

**Summary of Federal Laws and Regulations Affecting Agricultural Employers, 2000.** By Jack L. Runyan. Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture. Agricultural Handbook No. 719.

## Abstract

About 34 percent of U.S. farms in 1997 used hired labor, and 12 percent used contract labor. Hired labor costs averaged 12 percent of total farm production expenses in 1997, but amounted to as much as 44 percent of production expenses for horticultural specialty crop producers, 40 percent for fruit and tree nut producers, and 32 percent for vegetable and melon producers. Hired farmworkers have accounted for about 31 percent of the farm workforce in the 1990's. Hired labor's importance to U.S. farm production requires agricultural employers to understand Federal laws and regulations governing employment, taxes, wages, and working conditions. This single-source publication summarizes these laws and regulations. This updated version of a 1992 report contains expanded sections on agricultural employers' Federal safety requirements, migrant and seasonal farmworker provisions, and tax requirements for agricultural employers, as well as new sections on employer responsibilities under the Family and Medical Leave Act of 1993 and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

**Keywords:** Agricultural labor, farm labor, farm labor policy, employer-employee relations.

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## Preface

This handbook, an update of the Economic Research Service (ERS) report *A Summary of Federal Laws and Regulations Affecting Agricultural Employers, 1992*, (Runyan, 1992b) provides farm employers and employees, extension specialists, and others interested in farm labor issues with basic information about Federal laws and regulations affecting employment relationships in agriculture. Each of the laws and regulations is briefly described, and its application to agricultural employment is explained. I also direct readers to contacts for additional information. Nothing in this report substitutes for professional legal advice. As far as we know, this is the only summary of Federal laws and regulations affecting agricultural employment published by a Federal agency.

This handbook is a byproduct of a broader ERS research and analysis program on agricultural labor. Related ERS reports include:

Runyan, Jack L. "Minority Hired Farmworkers Earn About the Same as Their Nonminority Counterparts," *Rural Conditions and Trends*. Vol. 9, No. 2. USDA, Econ. Res. Serv. February 1999.

Effland, Anne B., and Jack L. Runyan. "Hired Farm Labor in U.S. Agriculture," *Agricultural Outlook*. USDA, Econ. Res. Serv. October 1998.

Runyan, Jack L. *A Profile of Hired Farmworkers, 1996 Annual Averages*. Agricultural Economic Report No. 762. USDA, Econ. Res. Serv. April 1998.

Runyan, Jack L. *Injuries and Fatalities on U.S. Farms*. Agriculture Information Bulletin No. 739. USDA, Econ. Res. Serv. January 1998.

Runyan, Jack L. "Number of Hired Farmworkers Increases, but Their Weekly Earnings Show Little Improvement," *Rural Conditions and Trends*. Vol. 8, No. 2. USDA, Econ. Res. Serv. September 1997.

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## Summary

Hired labor costs averaged 12 percent of total U.S. farm production expenses in 1997, but they amounted to as much as 44 percent of production expenses for horticultural specialty producers, 40 percent for fruit and tree nut producers, and 32 percent for vegetable and melon producers. Hired labor is an important part of the U.S. farm production process, and it is increasingly necessary for agricultural employers to know the Federal laws and regulations governing employment, taxes, wages, and working conditions, and to be aware of changes in those laws and regulations. This single-source publication, an updated version of a 1992 report, summarizes these laws and regulations. Among the changes from the 1992 report are expanded sections on occupational and pesticide safety, migrant and seasonal farmworkers, immigration, and tax requirements. New sections include employer responsibilities under the Family and Medical Leave Act of 1993 and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

The *Fair Labor Standards Act of 1938*, a Federal law with broad application, contains provisions and standards on minimum wages, maximum hours allowable without overtime pay, child labor, and recordkeeping. Coverage and exemptions for agricultural workers and recent changes in legislation are discussed.

The *Occupational Safety and Health Act of 1970* focuses on assuring safe and healthful working conditions for working adults and contains standards affecting several aspects of the agricultural workplace. Major provisions of the act cover standards for temporary labor camps, field sanitation, hazardous substances, cadmium usage, and logging operations. The cadmium usage and logging operations provisions are the major changes since publication of the 1992 summary.

The *Federal Insecticide, Fungicide, and Rodenticide Act of 1947* sets an overall risk/benefit standard for pesticide registration, requiring that all pesticides perform their intended function when used according to labeling instructions, without posing unreasonable risks to human health or the environment. The Environmental Protection Agency (EPA) requires the certification of all pesticide applicators and their employees who will be applying pesticides. In 1992, EPA issued a new Worker Protection Standard that covers all employers using pesticides or having them applied.

The *Migrant and Seasonal Agricultural Worker Protection Act of 1983* (MSPA) provides migrant and seasonal farmworkers with protections concerning pay, working conditions, and work-related conditions. Since 1992, two rules changing and clarifying MSPA have been published: one changed MSPA regulations regarding disclosure of workers' compensation information and reconsideration of the MSPA-required transportation liability insurance; and the other amended the definition of "employ" under MSPA to include a definition of "independent contractor" and to clarify the definition of "joint employment."

The *Immigration Reform and Control Act of 1986* requires all employers, including farm employers, to verify the eligibility of each employee hired to work in the United States, and prohibits employers from discriminating against any individual because of citizenship status. Since 1992, the Immigration and Naturalization Service has changed the list of documents acceptable for verifying employee identity and eligibility to work in the United States.

*Workers' compensation laws* provide medical and cash benefits to employees or their dependents who incurred a work-related injury or illness through no fault of their own, and relieves employers of liability from lawsuits involving negligence. These laws are not Federal laws (except those covering Federal employees and certain maritime employees) and coverage for agricultural workers varies among States. These variations are discussed.

The *Family and Medical Leave Act of 1993* (FMLA) was enacted to allow employees to balance their work and family life by taking reasonable unpaid leave for certain family and medical reasons. While an employee is on FMLA leave, an employer is required to maintain group health insurance (arrangements will need to be made for the employee to pay his or her share of the premiums). Upon return from FMLA leave, an employee must be restored to his or her original job, or to an equivalent job. FMLA will have a minimal effect on agricultural employers because it is limited to employers with 50 or more employees in 20 or more workweeks in the current or preceding calendar year.

The *Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, commonly known as the Welfare Reform Act, has many provisions. Agricultural employers, like all employers, are affected by the provision that each State must have a program that timely collects and processes information about the newly hired so that child support can be effectively enforced.

In addition to these acts, four Federal laws--*Equal Pay Act of 1963*, *Civil Rights Act of 1964 (Title VII)*, *Age Discrimination in Employment Act of 1967*, and *Americans with Disabilities Act of 1990*--provide qualified workers equal access to employment opportunities. The responsibilities of agricultural employers under each of these laws are discussed.

