and other issues. (DMNA's SMF [197] at ¶ 13; Pls.' Response to DMNA's SMF [208] at ¶ 13.) These activities do not rise to the level of "active oversight" of the work performed by the FLC workers. See *Aimable*, 20 F.3d at 440-41.

2. DMNA did not have or exercise the right to hire, fire, or modify workers' employment conditions.

There is no evidence that DMNA determined or had the power to determine plaintiffs' pay rates or payment method. While DMNA officers reviewed the FLC Agreements, they never altered the pay rates contained within them. (DMNA's SMF [197] at ¶ 63.) Instead, the pay rates and methods of pay were determined and approved by DMSE's General Manager. (*Id.* at ¶ 60.) Neither is there any

evidence that DMNA was at all involved in the recruitment, hiring or firing of any of the FLCs or their workers. (Pls.' Response to DMNA's SMF [208] at ¶¶ 65-66.) DMNA's limited involvement in DMSE's operations does not constitute indicia of joint employment under this factor. See *Beck v. Boce Group, L.C.*, 391 F. Supp. 2d 1183, 1188-90 (S.D. Fla. 2005) (finding that a parent corporation did not exercise control over the employees of its subsidiary, although the parent consulted with the subsidiary on employment matters and required distribution of an employee handbook).

3. Plaintiffs did not have a permanent relationship with DMNA.

The FLCs entered into contracts with DMSE, not DMNA. (DMNA's SMF [197] at ¶ 54.) There is no evidence that DMNA had any kind of relationship with plaintiffs or their FLCs, much less a relationship of such permanency or exclusivity to justify a finding of joint employment. See *Martinez-Mendoza*, 340 F.3d at 1212 (discussing permanency factor).

4. Plaintiffs performed unskilled work.

As noted above, it is undisputed that plaintiffs' jobs were unskilled. This factor thus weighs slightly in favor of joint employment.

5. Plaintiffs' jobs were not integral to DMNA's business.

DMNA is in the business of marketing and selling produce that it

purchases from either its wholly-owned subsidiaries or various third parties. (DMNA's SMF [197] at ¶ 3.) DMNA can and does purchase produce from a number of growers other than DMSE. (*Id.*) It is not dependent on produce purchased from DMSE. (*Id.* at ¶ 7.) Plaintiffs' work is therefore not indispensable or integral to DMNA's overall business. Compare *Antenor*, 88 F.3d at 937 (finding that farmworkers were "one small but indispensable part" of the growers' overall production process).

6. DMNA did not own or control the premises on which the work occurred.

DMSE leased all of the fields, and owned the warehouse, in which plaintiffs worked.⁶ (DMNA's SMF [197] at ¶¶ 6-8.) There is no evidence that DMNA had any interest in these properties.

7. DMNA did not undertake any responsibilities commonly performed by employers.

The Court found above that both DMSE and the FLCs performed some of the tasks that are ordinarily performed by employers, with the FLCs assuming responsibility for payroll functions and DMSE providing housing, equipment, and tools. There is no evidence that DMNA undertook any of these responsibilities. See *Gonzalez-Sanchez v. Int'l Paper Co.*, 346 F.3d 1017, 1023 (11th Cir. 2003) (holding that defendant did not jointly employ plaintiffs where there was no

⁶ The warehouse was marked with a sign reading "Del Monte Fresh Produce Southeast." (DMNA's SMF [197] at ¶¶ 7-8.)

evidence that it issued paychecks, withheld taxes, or provided insurance, housing, transportation, or tools to plaintiffs).

B. **There is no other basis for holding DMNA liable.** Plaintiffs essentially concede that they cannot demonstrate a joint employment relationship under the test articulated above. (*See Pls.' Response to DMNA's Mot. for Summ. J.* [208].) However, plaintiffs suggest that DMNA should be held liable to plaintiffs because: (1) DMNA is the parent corporation of DMSE and exercised "substantial control" over DMSE's operations; (2) DMNA and DMSE constitute an integrated enterprise; and (3) DMSE was DMNA's agent with respect to plaintiffs. (*Id.*) These arguments are not persuasive.

The Eleventh Circuit repeatedly has indicated that the seven-factor joint employment analysis is the proper standard to determine FLSA and AWPAA liability for multiple entities, including two related corporate entities. See *Martinez-Mendoza*, 340 F.3d at 1207-08; *Patel*, 803 F.2d at 637. In fact, the *Patel* Court specifically rejected the approach that plaintiffs recommend, stating: "There is no case holding that the individual entities which make up an enterprise should be jointly and severally liable for another entity's employees solely because they are members of the enterprise." *Patel*, 803 F.2d at 635. See also *Lane v. Capital Acquisitions and Mgmt. Co.*, 2007 WL 676019 at *4 (S.D. Fla

2007) ("Under the FLSA, courts apply the economic realities test to determine whether a parent is, in fact, a joint employer for purposes of the FLSA.") and *Kaplun v. Lipton*, 2007 WL 707383 at *3 (S.D. Fla. 2007) ("in order for all the corporate Defendants in this action to be liable for Plaintiff's overtime claim Plaintiff must establish their liability as her employer through a joint employer analysis").

