§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points; dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM OR E5 John Day, OR

John Day State Airport, OR
(LAT. 44°24′14″N, long 118°57′49″W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the John Day State Airport; that airspace extending upward from 1,200 feet above the surface within a 9-mile radius of the John Day State Airport, and that airspace within 4 miles either side of a line bearing 076° true from the John Day State Airport, extending from the 9-mile radius to a point 38 miles northeast of the airport, and within an area bounded on the northwest by V357, on the northeast by V4, on the southeast by V269, and on the southwest by V500; excluding that airspace within Federal Airways.

* * * * *

Issued in Seattle, Washington, on March 5, 1996.

Richard E. Prang,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 96–6369 Filed 3–15–96; 8:45 am]

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DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

29 CFR Part 500

RIN 1215–AA93

Migrant and Seasonal Agricultural Worker Protection Act

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Notice of proposed rulemaking, request for comments.

SUMMARY: This document proposes regulations to implement amendments to the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), with respect to the relationship between workers' compensation benefits and the benefits available under the MSPA as required by Public Law 104–49. This Public Law 104–49 specifically requires amendment to the MSPA regulations concerning disclosure of workers' compensation information and additionally authorizes reconsideration of the MSPA-required transportation liability insurance. This document also proposes to amend existing regulations in order to provide for the expedited proceeding before an Administrative Law Judge (ALJ) of actions initiated by the Administrator of the Wage and Hour Division to revoke, suspend, or refuse to issue or renew a Farm Labor Contractor Certificate of Registration, and for review by the Secretary of Labor. Additionally, this document proposes to amend the regulations in order to make them comport with amendments to MSPA. Lastly, this document proposes to amend the regulations to indicate that the Certificate of Registration will reflect the maximum number of farm workers that the farm labor contractor is authorized to transport.

DATES: Comments on the proposed rule are due on or before April 17, 1996.

ADDRESSES: Submit written comments to Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped post card or to submit them by certified mail, return receipt requested. As a convenience to commenters, comments may be transmitted by facsimile (''FAX'') machine to (202) 219–5122. This is not a toll-free number. If transmitted by FAX and a hard copy is also submitted by mail, please indicate on the hard copy that it is a duplicate copy of the FAX transmission.

FOR FURTHER INFORMATION CONTACT: Michael Hancock, Office of Enforcement Policy, Farm Labor Team, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3510, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 219–7605. This is not a toll-free number. Copies of this NPRM in alternative formats may be obtained by calling (202) 219–7605, (202) 219–4634 (TDD). The alternative formats available are large print, electronic file on computer disk and audio-tape.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act of 1995

The reporting requirements contained in these proposed regulations have been submitted for review to the Office of Management and Budget pursuant to section 3507(d) of the Paperwork Reduction Act of 1995.

Title: Worker Information, Form WH–516.

Summary: These proposed regulations amend sections 500.75 and 500.76 of Regulations, 29 CFR Part 500, Migrant and Seasonal Agricultural Worker Protection Act, to require disclosure to migrant and seasonal agricultural workers of certain information regarding the availability of workers' compensation insurance.

Need: Various sections of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), 29 U.S.C. 1801 *et seq.*, require that each farm labor contractor, agricultural employer and agricultural association disclose in writing the terms and conditions of employment to: (a) Migrant agricultural workers at the time of recruitment (section 201(a)(1)); (b) seasonal agricultural workers, upon request, at the time of employment (section 301(a)(1)) and (c) seasonal agricultural workers employed through a day-haul operation at the place of recruitment (section 301(a)(2)). Sections 201(b) and 301(b), which relate to posting in a conspicuous place at the place of employment a poster provided by the Secretary setting forth the rights and protections afforded covered workers under MSPA, also require that each such employer provide to each worker (upon request in the case of seasonal agricultural workers) a written statement of the terms and conditions of employment. In addition, sections 201(g) and 301(f) require that such information be provided in English, or as necessary and reasonable, in a language common to the workers and that the U.S. Department of Labor (DOL) make forms available to provide such information. Optional Form WH–516, Worker Information, is made available by DOL for these purposes. As an alternative to use of the Form WH–516, employers may disclose the terms and conditions of employment in writing to migrant workers, or in writing upon request to seasonal workers, using any other format provided the required information is contained within the disclosure.

Public Law 104–49 provides in section 4 for the disclosure of certain additional information regarding workers' compensation insurance to the employee, i.e., whether workers' compensation is provided and if so, the name of the workers' compensation insurance carrier, the name of the policyholder of such insurance, the name and the telephone number of each person who must be notified of an injury or death, and the time period within which this notice must be given. Optional Form WH–516 is being revised

to include this new statutorily-required information. This requirement can alternatively be met by the employer furnishing the worker with a photocopy of any notice regarding workers' compensation insurance required by law of the state in which such worker is employed, provided the notice contains the information specified above (with respect to workers' compensation) required for disclosure by section 4 of Public Law 104–49. It is important to note that the information on the terms and conditions of employment (including the workers' compensation information) required to be disclosed is to be disclosed to prospective employees. Outside of an investigation context in which the employer is specifically requested to provide a copy of any written disclosure made to workers, this information is not to be forwarded to, nor will it be maintained by, the Federal government.