This report also explains agricultural employers' responsibilities under the three major Federal employment tax laws: *Federal Insurance Contributions Act of 1935*, (commonly known as Social Security), *Federal Unemployment Tax Act of 1935*, and Federal income tax codes.

# Summary of Federal Laws and Regulations Affecting Agricultural Employers, 2000

Jack L. Runyan

## Introduction

Hired farmworkers accounted for about 31 percent of the farm workforce in the 1990's (13).<sup>1</sup> In 1997, 650,623 U.S. farms reported hired labor expenditures amounting to nearly \$15 billion (14). Farms hiring labor accounted for about 34 percent of all U.S. farms, but the percentage of farms reporting hired labor expenditures ranged from about 24 percent of sheep and goat farms to about 69 percent of cotton farms. Over 50 percent of crop farms, except for oilseed and grain farming, reported hired labor expenditures, but dairy cattle- and milk-producing farms were the only livestock farms where more than 50 percent reported hired labor expenditures. In addition to farms with hired labor expenditures, 226,909 reported expenditures for contract labor amounting to nearly \$3 billion. Labor costs averaged 12 percent of total farm production expenses; only expenditures for purchases of livestock and feed were a higher percentage of total farm production expenses. Labor costs as a percentage of total production costs in some operations greatly exceeded the U.S. average, amounting to as much as 44 percent of production expenses for horticultural specialty producers, 40 percent for fruit and tree nut producers, and 32 percent for vegetable and melon producers (14).

Hired labor is an important part of the U.S. farm production process. This makes it necessary for agricultural employers to know the laws and regulations affecting their labor relations, and to be aware of changes in those laws and regulations.

There are several labor laws and enforcing regulations that affect farm employers. The laws and regulations affecting labor relations are complex. In general, they offer wage, hour, and workplace protections to employees; provide benefits for work-related injuries; establish occupational health and safety standards and

regulate pesticide use; help control unauthorized immigration into the United States; assist in the enforcement of child support; and assure equal employment opportunities. Some of these laws such as the Fair Labor Standards Act, Federal Insurance Contributions Act (Social Security), and Federal Unemployment Tax Act came into effect with the New Deal legislation of the 1930's. Other laws such as the Family and Medical Leave Act and the Personal Responsibility and Work Opportunity Reconciliation Act came into effect more recently. Some laws, like the Migrant and Seasonal Agricultural Worker Protection Act, are designed specifically to offer protections to agricultural workers. Other laws, such as minimum wage legislation, are designed for all employers, but with special considerations given to agriculture, based on size of farm, number of employees, type of work, etc. Still other laws, such as the Immigration Reform and Control Act of 1986 and the Personal Responsibility and Work Opportunity Reconciliation Act, require the same compliance for farm and nonfarm employers.

This report, revising and updating a 1992 edition (10), discusses the laws and regulations most relevant to agricultural employers. This legislation includes the Fair Labor Standards Act; Occupational Safety and Health Act; Federal Insecticide, Fungicide, and Rodenticide Act; Migrant and Seasonal Agricultural Worker Protection Act; Immigration Reform and Control Act of 1986; Workers' Compensation Acts; Family and Medical Leave Act; Personal Responsibility and Work Opportunity Reconciliation Act; various Federal equal employment opportunities laws; and various Federal tax acts.

Several important changes in Federal laws and regulations have occurred since publication of the 1992 summary of Federal laws and regulations (10), and are noted in this edition. The minimum wage was increased under the Fair Labor Standards Act,

<sup>1</sup>Italicized numbers in parentheses refer to items in References at the end of this report.



standards for cadmium and logging operations were added under the Occupational Safety and Health Act, changes for determining joint employment and transportation insurance changes were added to the Migrant and Seasonal Agricultural Worker Protection Act, and the kinds of documents acceptable for establishing identity and employment eligibility under the Immigration Reform and Control Act of 1986 were changed. Minor changes also occurred in Workers' Compensation Acts and in employment taxes. In addition, two major new laws were enacted--the

Family and Medical Leave Act of 1993 and the Personal Responsibility and Work Opportunity Reconciliation Act of 1998--which could have significant effects on some agricultural employers.

Each of the laws and regulations is briefly described, its applicability to agricultural employment is explained, and penalties and enforcement are reported. Nothing in this report substitutes for professional legal advice.

## Fair Labor Standards Act of 1938

The Fair Labor Standards Act (FLSA), a Federal law with broad application that contains provisions and standards on minimum wages, maximum hours allowable without overtime pay, child labor, and recordkeeping, was enacted in 1938. Congress has amended the law several times since its inception. FLSA requirements generally apply to employees of employers engaged in interstate commerce or who produce goods and services for interstate or foreign commerce, including goods that become parts of products shipped by others.

The minimum wage provision of FLSA requires every employer (unless specifically exempt) to pay a minimum wage to each employee who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce (2).<sup>2</sup> The minimum hourly wage increased from \$4.75 to \$5.15 per hour beginning September 1997. The legislation that increased the minimum wage also established a subminimum wage (\$4.25 per hour) for employees under 20 years of age during their first 90 consecutive calendar days of employment with an employer. Migrant and seasonal farmworkers and H-2A nonimmigrant agricultural workers performing temporary or seasonal work, who meet the age and time criteria, are subject to the subminimum wage provisions.<sup>3</sup>

The maximum hours provision requires all employers, unless specifically exempt, to compensate employees for any hours they work over 40 hours per week (2). This provision sets the compensation rate for hours worked in excess of 40 per workweek at not less than one and one-half times the employee's regular pay rate.

The child labor provision prohibits employers from using "oppressive child labor" in commerce or in producing goods for commerce (2). The minimum age

for performing any job is 16 in the agricultural sector and 18 in the nonagricultural sector. Employment restrictions are placed on workers younger than the minimum age. These employment restrictions on younger workers differ between the agricultural and nonagricultural sectors.<sup>4</sup>

The recordkeeping provision requires covered employers to keep records on wages, hours worked, and other items, as specified in Department of Labor recordkeeping regulations. The records are not required to be kept in any prescribed form, and time clocks are not required. If an employer has employees subject to minimum wage or overtime pay provisions of FLSA, the following information must be recorded: (1) personal information, including employee's name, home address, occupation, sex, and birthday if under 19 years of age; (2) the hour and day at which the workweek begins; (3) total hours worked each workday and each workweek; (4) total daily or weekly straight-time earnings; (5) regular hourly pay for any week when overtime is worked; (6) total overtime pay for the workweek; (7) deductions from or additions to wages; (8) total wages paid each pay period; and (9) date of payment and pay period covered.

### How the Law Applies to Agricultural Employment

Table 1 summarizes FLSA provisions and their application to agricultural employment. The basis for agricultural exemptions is determined by the way the law defines terms, and by U.S. Department of Labor regulations and U.S. Supreme Court decisions.

