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U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
Wage and Hour Division
WASHINGTON, D.C. 20210



AUG 26 1977

Here is our response to the several questions raised in the meeting in Washington on May 3, 1977. We regret the delay involved in responding, however, we have attempted to provide the best possible information with regard to the issues raised.

You suggested that we translate portions of the Farm Labor Contractor Registration Act, Regulations Part.40, and other interpretative material into Spanish using a dialect commonly used and understood in the geographic area discussed. A project to accomplish this is now underway. We appreciate your bringing this suggestion to our attention.

The interpretations of the Farm Labor Contractor Registration Act in our March 9, 1977 letter remain in effect. The cash buyers referred to on page two of our letter, dated March 9, 1977, are those buyers who buy for resale to a processor. This type of buyer is not a farmer, processor, canner, ginner, packing shed operator or nurseryman within the meaning of Section 3(b) of the statute. Therefore, a cash buyer must register if he engages in any activities of a farm labor contractor as listed in Section 3(b) of the Act. *WH 4*

Packing shed operators, and other crop processors who buy crops, take title to the unharvested crop in the field and who personally engage in their own farm labor contracting activities solely for their own operations would not have to register as farm labor contractors. On the other hand the exemption in Section 3(b)(2) does not apply where a person other than the shed operator or crop processor performs any farm labor contracting activities on such crops. Likewise, the section 3(b)(2) exemption is inapplicable to any person, including the shed operator or crop processor, who engage in any farm labor contracting activity on behalf of another person.

Certain packing sheds or other processors operate in a joint venture or in a partnership with growers. Under such arrangements the shed may provide financing, seed, a portion of the fertilizer, or the land. The grower generally provides the labor and equipment to bring the crops to marketable size. The shed usually has such arrangements with several such growers. In such situations the shed usually supplies the labor

for harvesting the crop and for marketing the crop. The proceeds from the sale of the crop are shared on a prearranged basis, including a percentage basis, depending on the services contributed by each. Since the harvesting undertaken by the shed operator is independent of his association with grower in cultivating and raising the crop, the shed operator by providing the necessary workers for harvesting the crop is not personally engaged in supplying farm labor employees solely for his own operations as a farmer. Nor are such activities solely for the operation of the shed since the harvest services also enure to the benefit of the grower. Therefore, the shed cannot qualify for exemption under Section 3(b)(2) and it must register as a farm labor contractor to engage in farm labor contracting activities.

A fieldman employed by a shed such as described above who transports farm labor contractors to inspect a grove or field in connection with the day-to-day work assignments must either be registered as a farm labor contractor with transportation authorized or be a holder of a valid farm labor contractor employee ID card working for a registered farm labor contractor who has transportation authorized. The truck or vehicle used to transport the farm labor contractor must be identified on the farm labor contractor registration card. The truck must be inspected and have adequate seating facilities for each person being transported. Thus if the contractor is the only one transported, appropriate seating would be required for the farm labor contractor and the driver. (See item 17 of form WH-414.) Each full-time or regular employee who engages in farm labor contracting activities for a shed which is subject to the registration requirements of the Act must register either as a farm labor contractor or be the holder of a valid farm labor contractor employee identification card.

With regard to the problem that arises when an authorized vehicle breaks down and the farm labor contractor utilizes a substitute vehicle, we recognize that emergencies which prevent use of a licensed vehicle will occur from time to time. When such emergencies occur, all facts surrounding the situation will be examined in cases under investigation by the Wage and Hour Division. Generally, emergency transportation will not be considered an assessable violation of the Farm Labor Contractor Registration Act providing an extended use, during which time corrective action could have been taken, is not present. Of course, as indicated in 29 CFR 40.51(c) a vehicle may be substituted provided it meets the applicable standards and notification is made to the appropriate Regional Office within ten days after the farm labor contractor obtains or learns of such intended use.

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All vehicles utilized to transport migrant workers by farm labor contractors are required to meet all Federal and State safety and health standards, as provided in Section 5(a)(4) of the statute. In extending coverage to intrastate farm labor contractors and expanding protection to the workers, the Congress did not exempt intrastate contractors from the safety and health requirements set forth in the statute. Individual States differ in vehicle health and safety codes. Therefore, a uniform application of Farm Labor Contractor Registration Act is being achieved through use of the Department of Transportation standards. However the application of such Department of Transportation standards to vehicles used to transport migrant workers is now receiving specific study by the Department of Transportation and Department of Labor. Of course, any vehicle used to transport migrant workers must also meet the State standards applicable to such vehicle.

In determining compliance with the minimum wage for piece workers, the Wage and Hour Division has consistently used the following method. A piece worker's regular rate is arrived at by dividing his total straight time earnings in a week by his total hours worked that week. Of course differences may often develop on just how many hours were worked in a particular case, but this is a factual matter that must be resolved on the basis of the best evidence available in that case.

During the meeting on May 3rd, the question of travel time for workers, transported from the bridge at the border crossing point to various farms was raised. You stated that varying information was provided by the Wage and Hour Division in Texas. Travel time at the start or end of the workday need not be counted as working time unless it is compensable by contract, custom or practice. However, ordinary travel from home to work (or from the bridge at the border to the fields) need not be counted as hours worked even if the employer agrees to pay for it. See 29 CFR 785.34 and 785.35.

I appreciate your interest in the administration of the Farm Labor Contractor Registration Act by the Wage and Hour Division and look forward to working with you in the future on matters of concern to your clients.

Sincerely,

Warren D. Landis
Deputy Administrator