Respondents and proposed frequency of response: MSPA covers only those farms with over 500 man-days of hired agricultural labor during any calendar quarter during the preceding calendar year. Unless the 500 man-day threshold is reached, there is no coverage under the Act and no obligation to provide the disclosure. A yard stick for measuring when the 500 man-day threshold is reached is if a farm employs 7 full-time equivalent workers during a calendar quarter. The 1992 Census of Agriculture reported approximately 160,000 farms which hired 5 or more agricultural workers during the survey year. 1992 Census of Agriculture, Vol. 1, Part 51, U.S. Dept. of Commerce, Bureau of Census, pg. 207. Therefore, it is estimated that no more than 160,000 farms are covered by the disclosure obligation. According to the U.S. Department of Agriculture Quarterly Surveys, there are approximately 1,500,000 migrant and seasonal agricultural workers, some of whom are probably employed on exempt farms. According to the National Agricultural Worker Survey, these workers averaged 1.75 agricultural employers annually. *U.S. Farmworkers in the Post-IRCA Period*, USDOL, pg. 30, 1993. Therefore, the number of actual disclosures required will not exceed 2,625,000 (1,500,000 x 1.75).

Estimated total annual burden: It is estimated that it requires 32 minutes to gather and prepare for disclosure the required information, and to make the required disclosures. Of those 32 minutes, it is estimated that the new disclosure items required by Pub. L. 104–49 will require 2 minutes and the remaining time is for the disclosure items already required by MSPA and the regulations. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information, making copies if needed, and actually making the required disclosures to prospective employees. This results in an estimated annual burden of 85,333 hours (160,000 farms x 32 minutes). To obtain an estimate of respondent costs for making the required disclosure to prospective employees, the average wage rate for an agricultural worker nationwide of $6.05 per hour was used (Farm Labor, May 1995, National Agricultural Statistic Service, U.S. Department of Agriculture). An average markup of 20% for a farm labor contractor is added to yield an hourly rate of $7.26 per hour. Annual respondent costs are thus estimated as $619,518 (85,333 annual burden hours x $7.26).

The public is invited to provide comments on this information collection requirement so that the Department of Labor may:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agency's estimates of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) enhance the quality, utility and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to make the required disclosure of the terms and conditions of employment to prospective employees, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of the information to be disclosed to prospective employees. Written comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20503.

II. Background

Public Law 104–49 amends the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) provisions dealing with the private right of action, the regulatory process for setting minimum transportation liability insurance requirements, and disclosure obligations to agricultural workers. The Act requires the Secretary to reexamine the current MSPA transportation insurance regulations and to amend the regulations governing disclosure. The insurance rulemaking must be completed and a final rule published within 180 days of enactment, or no later than May 13, 1996. The disclosure regulations, while under no statutory deadline, provide important new information to agricultural workers and require regulations before they become effective.

The final proposed regulatory amendment would give adjudication priority to administrative actions denying, revoking, or suspending a farm labor contractor (FLC) certificate. Currently, some FLCs continue to lawfully operate for extended periods awaiting an administrative hearing and final order on a certification action. This proposed regulation would establish deadlines for Administrative Law Judge proceedings and Secretarial review proceedings in MSPA certificate actions.

Key issues addressed in the proposed regulations on which public comment is particularly solicited are summarized and explained below.

III. Summary and Discussion

Workers' Compensation Disclosure Requirements

The MSPA was amended by Public Law 104–49 to require farm labor contractors, agricultural employers and agricultural associations who recruit or hire agricultural workers subject to the protections of the Act to provide the workers certain additional information about the terms and conditions of employment. This information must be included in a written document, and that disclosure document must be given to each agricultural worker so that it may be retained in the event that the information contained therein becomes useful or necessary. Under current regulations, the information to be disclosed includes the place of employment, the period of employment, wage rate(s), crops and activities, whether transportation or other benefits are provided, housing and its cost (if provided), information about any strike, work stoppage, slowdown, or interruption in operations, and information about any employer charges for goods or services.

The disclosures required by the MSPA, including the proposed additions, must be given to each migrant agricultural worker at the time of recruitment, or, if sufficient information is unavailable at that time, at the earliest

time that the information becomes available, but in no event later than the commencement of employment. Seasonal agricultural workers are entitled to the same information in the same form upon request.

Only limited information about workers' compensation is required in the current regulation; the agricultural worker must be informed only as to whether or not workers' compensation is provided. Under Public Law 104–49, the disclosure of additional information concerning workers' compensation will now be required.

Public Law 104–49 provides that migrant agricultural workers are entitled to receive, in writing, the name of the workers' compensation insurance carrier, the name of the policy holder of such insurance, the name and telephone number of each person who must be notified of an injury or death, and the time period within which such notice must be given. Seasonal agricultural workers must also receive the workers' compensation information identified above, in writing if so requested by the worker(s). The Department proposes to amend §§ 500.75 and 500.76 to include these new statutorily-required disclosure items.

Under the proposed rule, the information concerning workers' compensation may be communicated to the worker in one of two forms. The farm labor contractor, agricultural employer, or agricultural association may provide this additional information via the optional written disclosure form (Optional Form WH–516). In the alternative, the farm labor contractor, agricultural employer or agricultural association may communicate the necessary workers' compensation information by giving the agricultural worker a photocopy of any notice regarding workers' compensation insurance required by the law of the state in which the worker is employed, as long as such photocopy contains all the required information.

