

## MSPA-6

May 9, 1984

This is in reply to your letter of March 1, on behalf of \*\*\* members, requesting clarification of certain provisions of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) Regulations, 29 CFR Part 500. You identify a number of concerns expressed by growers who attended seminars held in the states of California and Arizona. The concerns relate primarily to the requirements established by the regulations pertaining to recordkeeping or to disclosure of information to agricultural workers.

These regulations apply to agricultural business entities having migrant or seasonal agricultural workers engaged in a wide range of activities subject to the Act. Local conditions and practices vary from state to state and according to the number of workers employed. In order to carry out the purposes of the Act these regulations are, therefore, broad in scope.

Your questions are answered in numerical order.

1. Exactly what must employers disclose on the itemized statement or payroll stub given to the employee?

You are correct that the payroll records kept by farm labor contractors, agricultural employers and agricultural associations which employ any migrant or seasonal agricultural workers must include with respect to each worker the following:

### Employee identification

Name  
Permanent Address  
Social Security Number

### Payroll data

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.

When the worker receives an itemized written statement as provided by section 500.80(d), such itemized written statement must include the employer's:

Name

## Address

Employer identification number assigned by the Internal Revenue Service.

We do not read section 500.80(d) as requiring that the employee's permanent address be listed on the itemized written statement which is provided to the employee as provided by that section. As the employee presumably knows his own address, no statutory purpose would be served by including such address on the employee's pay statement. Of course, the employee's permanent address must be recorded in the payroll records as required by section 500.80.

2. In connection with the requirement that the employer must disclose the business address on the pay stub or itemized statement, can the employer list a post office box?

There is no requirement in the regulations which would preclude listing on the pay stub given to the employee the post office box of the agricultural employer or association in lieu of the street address. Under MSPA, we think the employer is obligated to provide the same business address to its employees that it provides to others with whom it deals in the ordinary course of business.

For the convenience of employers, the Department of Labor has provided optional Forms WH-501 and WH-501a (Spanish version), copies enclosed, to assist in carrying out the payroll recordkeeping and disclosure requirements of section 500.80 of the Regulations.

3. With respect to item 1, "place of employment" on form WH-516, what information will satisfy compliance with Regulations, Part 500?

The requirement to disclose the place of employment with as much specificity as possible (section 500.76(b)(1)) refers first to the name and address of the employer or association which is responsible for the information provided on the WH-516. This should refer to a number and street or RFD, City, Town, or County. Unlike the disclosure of an appropriate business address, the disclosure of the actual place of employment needs to be a physical location and not a post office box. It should be the place where the operations are controlled for the particular area.

The purpose of the section 500.76(b) disclosure requirement is to insure that seasonal workers recruited by a farm labor contractor, agricultural employer or agricultural association be apprised, when an offer of employment is made, of all material conditions of the prospective employment before deciding whether to accept the job. The place of employment (subsection (b)(1)) is, of course, important to the worker's decision. However, we do not believe that the statutory purpose of the Act would be furthered by requiring disclosure of the location of any particular field where the work will be done, as work may shift from field to field.

4. With respect to "Wage rates to be paid," can the employer disclose the wage range, i.e., \$12/crate to \$18/crate?

The requirement for wage rate information regarding seasonal workers is item 2 of section 500.76(b). The wage rates (including piece rates) to be paid should be as accurate as can be determined at the time of the offer of employment.

If there is a range of piece rates it must be disclosed such as:

Size No. 1 fruit \$5.00 per bushel basket

Size No. 2 fruit \$4.00 per bushel basket

If there is a range of hourly rates it too must be disclosed such as:

Pruning \$4.25 per hour

Weeding \$3.50 per hour

If a rate range is used and the likelihood is greater that the workers will receive any particular rate rather than the other rates, that too should be included. For example, if 20 workers are needed and 15 will be paid a lower rate for one task and only 5 will receive the higher rate for another task that fact must also be disclosed.

If there is a rate range the disclosure must be specific before the workers actually begin performing the duties of the job. For example, if workers are advised of a \$4.00-\$5.50 rate for picking a certain crop they must be given the exact rate to be paid on a particular day before starting work for that day. If more than one rate may apply during the day because of different field locations or crop quality that information must be provided. This disclosure requirement, too, is to insure that the worker has complete and accurate information before accepting the employment.

5. What factors does the DOL utilize in determining whether or not workers employed in a packing shed are covered under MSPA?

You are correct in your understanding that a packing shed employee who commutes from his permanent residence to work in the packing shed is not covered under MSPA. However, such an individual is covered as a seasonal agricultural worker if a "day-haul" operation is involved whereby the workers gather at a central meeting place and are picked up from that point and taken to the shed as prospective employees. Local workers are also covered by MSPA when they do field work as defined in 500.20(c).

When migrant agricultural workers are employed in packing sheds along with local commuters who are not involved in a "day-haul" operation, MSPA is applicable only to the migrant workers. The presence of migrant workers in packing shed employment will not cause workers who are not covered seasonal workers (local commuters not involved in day-haul) to be covered by MSPA. Moreover, it is the nature and type of work which controls and not the duration of the employment. Thus, the number of months worked during the year has no effect on the determination.

I am pleased to furnish this information which I believe clarifies the Department of Labor's position with respect to these issues.

Sincerely,

William M. Otter  
Administrator