FLSA contains two exemptions especially important for agricultural employers. Agricultural employers who did not use more than 500 man-days of agricultural labor during any calendar quarter of the preceding calendar year, or are primarily engaged in the range production of livestock are exempt from the minimum wage provisions. Using more than 500 man-days of agricultural labor would require employing six or more workers each day of the week for 13 weeks. In 1997, 513,568 farms (79 percent of farms with hired labor expenditures) employed fewer than five hired farmworkers (14). Thus, most farm employers are not covered by the minimum wage

<sup>2</sup>A "workweek is a fixed and regularly recurring interval of seven consecutive 24-hour periods. It may begin at any hour of any day set by the employer and need not coincide with the calendar week. Once set, the workweek commences on the same day and at the same hour in each succeeding week" (2).

<sup>3</sup>H-2A temporary foreign workers are nonimmigrant aliens authorized to work in agricultural employment in the United States for a specified time period, normally less than 1 year.

<sup>4</sup>For additional information, see appendix A and (18).

**Table 1--Fair Labor Standards Act of 1938: Summary of applicability to agriculture and penalties for violations**

| Provisions   | Exemptions for agriculture   | Basis for agricultural exemptions   | Enforcement  |
|--|--|---|--|
| <p><b>Minimum wage</b><br/>Requires employers, unless exempt, to pay any employee at least the legally established Federal minimum wage (\$5.15 an hour as of September 1, 1997).</p>  | Partial  | <ol style="list-style-type: none"> <li>1. Employer did not use more than 500 man-days of agricultural labor during any calendar quarter of the preceding calendar year.</li> <li>2. Employees are members of employer's immediate family.</li> <li>3. Employees are employed as hand-harvest laborers paid on a piece-rate basis; they commuted daily from their homes and were not employed in agriculture more than 13 weeks in the preceding calendar year.</li> <li>4. Employees are 16 years of age or younger and employed as hand-harvest laborers paid on a piece-rate basis equal to employees older than 16 years, and are employed on the same farm as parents or someone standing in place of parents.</li> <li>5. Employees are primarily engaged in range production of livestock.</li> </ol> | <p><b>Responsible agency</b><br/>Wage and Hour Division<br/>Employment Standards<br/>Administration, U.S.<br/>Department of Labor.</p> <p><b>Penalties</b><br/>\$10,000 fine or month imprisonment, or both, after a prior conviction for willfully violating provisions. Liable for unpaid wages and an additional equal amount as liquidated damages plus attorney fees and reasonable costs incurred by the plaintiffs when a party is convicted of violating minimum wage and maximum hour provisions.</p> |
| <p><b>Maximum hours</b><br/>Requires employers, unless exempt, who employ any employee for a workweek in excess of 40 hours to pay the employee at least 1-1/2 times the employee's regular pay rate for the hours worked in excess of 40.</p> | Total  | Employment in agriculture, except in a packing shed or processing plant that handles produce for more than one farm.  | Same as above  |
| <p><b>Child labor</b><br/>Employing anyone under the legal minimum age (16 years of age unless otherwise specified) in a nonexempt occupation is considered "oppressive child labor."</p>  | Partial (any employment permitted must be during nonschool hours). | <ol style="list-style-type: none"> <li>1. If employee is 14 or 15 years of age and not employed in a hazardous occupation as defined by the Secretary of Labor.</li> <li>2. If employee is 12 or 13 years of age and employed with the written consent of his or her parents, or a person standing in place of his or her parents, or if the prospective employee is employed on the same farm as the parents or person standing in place of the parents.</li> <li>3. If employees under 12 years of age are employed with written parental consent on farms where employees are exempt.</li> </ol>   | Civil penalty of up to \$10,000 for each violation of child labor provision.   |

Source: Compiled by USDA, ERS from 29 Code of Federal Regulations and Title 29 United States Code.

provision. Agricultural employers, except those operating packing sheds or processing plants that handle produce for more than one farm, are exempt from the maximum hours provisions (table 1). For employers to qualify for these exemptions, their employees, in almost every case, must be employed exclusively in an exempt occupation for the entire workweek, and the employer claiming the exemption is required to provide proof that the exemption applies.

## Definitions

Definitions presented in this section are restricted to key terms. Readers seeking more detailed information should contact the nearest office of the Wage and Hour Division, U.S. Department of Labor, and should consult *29 Code of Federal Regulations* and *Title 29 United States Code*.

*Agriculture* is defined for purposes of FLSA as:

“...farming and all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market” (12).

Section 15(g) of the Agricultural Marketing Act extends the definition of *agricultural and horticultural commodities*:

“...agricultural commodity includes, in addition to other agricultural commodities, crude gum (oleoresin) from a living tree, and the following products as processed by the original producers of the crude gum (oleoresin) from which derived: Gum spirits of turpentine, and gum rosin, as defined in the Naval Stores Act, approved March 3, 1923 (U.S.C. 91-99). As defined in the Naval Stores Act, ‘gum spirits of turpentine’ means spirits of turpentine made from gum (oleoresin) from a living tree and ‘gum rosin’ means rosin remaining after the distillation of gum spirits of turpentine” (2).

The U.S. Department of Labor regulations and decisions of the U.S. Supreme Court define agriculture further. The U.S. Department of Labor includes fish farming activities in agriculture and considers all employees engaged in such operations to be employed in agriculture (2).

The U.S. Supreme Court distinguished agriculture under the FLSA as consisting of two parts, primary and secondary (28). *Primary agriculture* “...includes farming and all its branches such as cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities and the raising of livestock, bees, fur-bearing animals, or poultry” (2). An employee employed in any of these activities is considered to be engaged in agriculture whether employed or not by a farmer or on a farm. *Secondary agriculture* includes any activities or practices performed by a farmer (including employees of a farmer) or on a farm as an incident to or in conjunction with such farming operations. These activities include preparing commodities for market and delivering commodities to storage, to market, or to a carrier for transporting to market (2). As a result, employment that falls outside of the primary or secondary meaning of agriculture, as defined in FLSA, is not employment in agriculture. Therefore, to be employed in agriculture, one must be employed: in farming, by a farmer, or on a farm.

*Employ* means “to suffer or permit” to work, which the courts have interpreted to mean an economic dependence of an employee upon an employer (2). An employee may be economically dependent on more than one employer. In this case, a joint employment situation occurs.<sup>5</sup>

*Man-day* means “any day during which an employee performs any agricultural labor for not less than 1 hour” (12).

*Calendar quarter of the preceding calendar year* has been defined by U.S. Department of Labor regulations to be January 1-March 31, April 1-June 30, July 1-September 30, and October 1-December 31 of the preceding calendar year (2).

<sup>5</sup>See the discussion of “determining joint employment” under the discussion of the Migrant and Seasonal Agricultural Worker Protection Act of 1983, p. 27.