Transportation Insurance Under MSPA

Under the MSPA, agricultural employers, agricultural associations, and farm labor contractors who use or cause to be used a vehicle to transport agricultural workers subject to the Act must comply with certain minimum transportation safety requirements and provide a minimum level of financial security to insure against injuries to workers or third parties. Public Law 104–49 amended the MSPA provision regarding the determination of the level of financial security to be required.

MSPA provides three means by which farm labor contractors, agricultural employers, or agricultural associations may insure against liability for damage to persons or property arising from the ownership, operation or causing to be operated a vehicle used to transport agricultural workers. The security may be in the form of (1) a vehicle liability insurance policy that insures employees and nonemployees; (2) a workers' compensation policy along with a liability certificate of insurance covering transportation whenever nonemployees and employees may be transported under circumstances not covered by workers' compensation; or (3) the posting of a $500,000 liability bond. Public Law 104–49 amended the MSPA provision to require the Secretary to re-examine the minimum liability insurance requirement and make any changes indicated by May 13, 1996.

While this proposed rule concerns only the minimum liability insurance levels per occurrence for such transportation, clarification is also provided regarding the obligations under MSPA if a farm labor contractor, agricultural employer, or agricultural association chooses workers' compensation as the primary transportation insurance coverage for the agricultural workers being transported. Further, the legislative history of Public Law 104–49 indicates a need to reaffirm and further explain the circumstances under which carpooling arrangements among workers fall outside of the scope of MSPA. Joint Statement of Legislative Intention, Rep. William F. Goodling, E1943, Cong. Rec., Oct. 13, 1995. To provide the needed clarification, these issues are discussed below.

Workers' Compensation as Primary Transportation Insurance

Workers' compensation coverage is a partial alternative to meeting liability obligations under MSPA and the Department's regulations. However, workers' compensation coverage alone does not completely satisfy the legal obligations under MSPA. Property damage insurance is also required. In addition, the regulations require that if an employer chooses workers' compensation as the primary coverage, additional insurance in a specified minimum amount must also be provided to compensate employees and nonemployees for property damage and bodily injuries not covered by workers' compensation benefits whenever there is a possibility that workers may be transported under circumstances not covered by workers' compensation insurance. Employers who are certain that the transportation will occur only under circumstances covered by workers' compensation are not obligated to secure additional bodily injury coverage but they do so at their own risk and will be in violation of the MSPA insurance obligations if they transport workers outside the scope of workers' compensation coverage and are exposed to suits for actual damages. The regulation at 29 CFR 500.122(c)(2) has required this supplemental coverage since 1983 and nothing in this proposed rule is intended to alter this obligation.

Transportation Under MSPA and Carpools

As discussed previously, the legislative history of Publc Law 104–49 indicated a need to reaffirm and clarify what constitutes a legitimate carpool arrangement among workers and therefore, beyond the scope of the MSPA transportation requirements (including minimum insurance obligations). Carpooling is described in the regulation at § 500.100(c), which remains unchanged in this proposed rule. Under the regulation, carpooling is a voluntary arrangement among workers for transportation to and from work using a worker's own vehicle. The workers may contribute to offset the costs of the transportation but only to reasonably reflect the actual costs of the transportation. Any compensation or other valuable consideration in excess of the actual costs means the transportation provider is considered a farm labor contractor and thereby subject to the registration and transportation requirements of the Act and the regulations. Likewise, any arrangement in which a farm labor contractor participates will not be considered a carpool. If any agricultural employer or association directs or requests such transportation arrangements or provides money or other valuable consideration for the transportation service, such an arrangement is not a carpooling arrangement among workers.

There is also some apparent misunderstanding concerning another transportation practice governed by MSPA transportation regulations. In California and elsewhere, a substantial industry of individuals known as ''raiteros'' has developed. The primary function of the ''raitero'' is to transport agricultural workers, for a fee, from common gathering points to the fields on a day-to-day basis. Under the current regulations, this would not be considered a carpooling arrangement but rather a farm labor contracting activity and, consequently, subject to the MSPA transportation regulations.

According to the Department of Labor National Agricultural Worker Survey

(hereinafter referred to as ''NAWS''), U.S. Farmworkers in the Post-IRCA Period, USDOL, pg. 51, 1993, 10% of the U.S. farm labor force working in fruit, vegetables, or horticulture, is charged by ''raiteros'' for transportation to and from work. The Report of the Commission on Agricultural Workers stated that two-thirds of those working in California citrus and tomatoes paid ''raiteros'' an average of $3.00 per day for transportation. Report of the Commission on Agricultural Workers, pgs. 108–109, 1992. It is unknown to what extent these transportation providers have registered as farm labor contractors but it is apparent from the farm labor contractor registration data maintained by the Department of Labor that many have not. Department of Labor Region 9, which includes the major labor-intensive agricultural state of California where the ''raitero'' practice is common, reports that only 79 of the 4298 registered farm labor contractors are authorized to provide transportation.

The ''raitero'' practice is clearly farm labor contracting activity and subject to MSPA, but many persons who provide this service have failed to properly register.

