Regulations Part 500: Migrant and Seasonal Agricultural Worker Protection

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SOURCE: 48 FR 36741, 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 FLCRA or the Farm Labor Contractor Registration Act. Prior judgments and final orders obtained under FLCRA 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 36741, 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 require farm labor contractors to register under this Act; and to assure necessary protections for migrant and seasonal agricultural workers, agricultural associations, and agricultural employers.'' 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.

(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 subpenas 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 any 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) Subparts 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 applications 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

OMB under control number 1215–0091. (See § 500.59(a)(11)).

[48 FR 36741, Aug. 12, 1983; 48 FR 38380, 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 any 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 subpenas 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 subpena, 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 subpena.

§ 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 756. 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 *employ* 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:

(i) 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 ''advanc[ing] * * * a completely new approach'' (Rept. at 3). Congress's incorporation of the FLSA term *employ* 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 makes clear that 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 or 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 contract 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* or *Farm Labor Contractor Employee Certificate of Registration* or *Employee Certificate* 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, 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.

(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

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.

(t) *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 effectively 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 38374, Aug. 23, 1983, as amended at 54 FR 13329, Mar. 31, 1989; 56 FR 54708, Oct. 22, 1991; 62 FR 11747, 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 permitted 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, debeaking, 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 (i)(1) of this section by a person who is exempt thereunder.

(j) *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 is accordance with paragraph (j)(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 contractors 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.

(i) 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 renewal 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 authorization 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 § 500.48, 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 statutory provisions.

Every farm labor contractor must comply with all of the provisions of titles I through V of the Act and all of the subparts 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 motor vehicle safety and insurance provisions of section 401 of the Act and §§ 500.100 through 500.128 of these regulations is imposed upon the person or persons using or causing to be used, any vehicle for transportation of migrant or seasonal agricultural workers. As stated in these regulations, the transportation safety provisions do not include certain car pooling arrangements. Additionally, these regulations do not impose responsibility on an agricultural employer or agricultural association for a farm labor contractor's failure to adhere to the safety provisions provided in these regulations when the farm labor contractor is providing the vehicles and directing their use. However, when an agricultural employer or agricultural association specifically directs or requests a farm labor contractor to use the contractor's vehicle to carry out a task for the agricultural employer or agricultural association, such direction constitutes causing the vehicle to be used and the agricultural employer or agricultural association is jointly responsible with the farm labor contractor for assuring that the vehicle meets the insurance, and safety and health provisions of these regulations. In all cases a person using a farm labor contractor is required to take reasonable steps to determine that the vehicle used by the farm labor contractor is authorized to be used for transportation as prescribed in section 402 of the Act and § 500.71 of these regulations.

(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 beyond 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;

(5) The transportation, housing, 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 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 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 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, however, 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.

[48 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

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 the purpose of each sum 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 assigned 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 § 500.105. 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 38380, 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, 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 air 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, supervision, 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,

(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 36-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)(ii)(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 displacement 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 (Source: 49 CFR 398.5)*—(i) *Compliance*. 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, 1952.

(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 construed 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 398.6).* 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 reports for duty.

(5) *Inspection and maintenance of motor vehicles (Source: 49 CFR 398.7).* 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 30327, 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 insurance 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;

(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 factors, 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

(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 Certification 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]

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 rulemaking) 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

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]

§ 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 (1–866–487–9243), a toll-free number, during the hours of 8 a.m. to 5 p.m., in your time zone, Monday through Friday.

[67 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:

(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(5) 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:

(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.

(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, 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. 18, 1992; 71 FR 16665, Apr. 3, 2006]

PROCEDURES RELATING TO SUBSTITUTED SERVICE

§ 500.215 Change of address.

(a) Pursuant to section 105(1) 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 of 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 each pleading, motion, brief, or other 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 of record by a number preceded by the year and the letters ''FLCRA-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*) –FLCRA-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 penalty(ies) 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 Appearances; 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 of such deferment and the duration thereof shall be at the discretion of the Administrative Law Judge, after consideration of the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement being reached which will result in a just disposition of the issues involved.

(b) *Content*. Any agreement containing consent findings and an order disposing of a proceeding or any part thereof shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the notice of administrative determination (or amended notice, if one is filed), and the agreement;

(3) A waiver of any further procedural steps before the Administrative Law Judge; and

(4) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.

(c) *Submission*. On or before the expiration of the time granted for negotiations, the parties or their authorized representatives or their counsel may:

(1) Submit the proposed agreement for consideration by the Administrative Law Judge; or

(2) Inform the Administrative Law Judge that agreement cannot be reached.

(d) *Disposition*. In the event an agreement containing consent findings and an order is submitted within the time allowed therefor, the Administrative Law Judge, within thirty (30) days thereafter, shall, if satisfied with its form and substance, accept such agreement by issuing a decision based upon the agreed findings.

POST-HEARING PROCEDURES

§ 500.262 Decision and order of Administrative Law Judge.

(a) The Administrative Law Judge shall prepare, as promptly as practicable after the expiration of the time set for filing proposed findings and related papers a decision on the issues referred by the Secretary.

(b) In cases involving certificate actions as described in § 500.224(b), the Administrative Law Judge shall issue a decision within ninety (90) calendar days after the close of the hearing.

(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

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. 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

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.