*Immediate family of an employer* under the FLSA includes a spouse, children, stepchildren, and foster children, parents, stepparents, and foster parents. The law is clear on this matter. "Other relatives, even when living permanently in the same household as the employer, will not be considered to be part of the immediate family" (2).

*Thirteen weeks* is a time period on which certain exemptions from the FLSA are based. The appropriate basis for determining whether a local worker has been employed in agriculture less than 13 weeks during the preceding calendar year is not necessarily a calendar week. According to U.S. Department of Labor regulations, a week is considered to be a "fixed and regularly recurring period of 168 hours consisting of 7 consecutive 24-hour periods during which the employee worked at least 1 man-day" (2). And, it is the total number of weeks that the employee worked for all employers in agriculture during the preceding calendar year that determines whether the 13-week test has been met. Most important, it is the employer's responsibility to obtain a statement from the employee showing the number of weeks he or she was employed in agriculture during the preceding calendar year. This exemption does not apply to migrant workers.

*Principally engaged in the range production of livestock* means that the employee spends more than 50 percent of his or her time on land not cultivated, actively taking care of (or standing in readiness for the purpose of caring for) cattle, sheep, horses, goats, and other domestic animals ordinarily raised or used on the farm (2).

*Oppressive child labor* means employment of a minor in an occupation for which he or she does not meet the minimum age standards of the act (2). The minimum age has generally been set at 16 years for all occupations, except in agriculture. There are several exceptions to the child labor provisions.<sup>6</sup>

*Wages* paid to any employee include the reasonable costs to the employer, as determined by the Secretary

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<sup>6</sup>See appendix A for minimum age requirements under FLSA.

of Labor, for furnishing such employee with board, lodging, or other facilities, if these are customarily furnished by such employer to his employees (2). If these costs are excluded under the terms of a collective bargaining agreement, they cannot be counted as wages.

## **Enforcement**

Each employer subject to any FLSA provision is required to maintain records of the wages, hours, and other employment conditions and practices for every employee. The Administrator of the Wage and Hour Division of the U.S. Department of Labor or a designated representative may enter a facility and inspect the employment conditions, practices, and employment records, and may conduct any investigation deemed necessary to determine if any violations have occurred. In addition to Wage and Hour inspections, if a compliance officer of the Occupational Safety and Health Administration conducting investigations is presented with information concerning noncompliance with FLSA, this information will be given to the Wage and Hour Division.

Any person convicted of willfully violating any FLSA provision is subject to a fine of not more than \$10,000 or imprisonment (after a prior conviction) of not more than 6 months, or both. An employer who violates the child labor provision is also subject to a civil penalty of up to \$10,000 for each violation.

## **Summary**

The Fair Labor Standards Act has broad application and mandates severe penalties for willful noncompliance. Although there are many exemptions from the law, agricultural employers should be familiar with the law and its regulations.

Two important facts agricultural employers should know are: (1) to qualify for exemptions from the minimum wage and maximum hours provisions of the FLSA, an employee must not be employed in a non-exempt occupation for any portion of the workweek, and (2) the burden of qualifying for the exemption lies with the employer.

## Occupational Safety and Health Act of 1970

The Occupational Safety and Health Act (OSHA) was enacted in December 1970 to assure safe and healthful working conditions for U.S. workers. According to the act, that objective is to be met by authorizing enforcement of standards developed under the law, helping and encouraging States in their efforts to assure safe and healthful working conditions, and providing for research, information, education, and training in the field of occupational safety and health.

Congress declared its intent in the legislation, under its powers to regulate domestic and international commerce and to provide for the Nation's general welfare, to assure healthful working conditions for all workers and to preserve the country's human resources. Congress established specific duties for employers in the "general duty clause" (section 5 of the act). The employer's duty is to furnish each employee employment and a workplace free from recognized hazards causing or likely to cause death or serious physical harm. The employer is also responsible for complying with occupational safety and health standards set forth in the law.

The employee's duty, under the law, is to comply with those standards and with all rules, regulations, and orders issued after the law's passage that apply to his or her own actions and conduct (8).

### How the Law Applies to Agricultural Employment

U.S. Department of Labor regulations place every employer, unless specifically exempt, under OSHA coverage. Two exemptions greatly reduce the coverage of agricultural employment. First, members of the immediate family of the farm employer are not considered employees and are excluded from coverage (2). Second, Congress has usually attached riders to annual appropriations bills for the U.S. Department of Labor that exclude from OSHA protection all agricultural workers in agricultural operations employing 10 or fewer workers (excluding family members) within the last 12 months, except where temporary labor camps are maintained or have been maintained in the last 12 months (table 2). The U.S. Department of Labor has interpreted this to mean that whenever a farm operation has more than 10 workers employed on 1 day, the operation is subject to OSHA

regulations. In 1997, about 9 percent of U.S. farms employed 10 or more hired workers (14). These farms employed about half of the hired farmworkers in 1997 (14). Thus, OSHA regulations apply to less than 10 percent of farm employers and about half of the hired farmworkers. Farm employers should note two important things about the 10-or-fewer-employees exemption. First, the exemption is a year-to-year exemption granted by Congress and could be ended with little advance notice. Second, the exemption applies only if the operation employs 10 or fewer employees currently and at all times during the last 12 months. Had the 10-or-fewer-employees exemption been written into regulations, as in the OSHA Field Sanitation Standard (see the definition for "field sanitation standard" in this section), employers would have been given advance notice of the proposed change and would have had an opportunity to present evidence against changing the regulation. The act covers agricultural employment that does not meet either of these exemptions.

The major provisions of the act cover temporary labor camps, tractor roll-over protection, guarding of farm field equipment, storage of anhydrous ammonia, field sanitation, hazard communication, cadmium usage, and logging operations. The cadmium and logging operations provisions are major changes since 1992. These provisions, along with their application to agricultural employment are summarized in table 3. Some definitions and explanations contained in regulations that enforce the act's provisions help determine its applicability to specific situations.

### Definitions

The definitions and explanations presented here are limited to key terms as they apply to standards governing agricultural employment. Readers seeking more detailed information should contact the nearest office of the Occupational Safety and Health Administration and consult *29 Code of Federal Regulations* and *Title 29 United States Code*.