Liability Insurance Requirements and Proposed Rulemaking

Public Law 104–49 requires DOL to reexamine the current minimum liability insurance requirements and determine whether or not changes are warranted. Among the factors to be considered are the type of vehicle used, passenger capacity of the vehicle, distance the workers will be transported, type of roads and highways on which the workers will be transported, any undue burden on employers and similar requirements under State law. All of these factors have been considered by the Department in this proposal.

The overriding concern, as stated in section 401(b)(2)(B) of MSPA, is the protection of the health and safety of migrant and seasonal agricultural workers. Prior to Public Law 104–49, the Secretary had the discretion to set a minimum insurance amount but this could not be less than the amount required for common carriers of passengers under part II of the Interstate Commerce Act and the regulations promulgated thereunder. The factors which the Secretary was to consider in establishing such requirements are the same as set out in Public Law 104–49.

The legislative history of MSPA makes clear that the requirements to provide safe vehicles and adequate levels of transportation insurance are key worker protections in the Act (Report of the House Committee on Education and Labor, Rept. No. 97–885, 97th Cong., 2d Sess.; 1982 U.S. Code Cong. and Ad. News 4547 (hereinafter referred to as Report), at 4565). It was noted that there were a variety of factors that the Secretary should consider in determining both the substantive vehicle safety standards and the required minimum insurance amounts. The House Education and Labor Committee Report accompanying original MSPA enactment noted that ''[t]he overriding concern of the Secretary shall be the protection of the health and safety of the workers.'' *Id* at 4565. The Committee went on to note the ''* * * often dangerous conditions under which agricultural workers are transpoted.'' *Id* at 4566.

The Department's review of MSPA minimum liability insurance levels as required by Pub. L. 104–49 is guided by the factors set out in the statute, the legislative intent of the original MSPA enactment and the amendment, and the underlying purpose articulated by the Interstate Commerce Commission in setting the minimum levels incorporated by reference in the current MSPA regulation.

Current Liability Insurance

In both the original MSPA regulations issued in 1983 and a subsequent amendment in 1992 that significantly raised the insurance levels, the minimum level of insurance required by the Department under MSPA has been the same as that set by the Interstate Commerce Commission regulations for vehicles transporting passengers for hire in interstate commerce, found at 49 CFR 1043.2(b)(1)(ii). The current ICC regulation requires at least $1.5 million in liability insurance coverage for vehicles with a passenger capacity of 15 or fewer and $5 million for a passenger capacity of 16 and more. (Note: under the ICC regulations—regardless of the outcome of this MSPA rulemaking process—those who transport agricultural workers in interstate commerce for a fee may well be required to also comply with the current ICC insurance rates.)

In a formal rulemaking proceeding to determine the appropriate minimum insurance levels, the ICC considered a number of factors. The Commission stated that the primary purposes to be served by the minimum liability insurance levels include incentives to motor carriers to operate their vehicles in a safe manner and to assure that they maintain adequate levels of financial responsibility sufficient to satisfy claims covering public liability and property damage. The agency determined, after notice and an opportunity to comment, that the appropriate amount of minimum coverage was $1.5 million for vehicles with a seating capacity of 15 or less and $5 million for vehicles with a seating capacity of 16 or more. In reaching this conclusion, the ICC considered the protection of the public, the stability of the regulated industry, the ability of the insurance industry to provide coverage, and the particular needs of small and minority businesses.

Transportation of Agricultural Workers

According to the Bureau of Labor Statistics, agricultural workers were second only to truck drivers in number of occupational fatalities in 1994. Among agricultural workers, vehicular accidents accounted for 50 percent of all occupational fatalities in 1994. Highway deaths accounted for 20 percent and vehicular accidents in parking lots and other non-public locations accounted for about 30 percent of all agricultural worker occupational fatalities. National Census of Fatal Occupational Injuries, 1994 (Bureau of Labor Statistics; August 3, 1995).

The Department of Labor has received information from investigations, published reports, and elsewhere documenting the risks to agricultural workers from vehicular accidents. The liability insurance required by MSPA is intended to compensate agricultural workers involved in vehicular accidents when the most common workplace insurance, workers' compensation, is not provided or when the injuries resulted from an accident that falls beyond the scope of workers' compensation. The minimum levels of liability insurance must be adequate to satisfy the purposes of the Act.

A further consideration in determining the appropriate minimum insurance levels under MSPA is the insured person's ability to meet his/her financial responsibility should it be determined that the he/she is liable for the injuries resulting from an accident. While agricultural employers generally have assets (land, equipment, crops, etc.) in addition to the policy of insurance, agricultural workers employed by many farm labor contractors are likely to find that compensation for injuries is limited to coverage provided by the vehicle insurance. Of the 10,899 farm labor contractors registered with the Department as of October 6, 1995, 975 were authorized to provide transportation under MSPA in FY 1995. It has been demonstrated in Wage-Hour enforcement that many farm labor contractors have few assets to satisfy

even modest civil money penalty and back wage assessments. It is reasonable to conclude that many farm labor contractors will also be without sufficient assets beyond the liability insurance policy with which to compensate workers injured in accidents.

Based on information indicating that farm labor contractors often have few financial assets, automobile liability insurance carried on vehicles operated by or caused to be operated by a farm labor contractor must be sufficient to cover non-catastrophic injuries incurred by agricultural workers. Should the damages resulting from transportation accidents, such as medical costs and lost wages, exceed the limits of the minimum insurance amounts, the farm labor contractor may well have insufficient assets to fully compensate for the injuries.

