

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

(Gen) FLCRA



JUL 27 1979

This letter is a response to your telephonic inquiries on July 11 and 12 to [REDACTED] of this office. You posed four questions concerning transportation of migrant workers under the Farm Labor Contractor Registration Act of 1963, as amended, and I will deal with them in sequence.

You described an instance in which a grower permits a registered farm labor contractor to use the grower's vehicle to transport migrant workers from a labor camp to the grower's field and return, and you ask whether the grower is therefore required to register. If the workers are being furnished only to that grower, then permitting the contractor to use the grower's vehicle will not, of itself, necessitate that the grower register as a farm labor contractor, provided the registered farm labor contractor obtains transportation authorization permitting him or her to use the grower's vehicle. If the registered farm labor contractor who uses the grower's vehicle does not obtain transportation authorization for the vehicle in question and if the grower does not register as a farm labor contractor with transportation authorized (in the vehicle in question), then the grower may be liable either under Section 4(c) of the Act for having engaged a farm labor contractor who did not possess a certificate which was in full force and effect or under Sections 4(a), 5(a)(2), 5(a)(4), and 5(b)(5) for transporting without certificate authorization. In regard to possible violation of Section 4(c), please see the enclosed Opinion Letter WH-494 dated June 26, 1979. Whoever actually operates the vehicle must, of course, be authorized to drive.

If the grower furnishes workers to other growers, and if he does not qualify for one of the statutory exemptions of Section 3(b), then, regardless of the status of the contractor, the grower must register. But see the enclosed Opinion Letter WH-446 dated June 27, 1977. The Department, under these circumstances, would find it acceptable for either the grower (if registered) or the contractor to obtain transportation authorization on the vehicle in question. The criteria for obtaining transportation authorization, which may be found in 29 C.F.R. 40.19, include the submission of written proof

of insurance or financial responsibility, a statement identifying each vehicle to be used under the applicant's ownership or control, and written proof that all such vehicles comply with all applicable Federal and State safety and health standards and with the rules and regulations of the Bureau of Motor Carrier Safety. Again, the individual who operates the vehicle must be registered, either as a farm labor contractor or as an employee of a registered farm labor contractor, with driving authorized. Under 29 C.F.R. 40.18, when an insurance policy which includes farm labor contractor coverage is cancelled, the insurer must notify the Department of Labor. The Department then advises the contractor that failure to maintain proper insurance will result in suspension of the contractor's transportation authorization supplement and that transporting without insurance or without a valid transportation authorization supplement including the vehicle in which the transportation is performed is a violation of the Act.

You ask further whether a vehicle owned and insured by a grower may be included in a contractor's transportation authorization supplement or whether the vehicle must be owned and insured by the contractor on whose transportation authorization supplement it appears. The contractor need not own the vehicles which he or she registers to obtain transportation authorization. Accordingly, the Department will accept valid and sufficient insurance regardless of whose name it is issued in. If the contractor and the insured are not the same, however, the contractor could be in violation of the Act if the insurance is permitted to lapse, and he continues transporting.

Your third and fourth questions concern the application of 29 C.F.R. 40.14. You ask how one may obtain a farm labor contractor vehicle liability certificate of insurance showing that passenger hazard is included, as discussed in 29 C.F.R. 40.14(a). You then ask under what circumstances passenger hazard would be excluded, as discussed in 29 C.F.R. 40.14(b). The certificate referred to is form NBCU 3798 (M2104), designed by the insurance industry. It is prepared by the insurer and forwarded directly to the registering Regional Office of the Wage and Hour Division. It includes a space which the insurer may mark to indicate the inclusion of passenger hazard. Some agencies do not write policies including passenger hazard. A contractor insured through such an agent must obtain an additional policy, as discussed in 29 C.F.R. 40.14(b).

I trust that the above information will satisfy your inquiries.

Sincerely,



C. Lamar Johnson
Deputy Administrator

Herbert J. Cohen
Assistant Administrator
Wage and Hour Division