*Farming operation* "means any operation involved in the growing or harvesting of crops, raising of livestock or poultry, or related activities conducted by a farmer on site such as farms, ranches, orchards, dairy farms, or similar farming operations. These operators are

**Table 2--Occupational Safety and Health Administration enforcement exceptions and limitations under the Appropriations Act**

| OSHA activity   | Farms with 10 or fewer employees and no temporary labor camp activity within 12 months | Farms with more than 10 employees or a farm with an active temporary labor camp within 12 months | Nonfarm employer with 10 or fewer employees in SIC's <sup>1</sup> with a lost workday injury rate below the national private sector rate |
|---|--|--|--|
| Programmed safety inspections   | Not permitted  | Can inspect  | Cannot inspect   |
| Programmed health inspections   | Not permitted  | Can inspect  | Can inspect  |
| Employee complaint  | Not permitted  | Can inspect  | Can inspect  |
| Fatalities/catastrophes and accidents   | Not permitted  | Can inspect  | Can inspect  |
| Imminent danger   | Not permitted  | Can inspect  | Can inspect  |
| Investigations to determine if employee was fired as a result of making a complaint | Not permitted  | Can inspect  | Can inspect  |
| Consultation and technical assistance   | Not permitted  | Permitted  | Permitted  |
| Education and training  | Not permitted  | Permitted  | Permitted  |
| Conduct surveys and studies   | Not permitted  | Permitted  | Permitted  |

<sup>1</sup>Specific SIC's are contained in appendix A of *Enforcement Exceptions and Limitations Under the Appropriations Act*, OSHA Directive No. CPL 2-0.51J. May 28, 1998.

Source: *Enforcement Exceptions and Limitations Under the Appropriations Act*, OSHA Directive No. CPL 2-0.51J. May 28, 1998.

engaged in businesses that have a two-digit Standard Industrial Classification (SIC) of 01 (Agricultural Production-Crops), 02 (Agricultural Production-Livestock and Animal Specialties), and four-digit SIC 0711 (Soil Preparation Services), 0721 (Crop Planting, Cultivating, and Protecting), 0722 (Crop Harvesting, Primarily by Machine), 0761 (Farm Labor Contractors and Crew Leaders), and 0762 (Farm Management Specialists)" (20).

*Housing* "includes both permanent and temporary structures located on or off the property of any employer" (20).

*Temporary labor camp* means "farm housing directly related to the seasonal or temporary employment of farm workers" (20). Standards for temporary labor camps govern all temporary labor camps in which migrant housing is provided and on which construction was started after April 3, 1980. These camps must comply with Federal safety and health standards put into effect by the Occupational Safety and Health Administration (2). Temporary labor camps completed

or being built before April 3, 1980, or under contract to be built before March 3, 1980, may choose to comply with either the OSHA standards or the standards of the Employment and Training Administration of the U.S. Department of Labor.

The *field sanitation standard* spells out requirements on potable water, sanitation, and cleanliness to be met on labor work sites for farm field hands. While the Department of Labor's emphasis is on farmworker health and safety, a recent report by the U.S. Department of Health and Human Services emphasized field sanitation as part of an overall effort to minimize microbial food safety hazards (16). The field sanitation standard contains the appropriations law exemption for agricultural operations of 10 or fewer employees (unless operations maintain a temporary labor camp). The U.S. Department of Labor interprets this to mean that the field sanitation standard applies to a farming operation that has employed 11 or more employees (including contractor's employees) on any given day during the

**Table 3--Occupational Safety and Health Act of 1970: Summary of applicability to agriculture and penalties for violations**

| Provisions  | Exemptions for agriculture | Basis for agricultural exemptions   | Enforcement  |
|---|----------------------------|---|--|
| <p><b>Temporary labor camps</b><br/>Must meet standard developed for site, shelter, water supply, toilet facilities, lighting, refuse disposal, construction, and operation of kitchens, dining hall, and feeding facilities, insect and rodent control, first aid, and reporting of communicable disease violations.</p>   | None                       | None  | <p><b>Responsible agency</b><br/>Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.</p> <p><b>Penalties</b><br/>Based on the severity of the conditions and the firm's history of OSHA.</p> |
| <p><b>Field sanitation</b><br/>Agricultural employers operating qualifying establishments are required to provide employees who do hand labor operations in the field with potable drinking water, toilet facilities, and hand-washing facilities, to maintain these facilities, to inform employees of the importance of specific hygiene practices, and to allow reasonable use in the field without cost to the employees.</p> | Partial                    | <ol style="list-style-type: none"> <li>Limited to hand fieldwork.</li> <li>Ten or fewer employees at all times during the past 12 months.</li> <li>Do not have to provide toilet and hand-washing facilities when employees will be working fewer than 3 hours (including transportation time).</li> <li>Farms where only immediate family members are employed.</li> </ol> | Same as above  |
| <p><b>Hazard communication</b><br/>Agricultural employers are required to establish a hazard communication program to provide employees with information about the hazardous chemicals, other than pesticides, to which they might be exposed.</p>  | Partial                    | Same as above   | Same as above  |
| <p><b>Cadmium</b><br/>Agricultural employers are required to monitor the air in areas where employees are exposed to cadmium, and if level of exposure is above minimum allowed, employees must be notified, and provided with necessary protective equipment.</p>  | Partial                    | Same as above   | Same as above  |
| <p><b>Logging operations</b><br/>Agricultural employers who have logging operations, as defined by the standard, must provide specific training on hazards and work practices, first aid, and CPR. They must also assure that personal protective equipment, tools, and machinery are provided, maintained, and used in a safe manner.</p>  | Partial                    | Same as above   | Same as above  |

Continued--



**Table 3--Occupational Safety and Health Act of 1970: Summary of applicability to agriculture and penalties for violations--Continued**

| Provisions  | Exemptions for agriculture | Basis for agricultural exemptions | Enforcement   |
|---|----------------------------|-----------------------------------|---------------|
| <i>Other key provisions</i>   |                            |                                   |               |
| 1. Rules governing storage and handling of anhydrous ammonia.   | Partial                    | Same as above                     | Same as above |
| 2. Safety requirements for slow-moving vehicles (less than 25 m.p.h.).  |                            |                                   |               |
| 3. Roll-over protective structures for tractors used in agricultural operations.  |                            |                                   |               |
| 4. Safety devices for farm field equipment, farmstead equipment, and cotton gins.   |                            |                                   |               |
| 5. Post notices informing employees of OSHA protections and obligations and how to get copies of the act or specified standard.   |                            |                                   |               |
| 6. Post citations near location of violation where they will be readily seen by affected employees.   |                            |                                   |               |
| 7. Post annual summary of occupational injuries and illnesses.  |                            |                                   |               |
| 8. Notify nearest OSHA area office within 48 hours of any accident that is fatal to one or more employees or results in the hospitalization of three or more employees.   |                            |                                   |               |
| 9. Maintain records of occupational injuries and illnesses for 5 years at end of year in which they occur.  |                            |                                   |               |
| 10. Insure the ready availability of medical persons for advice on matters of workplace health.   |                            |                                   |               |
| 12. Provide a person (or persons) who are trained to render first aid when an infirmary, clinic, or hospital is not near the workplace. Make physician-approved first aid supplies readily available.                   |                            |                                   |               |
| 13. Provide a suitable emergency facility within the work area for the quick drenching of eyes and body. This facility would be for use of any person who may be exposed to injuries or corrosive materials on the job. |                            |                                   |               |

Source: Compiled by USDA, ERS from 29 Code of Federal Regulations and Title 29 United States Code.

previous 12 months. Key terms used in the standard follow.