A further consideration is the availability of other insurance coverage to compensate agricultural workers in the event that they suffer injuries in a transportation accident. Unlike most U.S. workers, many agricultural workers do not enjoy full mandatory workers' compensation protection in most states. According to information provided by the Department of Labor's Employment Standards Administration/Office of Workers' Compensation Programs, agricultural workers are specifically covered in varying degrees by workers' compensation under current State laws in thirty-nine (39) jurisdictions. In only fourteen (14) of the 39 jurisdictions in which agricultural workers are statutorily covered (Arizona, California, Colorado, Connecticut, the District of Columbia, Hawaii, Louisiana, Massachusetts, Montana, New Hampshire, New Jersey, Ohio, Oregon, and the Virgin Islands), farm workers are covered the same as all other employees. In the remaining twenty-five of the 39 jurisdictions in which agricultural workers are statutorily covered (Alaska, Delaware, Florida, Georgia, Illinois, Iowa, Maine, Maryland, Michigan, Minnesota, Missouri, New York, North Carolina, Oklahoma, Puerto Rico, Pennsylvania, South Dakota, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming), there are limitations that are not applicable to covered employees in other industries. And in another 14 jurisdictions (Alabama, Arkansas, Idaho, Indiana, Kansas, Kentucky, Mississippi, Nebraska, Nevada, New Mexico, North Dakota, Rhode Island, South Carolina, and Tennessee), agricultural employers may secure coverage voluntarily, even though no statutory provisions are prescribed.

According to the National Agricultural Worker Survey, only 41 percent of the agricultural workforce employed in fruit, vegetables, and horticultural commodities are covered by workers' compensation, and only 27 percent of the workers employed by farm labor contractors. Findings from the National Agricultural Workers Survey 1990; A Demographic and Employment Profile of Perishable Crop Farm Workers, USDOL, pg. 74, 1991. Further, according to unpublished NAWs survey data for FY 1993–1994, only 14 percent of those employed by agricultural employers or associations and only 7 percent of those employed by farm labor contractors have any health insurance. Therefore, many workers will be completely reliant on the liability insurance to compensate for injuries suffered in transportation accidents. Should the damages resulting from transportation accidents, such as medical costs and lost wages, exceed the limits of the minimum insurance amounts, agricultural workers may find it difficult to secure adequate compensation.

State Insurance Regulation of Agricultural Worker Transportation

In addition to these factors, similar agricultural worker transportation requirements under State law must be considered. In that regard, a telephone survey was taken of several States having major agricultural activity. In every instance, the information provided was that the State deferred to Federal requirements. Among the States surveyed were the major labor intensive agricultural states of California, Texas, and Florida.

The Department considered the limits under the various State compulsory liability-financial responsibility laws governing personal vehicles as indicative of sufficient minimum insurance under MSPA. An examination of these minimum liability insurance levels reveals a wide range among the various States. For instance, Florida, Louisiana, Mississippi, and Oklahoma have minimum levels of $10,000 per person and a limit of $20,000 per occurrence. On the other hand, Hawaii requires minimum liability coverage of $50,000 per person and has no per occurrence limit. The most common minimum coverages are $25,000 per person up to a maximum of $50,000 per occurrence, found in nearly half the States.

The levels required for personal automobiles appear to be far too low to serve the fundamental purpose for which the MSPA transportation insurance requirement was intended. These levels of mandatory coverage are not sufficient to adequately compensate for reasonably foreseeable incidents of agricultural worker accidents and the resulting damages. For instance, in the 1982 ICC rulemaking that resulted in the current MSPA levels, the ICC found that the average loss in an interstate bus accident in 1981 exceeded $125,000 per accident. Information concerning agricultural worker accidents in Florida over the last six years shows actual loss exceeding $1.5 million per accident is not unusual.

Consideration of the Current Regulatory Scheme

It has also been suggested that the regulations retain the current scheme setting a required insurance level for vehicles with a capacity of 15 passengers or below or 16 and more, either at the current minimum amounts or reduced amounts.

The current regulatory scheme is simple and easily understood; the vehicle capacity is either 15 or below or 16 and above. Underwriting is simplified in that there are only two insurance amounts and these are the same as required of others engaged in commercial transportation. The standards are well known in that the agricultural and insurance industries have worked under this structure for over a decade and the current insurance amounts have been in place for over three years. There is no evidence that the higher 1992 amounts have resulted in reduced compliance with the insurance obligation.

Lowering these liability insurance levels could actually work against one of the primary rationales for overturning the Adams Fruit decision. That decision allowed injured workers to sue and recover full actual damages for MSPA violations even when workers are covered by workers' compensation. In restoring the workers' compensation bar against suits for actual damages, the primary sponsor of the legislation believed that it would be more likely for employers in voluntary workers' compensation States to opt for workers' compensation over the presumably more expensive liability insurance option. Securing workers' compensation insurance would benefit workers by providing coverage for a broad range of workplace injuries, not simply transportation accidents. (See statement of Rep. William Goodling, Congressional Record, H10090, Oct. 17, 1995.) However, if the minimum liability insurance requirements are lowered, this desired movement to

voluntary workers' compensation coverage may well be thwarted.

