MSPA-4

April 23, 1984

This is in reply to your November 16 letter in which you raise three questions regarding the interpretation of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA).

These interpretative questions relate to the definition of the term "seasonal agricultural worker" (§ 3(10)); and to the status of packing sheds and "farm management" or "grove caretaker" operations under the Act.

With reference to the definition of the term "seasonal agricultural worker," you express the view that "we are back in the same situation as we were with FLCRA. There are no year-round employees on farms, except for the specifically excluded persons listed--namely supervisory employees and employees not primarily employed to do field work." Specifically, you pose a situation involving a person employed and paid year-round for more than 300 days a year by a single employer whom you believe "ought not" to be afforded "the protection of this Act."

MSPA, as enacted, extends protections to two groups of agricultural workers, i.e., all migrant agricultural workers (§3(8)) and certain seasonal agricultural workers (§3(10)). Section 3(10)(A) of MSPA defines "seasonal agricultural worker" as 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 (i) when employed on a farm or ranch performing field work related to planting, cultivating or harvesting operations; or (ii) when employed in canning, packing, ginning, seed conditioning or related research, or processing operations, and transported or caused to be transported, to or from the place of employment by means of a day-haul operation.

Under this definition, the protected 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.

See 29 CFR which states: "A worker who moves from one seasonal activity to another, while employed in agriculture or performing agricultural labor, is employed on a seasonal basis <u>even though he may continue to be employed during a major portion of the year</u>" (underscore added). As pointed out in these regulations, it is the nature of the work rather than the duration of employment which controls. Thus, pruning, irrigation and harvesting duties, as mentioned in your letter, are field work and employees not required to be absent from their permanent residence overnight performing these duties would be considered seasonal employees. The regulations, however, do exclude from the definition of seasonal or temporary work, certain foremen, supervisors and local residents employed by a specific agricultural employer or agricultural association on essentially a year round basis to perform a variety of tasks for the employer and not primarily employed to do field work. See the paragraph of the preamble to the final regulations captioned "Section 500.20(r)(2)(iii) Seasonal or temporary," on page 36737 of the Federal Register of Friday, August 12, 1983 as well as 29 CFR 500.20(r)(iii) through (v).

Clearly, this interpretation does not put us back in the same situation as we were with the Farm Labor Contractor Registration Act (FLCRA), as you suggest. Under FLCRA, agricultural employers and associations who did not qualify for specific exemptions and who performed named activities were required to be fingerprinted and to obtain a certificate of registration as a farm labor contractor. If they transported or housed workers, they had to submit additional information identifying the vehicles and/or housing and proof that such vehicles and/or housing complied with all applicable Federal and State safety and health requirements. If they planned to transport workers, they also had to submit proof of appropriate insurance or a surety bond for each vehicle used. Under MSPA, none of this is required. By passing MSPA, Congress redefined the status of many of the people previously required to register as farm labor contractors under FLCRA. We do not, however, believe that it was the intent of Congress to remove workers from the protection of the Act. As you know, the Congress intended that MSPA be a worker protection Act.

With reference to the status of commercial packing sheds and grove care contractors, both fall within the definition of "agricultural employer" and registration is not required.

Under the predecessor statute, the Farm Labor Contractor Registration Act, the Department had followed the position stated on page 7 of Senate Report 93-1295. That report accepted the Department's position that:

*** grove care contractors who perform all farming operations for fruit grove owners required prior to harvest in producing a crop of fruit from the owner's groves have been considered "farmers"*** and would not be deemed farm labor contractors***

Accordingly, the Department will treat such grove care contractors who perform all the farming operations required prior to harvest, as noted above, as agricultural employers under MSPA. However, if such a grove care contractor engages in harvesting operations in any grove where he did not perform all the farming operations required prior to harvest he will be considered a farm labor contractor and must comply with the registration requirements under MSPA.

Sincerely,

Craig A. Berrington
Associate Deputy
Under Secretary