*Potable water* means “water that meets the standards for drinking purposes of the State or local authority having jurisdiction or water that meets the quality standards prescribed by the U.S. Environmental Protection Agency’s Interim Primary Drinking Water Regulations, published in *40 Code of Federal Regulations, Part 141*” (3). Agricultural employers should note that the drinking water available on their farms might not meet the standards for potable water.

*Hand washing facility* is a “facility providing either a basin, container, or outlet with an adequate supply of potable water, soap, and single-use towels” (2). One hand-washing facility must be provided for each 20 employees or a fraction thereof.

*Toilet facility* means a fixed or portable facility designed to adequately collect and contain human waste and is supplied with toilet paper adequate to employee needs. Toilet facility includes “biological, flush, and combustion toilets and sanitary privies” (2).

*Maintaining facilities* means that “potable drinking water and toilet and hand washing facilities shall be maintained in accordance with appropriate public health sanitation practices” (2). For example:

- Drinking water containers must maintain water quality, be refilled as often as necessary (at least daily), be covered, and be generally clean.
- Toilet facilities must be in working order and be kept clean and sanitary.
- Hand-washing facilities must have an adequate supply of potable water and be kept clean and sanitary.
- Disposal of waste from facilities must not cause unsanitary conditions (2).

*Reasonable use* is a term that goes beyond meaning merely allowing employees reasonable opportunities to use sanitation facilities. According to the field sanitation standard, it means:

The employer also shall inform each employee of the importance of each of the following good hygiene practices to minimize exposure to the hazards in the field of heat, communicable diseases, retention of urine, and agricultural residues:

- (i) Use the water and facilities provided for drinking, hand washing, and elimination;
- (ii) Drink water frequently, especially on hot days;
- (iii) Urinate as frequently as necessary;
- (iv) Wash hands both before and after using the toilet; and
- (v) Wash hands before eating and smoking (2).

The *hazard communication standard* requires all employers to provide information to their employees about the hazardous chemicals (except pesticides, which are regulated by the U.S. Environmental Protection Agency) to which they are or may be exposed. The information is to be provided through a written hazard communication program consisting of labels and other forms of warning, materials safety data sheets (MSDS), and information and training. Chemical manufacturers and importers, not employers, are required to evaluate chemicals they produce or import.

Each employer must develop, implement, and maintain at the workplace a written hazard communication program for the workplace. The hazard communication program will describe how the requirements for labels and other forms of warning, MSDS, and information and training will be met. The program also includes a list of hazardous chemicals known to be present (that must be properly referenced to an MSDS) and notes the methods the employer will use to inform employees of the hazards of nonroutine tasks. The employer is required to make the written hazard communication program available, upon request, to employees or their designated representatives, as well as the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor; and the Director of the National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services.

The chemical manufacturer, importer, or distributor must ensure that each container of hazardous chemicals is labeled with the identity of the hazardous chemical, appropriate hazard warnings, name of manufacturer, importer, or other responsible party. The employer is responsible for ensuring that the labels (or some other written material containing the

labeling information) are attached to each container of hazardous chemicals in the workplace. These labels or other forms of warning are to be legible, written in English, and either prominently displayed on the container or readily available in the work area.

MSDS are prepared or obtained by manufacturers or importers for each hazardous chemical they produce or import. Employers must have an MSDS for each hazardous chemical they use. The employer must ensure that an MSDS is either provided with each shipment or obtained from the manufacturer, importer, or distributor as soon as possible. The employer must also maintain copies of the required MSDS for each hazardous chemical in the workplace and ensure that they are readily accessible to employees when they are at work. If employees must travel between workplaces during a work shift, the MSDS may be kept at a central location at the primary workplace as long as the employees can immediately obtain the required information in an emergency. An MSDS may be kept in any form and may be designed to cover groups of hazardous chemicals in a work area where it may be more appropriate to address the hazards of a process than individual hazardous chemicals. An MSDS must be made readily available, upon request to employees or their designated representatives; the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor; and the Director of the National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services.

Employers are also required to provide employees with information and training on hazardous chemicals in their workplace when employees are first assigned to the workplace and whenever a new hazard (not a new chemical) is introduced to the work area.<sup>7</sup> The information that must be provided to employees was discussed earlier in this section (labels, MSDS, etc.). Employee training must include a demonstration of methods to detect the presence or release of a hazardous chemical in the work area, point out the physical and health hazards of the chemicals in the work area, and show employees the measures they can take to protect themselves from these hazards. These measures include specific protective procedures the employer has implemented for employees (for

<sup>7</sup>For example, if a new chemical is brought into the workplace, and it has hazards similar to existing chemicals for which training has already been conducted, no new training is required.

example, appropriate work practices, emergency procedures, and personal protective equipment). Training must be provided to give employees the details of the hazard communication program the employer has developed.

The *Cadmium Standard* “applies to all occupational exposures to cadmium and cadmium compounds” (2). Cadmium exposure in agriculture would most likely occur where large quantities of fertilizer and/or pesticides are stored or handled, and where employees may be soldering or welding metal that contains cadmium. This standard requires a covered employer to determine if any employee may be exposed to cadmium at or above the minimum acceptable level (called the action level).<sup>8</sup> If the initial monitoring indicates exposure to be at or above the action level, the employer must continue exposure monitoring at least every 6 months, unless the exposure drops below the action level. The employer must notify each affected employee, in writing, within 15 days after receiving the results of monitoring. Whenever monitoring results indicate that employee exposure exceeds the “permissible exposure limit (PEL),” the employer must include in the written notice that the PEL has been exceeded and a description of the corrective action being taken to reduce exposure to or below the PEL.<sup>9</sup>

The employer is required to establish a regulated area that is demarcated from the rest of the workplace in any manner that adequately establishes and alerts employees of the boundaries of the regulated area. Access to the regulated area will be limited to authorized persons who will be required to wear employer-provided respirators that meet accepted standards, and in some situations employees may be required to wear protective clothing and eye protection (these must also be employer-provided). Employers must not allow employees to eat, drink, smoke, chew tobacco or gum, or apply cosmetics in regulated areas, carry the products associated with these activities into regulated areas, or store such products in those areas. In addition to these requirements, the employer has to

<sup>8</sup>As an airborne concentration of cadmium, the action level is 2.5 micrograms per cubic meter of air..., calculated as an 8-hour time-weighted average (TWA)” (2).

<sup>9</sup>Permissible Exposure Limit (PEL). The employer shall assure that no employee is exposed to an airborne concentration of cadmium in excess of 5 micrograms per cubic meter of air..., calculated as an 8-hour time-weighted average exposure (TWA)” (2).

provide employees with showers and hand-washing facilities, medical removal protection benefits, medical surveillance, monitored lunch rooms, and other requirements as mandated by the standard (2).