It is the view of the Department that the important interests served by the transportation insurance requirements can be maintained with additional flexibility for the regulated community in structuring transportation practices to suit its particular need. Departing from the two-level scheme, the proposed rule would maintain an adequate level of insurance coverage but at the same time allow a lower minimum insurance amount and, presumably, decrease the premiums to be paid. This approach most closely reflects the statutory considerations guiding this rulemaking.

Request for Information From the Regulated Community

Also among the factors to be considered is the extent to which the proposed minimum insurance levels cause an undue burden on agricultural employers, agricultural associations, and farm labor contractors. Information from the regulated community is sought to help DOL assess the financial impact of the current insurance levels and the levels specified in this proposed rule. The Department would be aided by receiving financial statements from agricultural employers, agricultural associations, and farm labor contractors, detailing the vehicular liability insurance premiums paid for years 1990–1995, the number of vehicles covered, the types of transportation provided, and the period within each year that the transportation was provided. This information should be accompanied by information regarding accidents in this period involving agricultural workers and insurance claims, damages, medical expenses, and other loss information resulting therefrom.

The Department is particularly interested in receiving information from insurance companies providing this insurance regarding premiums charged for this coverage, by county or region, as well as any information the companies can provide concerning total costs for accidents involving fatalities, personal injuries and property damage. Specific information about economic loss in each accident would be most helpful. In the absence of specific agricultural worker information, data concerning the transportation of passengers for hire would be helpful. This information is requested for each year between 1990 and 1995. Similar information is requested for interstate motor carriers covered by 49 CFR 387.31. Finally, information concerning any State minimum insurance levels for intrastate passenger transportation for hire but not subject to the ICC levels would be helpful.

Information from state insurance and/or labor agencies concerning state agricultural worker transportation insurance requirements would be helpful.

The Department also solicits information from the regulated community evidencing whether, and if so, the extent to which the 1992 minimum insurance increases resulted in agricultural employers, agricultural associations, or farm labor contractors transporting agricultural workers without securing the required insurance coverage. In addition, the Department solicits information evidencing whether and, if so, the extent to which farm labor contractors failed to secure DOL authorization to transport because they were unable to find an insurer willing to provide a liability insurance policy at the levels required in 1992. There is no evidence which supports such a finding in the enforcement and registration records of DOL. In fact, DOL is unable to detect any significant decrease in the number of farm labor contractors registering as transportation providers before and after the insurance increases. In 1991, the year before the insurance minimums were increased to the current levels, 40% of all farm labor contractors inspected by the Department in the course of enforcement activities were found to be transporting workers without the required transportation authorization. A year after the increase, in 1993, the percentage of farm labor contractors in violation had risen slightly to 43%. Similarly, enforcement against farm labor contractors, agricultural employers and agricultural associations detected no significant increase in violations of the minimum insurance requirements. In 1991, 24% of those transporting agricultural workers did so without securing the required insurance while in 1993, 28% were in violation, a slight rise. We cannot conclude based on these data that the increased insurance premiums caused the regulated community to forego compliance with the legal obligations to register as a farm labor contractor or to secure the required insurance.

Agricultural workers are requested to provide information concerning loss suffered by workers injured in accidents and the amount of insurance necessary to insure against reasonably foreseeable risks. It is not the intention of this rulemaking to establish a minimum level of insurance sufficient to cover every possible accident. There are catastrophic events beyond the scope of this coverage and it is not the Department's purpose to set excessive minimum insurance levels. Commentators are invited to discuss the level of insurance necessary to insure against reasonably foreseeable risks.

Public Law 104–49 directs the Secretary to consider the factors set out in section 401(b)(2)(B) of the Act in determining the appropriate insurance for MSPA transportation. That section states: ''To the extent consistent with the protection of the health and safety of migrant and seasonal agricultural workers, the Secretary shall * * * consider, among others—(i) the type of vehicle used, (ii) the passenger capacity of the vehicle, (iii) the distance which such workers will be carried in the vehicle, (iv) the type of roads and highways on which such workers will be carried in the vehicle, and (v) the extent to which a proposed standard would cause an undue burden on agricultural employers, agricultural associations, or farm labor contractors.''

In the proposed rule discussed below, the capacity of the vehicle is the central feature in determining the amount of insurance required. The type of vehicle, the type of road and the geographic area within which it will be operated, and the distances to be traveled are considered by the insurance industry in determining the premiums to be charged for the required minimum insurance coverage amounts. The proposal should have the effect of lowering the minimum insurance required in most transportation covered by MSPA and, presumably, lowering the premiums to be paid. We solicit comments on the statutory factors and how they bear on this proposal.

Minimum Transportation Insurance Proposal

The proposed rule would amend the current MSPA liability insurance requirement to decouple the minimum insurance requirement from the 15-passenger ICC threshold and would substitute a standard which varies with the seating capacity of the insured vehicle. This approach would be a more accurate reflection of actual practice in the agricultural workplace, where vehicle capacity varies widely. Many agricultural workers are transported in vehicles that have a maximum capacity of five, six, nine seats, etc. Growers often transport in buses that seat 30–40 passengers. By eliminating the 15-seat dividing line and substituting a per-passenger capacity standard, the regulation would grant the transportation provider the ability to choose its vehicles in such a way as to control its insurance costs. This course would probably result in a net decrease in insurance premiums for those who

transport in vehicles with a seating capacity of fewer than 15 passenger or from 16 to 49 passengers.

