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This is in response to your letter of January 25, 1978 with which you enclosed copies of letters from Mr. [REDACTED] and Mr. [REDACTED] a farmer and seed corn producer [REDACTED]. We regret the delay in responding.

Both Mr. [REDACTED] Mr. [REDACTED] question Department of Labor interpretations under the Farm Labor Contractor Registration Act (copy enclosed) as they apply to hybrid seed corn producers and to the youth whom they employ as corn detassellers and rogues. They contend that local youth hired by the seed corn producers for detasseling and roguing should not be classified as migrant workers, causing the seed corn producers to become subject to the Act.

Section 3(g) of the Act sets forth the definition of a migrant worker to be used by the Wage and Hour Division in applying the law. The term "migrant worker" means an individual whose primary employment is in agriculture, or who performs agricultural labor on a seasonal or other temporary basis. The young people who detassel and rogue the seed corn perform agricultural labor on a seasonal or other temporary basis and, therefore, are considered migrant workers.

This is not a new interpretation or application of the term "migrant worker". The same definition was in effect under the statute as enacted in 1963, which covered only interstate agricultural employment. The Act was substantially amended in 1974 to provide greater protection to the workers. One of the major changes was the broadening of coverage to include intrastate movement as well. It was then that the question arose as to whether persons recruited locally for seasonal employment in agriculture should be deemed migrant workers. As stated in the legislative history, page 2 of Senate Report No. 93-1295 (copy enclosed), "Basically, there are two types of

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seasonal farm laborers; the migrants who travel from state-to-state along fairly established patterns and those who live permanently in the agricultural area where they work ... " We believe that our interpretation is in accord with the intent of Congress when applied to the young people hired for seed corn detasseling and rogueing.

Section 3(b) of the Act defines the term "farm labor contractor" to mean any person, who, for a fee, either for himself or on behalf of another person, recruits, solicits, hires, furnishes, or transports migrant workers ... for agricultural employment. Such persons must register with the Secretary of Labor and comply with all the provisions of the Act unless one of the specific exemptions listed in Section 3(b) applies. Statements made by ██████████ prompt a discussion of two of these exemptions.

Section 3(b) (2) provides an exclusion from the term "farm labor contractor" for any farmer, processor, canner, ginner, packing shed operator, or nurseryman who personally engages in any farm labor contracting activity for the purpose of supplying migrant workers solely for his own operation. The facts provided are insufficient for a determination as to whether Mr. ██████████ would qualify for this exemption. He states that he is a farmer and seed corn producer, that he produces seed corn for a cooperative seed sales organization, and that he hires and pays all his own labor costs without guarantee, unlike most seed producers. If he, himself, hires the migrant workers and uses them solely for his own operation, the exemption would be applicable.

Section 3(b)(4) of the Act exempts from registration any person who engages in farm labor contracting activities solely within a twenty-five mile intrastate radius of his permanent place of residence and for not more than thirteen weeks per year. This exemption does not apply where a person's farm labor contracting activities extend beyond the twenty-five mile intrastate radius, regardless of the number of weeks involved. Likewise, it does not apply where the named activities extend beyond thirteen weeks per year, regardless of the mileage. Further, any interstate activity is subject to the Act regardless of the distance or time spent. The hiring of the youth for some three to eight weeks for detasseling and rogueing meets the stated period of time requisite. However, the exemption is lost because, as admitted by Mr. ██████████ the recruitment of workers exceeds the distance limitation.

Statements made by Mr. ██████████ and Mr. ██████████ indicate misunderstanding as to the categories of persons required to register under the Act. Only those persons who meet the definition of a farm labor contractor and their bona fide full-time or regular employees who engage in farm labor contracting activities must register. This would not necessarily include all persons involved in the seed corn producing operation. For example, crew foremen and other supervisory personnel are excluded from registration, as supervision is not a farm labor contracting activity. Likewise only those youth who may be performing one or more of the named farm labor contracting activities would be required to register.

There is an apparent general feeling that seed corn producers will experience difficulty in complying with the Act's registration requirements. In this connection, we have been working with the various regional offices to insure that application forms, informational material, and technical assistance are available to registrants. As a further facilitating measure, we are considering preparation of an instructional pamphlet on registration for use by entities such as seed corn companies who expect large volume registrations.

The Congress, through enactment of this legislation, has mandated the Department of Labor to carry out its provisions and to insure enforcement. Any delay in enforcement, as suggested by ██████████, would be in derogation of our statutory responsibility. Further, any change in the provisions of the Act, such as specifically exempting persons engaged in seedcorn production would require legislative action by the Congress. Interpretations of the Secretary of Labor and the Administrator of the Wage and Hour Division regarding the Act's application are issued pursuant to Section 17 of the Statute and are carefully considered prior to issuance.

I hope this information will be helpful to you. Please do not hesitate to let me know if we can be of further assistance.

Sincerely,

Herbert J. Cohen
Assistant Administrator
Wage and Hour Division

Xavier M. Vela
Administrator

Enclosures

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