The *logging operations standard* “establishes safety practices, means, methods, and operations for all types of logging regardless of the end use of the wood. These types of logging include, but are not limited to, pulpwood and timber harvesting and the logging of sawlogs, veneer bolts, poles, pilings and other forest products” (2). The standard defines logging operations, as “operations associated with felling (cutting) and moving trees and logs from the stump to the point of delivery, such as, but not limited to, marking danger trees, (standing trees that present a hazard to an employee because of condition and/or direction and lean, and trees/logs to be cut to length), felling, limbing (removing limbs and branches), bucking (cutting or splitting trees into manageable logs), debarking, chipping, yarding (removing cut trees and logs), landing (a central location), loading, unloading, storing, and transporting machines, equipment, and personnel from one logging site to another” (2).

If more than 10 employees on a farm are engaged in a logging operation, as defined above, at any time, the employer must adhere to the standard and provide and assure that employees use personal protective equipment (that protects hands, heads, legs, feet, eyes, and faces) and seat belts. All employees must be trained in CPR and first aid (requirements are in the standard). The employer must also provide first-aid kits (contents of which are listed in the standard), fire extinguishers, and a safe environment. A safe environment includes:

- Not working in inclement weather,
- Spacing duties of each employee so the actions of one employee will not create a hazard for any other employee,
- Ensuring that employees use proper tree-felling techniques,
- Establishing a system of visual or audible contact between employees at all times,
- Accounting for each employee at the end of each work shift,

- Providing properly guarded and maintained equipment, and
- Implementing several other actions spelled out in the standard.

Other key terms relate to safety in the agricultural workplace. The Code of Federal Regulations defines the following farm equipment terms.

*Agricultural tractor* means “a two- or four-wheel drive type vehicle, or track vehicle, of more than 20-engine horsepower, designed to furnish the power to pull, carry, propel, or drive implements designed for agriculture. All self-propelled implements are excluded” (2). All tractors manufactured after October 5, 1976, that are operated by hired workers must be equipped with roll-over protective structures (ROPS), except for the following: “low profile” tractors while they are used in orchards, vineyards, or hop yards where the vertical clearance requirements would substantially interfere with normal operations and while their use is incidental to the work performed therein; “low profile” tractors while used inside a farm building or greenhouse in which the vertical clearance is insufficient to allow the ROPS-equipped tractor to operate and while their use is incidental to the work performed therein; and tractors while used with mounted equipment which is incompatible with ROPS (for example, corn pickers, cotton strippers, vegetable pickers, and fruit harvesters) (2).<sup>10</sup> Another exception to the ROPS standard appears in the logging operations standard. This standard requires that all tractors placed in initial service after February 9, 1995, operated by hired workers be equipped with FOPS (falling objects protective structures) and ROPS and that these devices be reinstalled on tractors from which they had been removed.

Every employee who operates an agricultural tractor must be informed of the following operating practices at the time of initial assignment and at least annually thereafter:

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<sup>10</sup>A low profile tractor is one in which front-wheel spacing equals the rear-wheel spacing (as measured from the centerline of the right wheel to the centerline of the corresponding left wheel), the clearance from the bottom of the tractor chassis to the ground does not exceed 18 inches, the highest point of the hood does not exceed 60 inches, and the operator straddles the transmission when seated (2).

- Securely fasten your seat belt if the tractor has ROPS.
- Where possible, avoid operating the tractor near ditches, embankments, and holes.
- Reduce speed when turning, crossing slopes, and on rough, slick, or muddy surfaces.
- Stay off slopes too steep for safe operation.
- Watch where you are going, especially at row ends, on roads, and around trees.
- Do not permit others to ride on the machine.
- Operate the tractor smoothly--no jerky turns, starts, or stops.
- Hitch only to the drawbar and hitch points recommended by tractor manufacturers.
- When tractor is stopped, set brakes securely and use park lock if available (2).

*Farm field equipment* means “tractors or implements, including self-propelled, or any combinations thereof used in agricultural operations” (2).

*Farmstead equipment* means “agricultural equipment normally used in a stationary manner. This includes, but is not limited to, materials-handling equipment and accessories for such equipment whether or not the equipment is an integral part of a building” (2).

*Sign* “refers to a surface prepared for the warning of, or safety instructions of, industrial workers or members of the public who may be exposed to hazards. Excluded from this definition, however, are news releases, displays commonly known as safety posters, and bulletins used for employee education” (2). There are three classifications of signs according to use--danger, caution, and safety instruction. Danger signs warn of specific dangers and radiation hazards. All employees must be instructed that these signs indicate immediate danger and that special precautions are necessary. Caution signs must be used to warn against potential hazards or to caution against unsafe practices. All employees must be instructed that these signs indicate a possible hazard against which proper precaution should be taken. Safety instruction signs must be used where there is a need for general instructions and suggestions relative to safety measures. Each of these signs has specific color and design characteristic requirements spelled out in the standards.

The slow-moving vehicle emblem consists of a fluorescent yellow-orange triangle with a dark red reflective border. This emblem is intended as a unique identification and should be used only on vehicles which by design move slowly (25 m.p.h. or less) on the public roads. The emblem is not a clearance marker for wide machinery nor is it intended to replace required lighting or marking of slow-moving vehicles (2).

In the rare case where a substance constituting a biological hazard (“infectious agent presenting a risk or potential risk to the well-being of man”) is kept on a farm, biological hazard signs must be posted (2).

### **Enforcement**

The Occupational Safety and Health Administration is authorized to conduct workplace inspections to assure compliance with the law. With few exceptions, inspections are conducted without advance notice. Safety and health officers, upon presenting appropriate credentials to the owner, operator, or agent in charge, are authorized to enter a workplace without delay and at reasonable times. The safety and health officer must get a search warrant when an employer refuses admission for inspection. In addition to Occupational Safety and Health Act (OSHA) inspections, if a compliance officer of the Wage and Hour Division, while conducting investigations, is presented with information concerning noncompliance with OSHA, this information will be given to OSHA. In States in which the State plan does not include enforcement of temporary labor camp or field sanitation standards, the Wage and Hour Division has assumed enforcement authority.

Penalties are proposed based on the severity of conditions, the good-faith effort of the employer to remedy problems, the employer’s size, and the firm’s history of OSHA violations. Not every citation results in a penalty. Serious and willful violations carry a mandatory proposed penalty, while less serious violations may carry no penalty. Penalties may also be proposed for repeated violations and when the employer fails to correct safety and health hazards. Penalties for violations, where appropriate, will be proposed, even if the employer (after being informed by the safety and health officer) immediately eliminates or takes steps to correct or abate the hazards. The act also provides for criminal prosecution in certain situations when an employer

commits a willful violation that results in a worker's death.