Agricultural workers face significant risk from transportation accidents. Workers have been killed and seriously disabled in such accidents and have generally not had recourse to workers' compensation. The damages in such accidents are often substantial, involving the payment of death benefits to the decedent's survivors or damages for permanent disabilities. The traumatic injuries suffered in transportation accidents can result in large medical expenses and substantial amounts of lost wages. Based on the current regulatory requirement that a 15 passenger vehicle have at least $1.5 million per occurrence in liability insurance, the Department proposes a requirement of $100,000 for each person the vehicle has the seating capacity to lawfully transport. This amount reflects the reasonably foreseeable damages that result from transportation accidents without being excessive.

Administrative Hearings on Denials, Suspensions, and Revocations of Farm Labor Contractor Certificates

Through enforcement experience under MSPA, the Department is aware that there are often significant delays in the administrative hearing and review proceedings to which farm labor contractors are entitled when the Administrator issues a determination denying, suspending, or revoking a Certificate of Registration (including a Farm Labor Contractor Employee Certificate). These delays have resulted in individuals determined to have violated provisions of MSPA remaining in business as farm labor contractors for considerable periods after the Wage and Hour Division has found sufficient basis for barring them from such activity. To remedy this situation and, thereby, assure more effective enforcement of MSPA while affording appropriate due process, the Department proposes to amend the procedural regulations to establish deadlines for administrative hearings and review proceedings: the hearing is to be held within 60 days after referral of the matter to the Office of Administrative Law Judges (ALJ); the ALJ decision is to be issued within 90 days after the close of the hearing; and a Secretarial decision will be made within 90 days after the issuance of a notice of intent to review an ALJ decision (in the event of a proper appeal to the Secretary of the ALJ's decision).

Executive Order 12866/Section 202 of the Unfunded Mandates Reform Act of 1995

This proposed rule is not ''economically significant'' within the meaning of Executive Order 12866, nor does it require a § 202 statement under the Unfunded Mandates Reform Act of 1995. However, because the rule provides initial regulations required to implement provisions of Public Law 104–49 and may raise novel legal or policy issues arising out of legal mandates, it has been determined to be a ''significant regulatory action'' within the meaning of § 3(f)(4) of Executive Order 12866. The proposed rule addresses insurance and disclosure obligations required under MSPA, as amended by Public Law 104–49. In addition, the rule proposes to revise the administrative proceedings involving decisions to revoke, suspend, or refuse to issue or renew Certificates of Registration under MSPA. No economic analysis is required because the rule will not have a significant economic impact.

Regulatory Flexibility Analysis

This proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed rule amends current regulations at 29 CFR Part 500 to bring the regulations into conformity with the statutory changes made to MSPA by the enactment of Public Law 104–49. Additionally, the proposed rule amends § 500.225 of the current rule to provide for expedited administrative proceedings in matters where the Administrator has initiated action to revoke, suspend, or refuse to issue or renew a farm labor contractor's Certificate of Registration (including Farm Labor Contractor Employee Certificates).

While certain small entities may benefit by reductions to their insurance premiums resulting from the proposed change to the prescribed vehicle insurance limits, any benefit would be modest in nature. Further, the Department anticipates that the portion of the regulated community which provides transportation, and thus would be affected by the proposed minimum insurance requirements, is not substantial in number in any event. According to the Department's farm labor contractor registration data, only 975 of all registered contractors (less than 9% of the total), provide transportation to agricultural workers. It is believed that a similarly small percentage of agricultural employers and agricultural associations provide MSPA-covered transportation.

Therefore, this proposed rule is not expected to have a ''significant economic impact on a substantial number of small entities'' within the meaning of the Regulatory Flexibility Act, and the Department has certified to this effect to the Chief Counsel for Advocacy of the Small Business Administration. Accordingly, a regulatory flexibility analysis is not required.

Document Preparation: This document was prepared under the direction and control of Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 500

Administrative practice and procedure, Agricultural associations, Agricultural worker, Aliens, Carpooling, Day-Haul, Farmer, Farm labor contractor, Health, Housing, Housing standards, Immigration, Insurance, Investigation, Migrant agricultural workers, Migrant labor, Motor carriers, Motor vehicle safety, Occupational safety and health, Penalties, Reporting and recordkeeping requirements, Seasonal agricultural workers, Transportation, Wages, Manpower training programs, Labor, Safety.

Signed at Washington, D.C., on this 12th day of March, 1996.

Maria Echaveste,

Administrator, Wage and Hour Division.

For the reasons set forth above, 29 CFR part 500 is amended as set forth below:

PART 500—MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION

1. The authority citation for part 500 is amended to read as follows:

Authority: Pub. L. 97–470, 96 Stat. 2583 (29 U.S.C. 1801–1872); Secretary's Order No. 6–84, 49 FR 32473; Sec. 210A(f), Pub. L. 99–603, 100 Stat. 3359 (8 U.S.C. 1161(f)); and Pub. L. 104–49, 109 Stat. 432 (29 U.S.C. 1854).

2. Section 500.48 is proposed to be amended by revising paragraph (d) to read as follows:

§ 500.48 Issuance of certificate.