Moreover, the evidence does not support plaintiffs' alternative theories of liability, which all assume that DMNA exercised "substantial control" over DMSE. The evidence overwhelmingly suggests that DMSE conducted its business independently from DMNA. (DMNA's SMF [197] at ¶¶ 14-35.) DMNA's involvement in DMSE's daily operations was limited. (*Id.*) More importantly, DMNA had no involvement whatsoever with plaintiffs or the FLCs. See *Greason v. Se. R.R. Assoc. Bureau*, 650 F. Supp. 1, 4 (N.D. Ga. 1986) ("For the agency theory, the claimant must show that one entity acted as the other's agent with respect to employment practices.") (emphasis added) and *Llampallas v. Mini-Circuits, Lab, Inc.*, 163 F.3d 1236, 1244-45 (11th Cir. 1998) (the integrated enterprise theory concentrates on the "degree of control an entity has over the adverse employment decision on which the [plaintiffs'] suit is based."). Accordingly, DMNA's motion for summary judgment [197] should be **GRANTED**, and plaintiffs' motion for partial summary judgment as to DMNA [203] should be **DENIED**.

III. Plaintiffs' motions to strike or determine the validity of defendants' offer of judgment

The named plaintiffs filed this action on behalf of themselves and other similarly situated migrant farmworkers. (See Amended Compl. [55].) Shortly after plaintiffs filed their amended complaint, they filed motions for class certification and for certification as an FLSA collection action. (Pls.' Mot. to Certify Class [73] and Mot. to Certify FLSA Collective Action [84].) Subsequently, 47 plaintiffs opted into the lawsuit. (Pls.' Br. in Supp. of Mot. to Strike [199] at 2.) Defendants have issued Rule 68 offers of judgment to 42 of the opt-in plaintiffs. (*Id.* at 6.) Plaintiffs move to strike or invalidate those offers. (Pls.' Mot. to Strike Offers of J. [199]; Pls.' Mot. to Determine Validity of Offers of J. [216].)

Pursuant to Rule 68, a defendant may make an offer of judgment to a plaintiff any time up to ten days prior to trial. Fed. R. Civ. P. 68. If the plaintiff rejects the offer of judgment, and ultimately recovers less at trial than the amount specified in the offer, he must pay the defense costs incurred after the date of the offer. *Id.* Plaintiffs contend that defendants' offers are inappropriate in the context of an FLSA collective action. (Pls.' Mot. to Strike [199] at 7.) They seek judicial clarification of the issue because rejecting the offers may prejudice plaintiffs in the

eventual assessment of costs. (*Id.*)

The Eleventh Circuit has held that FLSA claims may only be abridged or settled after a court reviews the proposed settlement to ensure that it is fair and reasonable. *Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350, 1352-53 (11th Cir. 1982). As the Court explained in *Lynn's Food*:

There are only two ways in which back wage claims arising under the FLSA can be settled or compromised by employees. First, under section 216(c), the Secretary of Labor is authorized to supervise payment to employees of unpaid wages owed to them. . . The only other route for compromise of FLSA claims is provided in the context of suits brought directly by employees against their employer under section 216(b) to recover back wages for FLSA violations. When employees bring a private action for back wages under the FLSA, and present to the district court a proposed settlement, the district court may enter a stipulated judgment after scrutinizing the settlement for fairness.

Id. at 1353.

Defendants have not presented its Rule 68 offers to the Court for approval, with good reason. At this stage in the litigation, there is absolutely no basis for determining whether the offers are fair and reasonable. The parties have not conducted any merits discovery or provided even an estimate as to the amount plaintiffs might be entitled to recover on their FLSA and AWPA claims. See *Yates v. Applied Performance Tech., Inc.*, 205 F.R.D. 497, 503 (S.D. Ohio 2002) (holding that it would be inappropriate to compel plaintiffs to accept an offer of judgment where it was unclear how

much plaintiffs were owed) and *Rubery v. Buth-Na-Bodhaige, Inc.*, 494 F. Supp. 2d 178, 181 (W.D.N.Y. 2007) (noting that courts have "traditionally been wary of attempts by defendants to evade FLSA collective actions by making Rule 68 offers of judgment at the earliest possible time"). The amount specified in the offers appears to have been randomly selected.


Defendants' settlement offers have not been, and at this stage in the litigation cannot be, reviewed or approved by the Court. The offers are thus invalid under *Lynn's Food*. Accordingly, the Court **GRANTS** plaintiffs' motion to strike defendants' Rule 68 offers [199] and **DENIES** as moot plaintiffs' motion to determine the validity of the offers [216]. Pursuant to this ruling, plaintiffs are not subject to the consequences of refusing the offers under Rule 68.

CONCLUSION

For the foregoing reasons, the Court finds that defendant DMNA's Motion for Summary Judgment [197] should be **GRANTED**; defendant DMSE's Motions for Summary Judgment [198], [200], and [201] should be **DENIED**; plaintiffs' Motion to Strike Defendants' Offer of Judgment [199] should be **GRANTED**; plaintiffs' Motion for Summary Judgment with respect to DMSE [202] should be **GRANTED**; plaintiffs' Motion for Summary Judgment with respect to DMNA [203] should be **DENIED**; plaintiffs' Motion to Determine the Validity of Defendants' Offer of

Judgment [216] should be **DENIED as moot**; and Attorney Mary Bauer's unopposed Motion to Withdraw [229] should be **GRANTED**.

SO ORDERED, this 18 day of March, 2008.



JULIE E. CARNES
UNITED STATES DISTRICT JUDGE