* * * * *

(d) Authorize the activity of transporting a migrant or seasonal agricultural worker, subject to the maximum number of workers authorized to be transported under the vehicle liability policy and as indicated on the face of the Certificate of Registration, only upon receipt of:

(1) A statement in the manner prescribed by the Secretary identifying each vehicle to be used, or caused to be used, by the applicant for the transportation of any migrant or seasonal agricultural worker during the period for which registration is sought;

(2) written proof that every such vehicle which is under the applicant's ownership or control, is in compliance with the vehicle safety requirements of the Act and this part; and

(3) written proof that every such vehicle is in compliance with the insurance requirements of the Act and this part;

* * * * *

3. In § 500.75, paragraph (b)(6) is proposed to be revised to read as follows:

§ 500.75 Disclosure of information.

* * * * *

(b) * * *

(6) Whether state workers' compensation or state unemployment insurance is provided:

(i) If workers' compensation is provided, the required disclosure must include the name of the workers' compensation insurance carrier, the name(s) of the policyholder(s), the name and telephone number of each person who must be notified of an injury or death, and the time period within which such notice must be given.

(ii) The information in paragraph (b)(6)(i) of this section may be provided to the worker by giving the worker a photocopy of any workers' compensation notice required by State law if such State-required notice contains the information in paragraph (b)(6)(i) of this section.

* * * * *

4. In § 500.76, paragraph (b)(6) is proposed to be revised to read as follows:

§ 500.76 Disclosure of information.

* * * * *

(b) * * *

(6) Whether state workers' compensation or state unemployment insurance is provided:

(i) If workers' compensation is provided, the required disclosure must include the name of the workers' compensation insurance carrier, the name(s) of the policyholder(s), the name and telephone number of each person who must be notified of an injury or death, and the time period within which such notice must be given.

(ii) The information in paragraph (b)(6)(i) of this section may be provided to the worker by giving the worker a photocopy of any workers' compensation notice required by State law if such State-required notice contains the information in paragraph (6)(b)(i) of this section.

* * * * *

5. Section 500.121 is proposed to be amended by revising paragraphs (a) and (b) to read as follows:

§ 500.121 Coverage and level of insurance required.

(a) Except where a liability bond pursuant to § 500.124 of this part has been approved by the Secretary, a farm labor contractor, agricultural employer or agricultural association shall, in order to meet the insurance requirements in § 500.120, obtain a policy of vehicle liability insurance.

(b) The amounts of vehicle liability insurance shall not be less than $100,000 for each seat in the vehicle. The number of seats in the vehicle shall be determined by reference to § 500.105(b)(3)(vi). See § 500.122 regarding insurance requirement where State workers' compensation coverage is provided.

* * * * *

6. Section 500.122 is proposed to be amended by removing and reserving paragraph (b), and revising paragraph (c) to read as follows:

§ 500.122 Adjustments in insurance requirements when workers' compensation coverage is provided under State law.

* * * * *

(c) A farm labor contractor, agricultural employer or agricultural association who is the employer of a migrant or seasonal agricultural worker may evidence the issuance of workers' compensation and passenger insurance under paragraph (a) of this section by obtaining and making available upon request to the Department of Labor:

(1) A workers' compensation coverage policy of insurance, and

(2) A liability certificate of insurance covering transportation of all passengers who are not employees and of workers whose transportation by the employer is not covered by workers' compensation insurance. See § 500.121.

* * * * *

7. Section 500.224 is proposed to be amended by redesignating paragraph (b) as paragraph (c), revising paragraph (c), and adding a new paragraph (b) to read as follows:

§ 500.224 Referral to Administrative Law Judge.

* * * * *

(b) In cases involving a denial, suspension, or revocation of a Certificate of Registration (Farm Labor Contractor Certificate; Farm Labor Contractor Employee Certificate) or ''certificate action,'' including those cases where the farm labor contractor has requested a hearing on civil money penalty(ies) as well as on the certificate action, the date of the hearing shall not be more than sixty (60) days from the date on which the Order of Reference is filed. No request of postponement shall be granted except for compelling reasons.

(c) A copy of the Order of Reference, together with a copy of these regulations, shall be served by counsel for the Secretary upon the person requesting the hearing, in the manner provided in 29 CFR 18.3.

8. Section 500.262 is proposed to be amended by redesignating paragraphs (b), (c), (d), (e), (f), and (g) as (c), (d), (e), (f), (g), and (h) respectively, and adding a new paragraph (b) to read as follows:

§ 500.262 Decision and order of Administrative Law Judge.

* * * * *

(b) In cases involving certificate actions as described in § 500.224(b) the Administrative Law Judge shall issue a decision within ninety (90) calendar days after the close of the hearing.

* * * * *

9. Section 500.268 is amended by revising paragraph (a) to read as follows:

§ 500.268 Final decision of the Secretary.

(a) The Secretary's final Decision and Order shall be issued within 120 days from the notice of intent granting the petition, except that in cases involving the review of an Administrative Law Judge decision in a certificate action as described in § 500.224(b) of this part, the Secretary's final decision shall be issued within ninety (90) days from the date such notice. The Secretary's Decision and Order shall be served upon all parties and the Chief Administrative Law Judge, in person or by certified mail.

* * * * *

[FR Doc. 96–6379 Filed 3–15–96; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–113–FOR]

Pennsylvania Regulatory program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; correction.