### **Summary**

The Occupational Safety and Health Act of 1970 was enacted to assure safe and healthful working conditions for U.S. workers. The OSHA standards affecting agricultural employers and employees cover temporary labor camps, field sanitation, hazard communication, cadmium exposure, logging

operations, storage and handling of anhydrous ammonia, roll-over protection, safety practices of slow-moving vehicles, and guarding of farm field equipment, farmstead, and cotton gins.

Congress has added riders to annual appropriation bills exempting farm operations that employ 10 or fewer employees and do not maintain a temporary labor camp. Employers should remember that the 10 or fewer employees exemption granted by Congress could be ended on short notice.

## Federal Insecticide, Fungicide, and Rodenticide Act of 1947

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), enacted in 1947, and amended several times, sets an overall risk and benefit standard for pesticide registration, requiring that all pesticides perform their intended function, when used according to labeling instructions, without posing unreasonable risks to human health or the environment. The law requires that pesticides be registered with the U.S. Environmental Protection Agency (EPA) before they are sold or distributed in commerce. Pesticide registrants (companies that hold pesticide registrations) are responsible for providing all test data necessary to satisfy EPA's registration requirements. The Federal Environmental Pesticide Control Act of 1972 required the Administrator of the EPA to ensure that the labeling and classification of pesticides works to protect farmers, farmworkers, and other persons coming in contact with pesticides or pesticide residues. In response, EPA issued a worker protection standard in 1974 that dealt with pesticide-related occupational safety and health of workers performing hand labor operations in fields during and after application of pesticides. EPA, after determining the 1974 standard did not adequately protect workers and pesticide handlers, issued a new Worker Protection Standard (WPS) in 1992 (3).<sup>11</sup> The Worker Protection Standard and the Certification of Pesticide Applicators Standard (CAS) restrict workers' exposures to pesticides.

### How the Law Applies to Agricultural Employment

The WPS has a much broader application than the older standard and applies to most employers as illustrated below. Covered employers include:

- Owners or managers of farms, forests, nurseries, or greenhouses where pesticides are used in the production of agricultural plants.

<sup>11</sup>The 1974 EPA standard contained four basic requirements: (1) workers are not to be sprayed with pesticides; (2) restricted entry intervals are specified for 12 pesticides, interim restricted entry intervals for certain pesticides, and general restricted entry intervals for all other pesticides prohibiting reentry into treated areas until sprays have dried, dusts have settled, and vapors have dispersed; (3) protective clothing is required for any worker entering a restricted area before the specific reentry period has expired; and (4) appropriate and timely warnings are required (9).

- Operators who hire or contract for services of agricultural workers to do tasks related to the production of agricultural plants on a farm, forest, nursery, or greenhouse.
- Operators of businesses in which the operator or employees apply pesticides used for the production of agricultural plants on any farm, forest, nursery, or greenhouse.
- Operators of businesses in which the operator or employees perform tasks as a crop advisor on any farm, forest, nursery, or greenhouse (25).

The WPS potentially affects the 170,173 vegetable and melon farms, fruit and tree nut farms, and farms that produce greenhouse, nursery, and floriculture products. However, 45,840 other farms had orchards and harvested vegetables for sale in 1997 (14). Thus, WPS could affect as many as 216,018 farms or about 11 percent of all farms.

Under provisions of WPS, covered employers are required to: Reduce overall exposure to pesticides by prohibiting handlers from exposing workers during pesticide application, excluding workers from areas being treated and areas under a restricted entry interval, and notifying workers about treated areas. Some activities are allowed during restricted entry intervals if workers are properly trained and protected:

- Mitigate exposures by requiring decontamination supplies to be present and emergency assistance available.
- Inform workers about pesticide hazards by requiring safety training (workers and handlers), safety posters, access to labeling information, and access to specific information (listing of treated areas on the establishment).

The general duties of the WPS tell employers what they must do to meet the above general requirements. Under the general duties, an agricultural employer or a pesticide handler-employer is required to:

- Assure that each worker and handler subject to the standard receives the required protections.
- Assure that any pesticide subject to the standard be used in a manner consistent with the labeling of the

pesticide, including the requirements in the standard.

- Provide sufficient information and directions to each person who supervises any worker or handler to assure that each worker or handler receives the required protection. The information and directions must specify which persons are responsible for actions required to comply with the standard.
- Require each person who supervises any worker or handler to assure compliance by the worker or handler with the provisions of this standard and to assure that the worker or handler receives the required protection (3).

Also, agricultural and handler employers are prohibited from taking any retaliatory actions against workers attempting to comply with this standard, and from taking any action that prevents or discourages any worker or handler from complying or attempting to comply with the WPS.

Table 4 summarizes WPS's provisions and how they apply to agricultural employment.<sup>12</sup>

## Definitions

The definitions and explanations presented here are limited to key terms to show the range of coverage of WPS. Readers seeking more detailed information should contact their State agency that regulates pesticides or their regional EPA office and consult *Title 40 Code of Federal Regulations, Part 170*, and *Title 7 United States Code*.

*Agricultural employer* means any person who hires or contracts for the services of workers, for any type of compensation, to perform activities related to the production of agricultural plants, or any person who is an owner of or is responsible for the management or condition of an agricultural establishment that uses such workers (3).

*Agricultural emergency* means a sudden occurrence or set of circumstances that the agricultural employer could not have anticipated and over which the agricultural employer has no control, requiring entry into a treated area when no alternative practices would prevent or mitigate a substantial economic loss (a loss

in profitability greater than that which is expected based on the experience and fluctuations of crop yields in previous years). The State, tribal, or Federal agency having jurisdiction must declare the existence of circumstances that could cause an agricultural emergency on that agricultural establishment (3).

*Agricultural establishment* means any farm, forest, nursery, or greenhouse (3).

*Agricultural plant* means any plant grown or maintained for commercial, research, or other purposes. Included in this definition are food, feed and fiber plants, trees, turfgrass, flowers, shrubs, ornamentals, and seedlings (3).

*Chemigation* means "the application of pesticides through irrigation systems" (3).

*Commercial pesticide handling establishment* means "any establishment, other than an agricultural establishment, that: (1) employs any person, including a self-employed person, to apply on an agricultural establishment, pesticides used in the production of agricultural plants; or (2) employs any person, including a self-employed person, to perform on an agricultural establishment, tasks as a crop advisor" (3).

*Crop advisor* means "any person who is assessing pest numbers or damage, pesticide distribution, or status or requirements of agricultural plants. The term does not include any person who is performing hand labor tasks" (3).

*Early entry* means "entry by a worker into a treated area on the agricultural establishment after a pesticide application is complete, but before any restricted-entry interval for the pesticide has expired" (3).

*Farm* means "any operation, other than a nursery or forest, engaged in the outdoor production of agricultural plants" (3).

*Forest* means "any operation engaged in the outdoor production of any agricultural plant to produce wood fiber or timber products" (3).

*Greenhouse* means "any operation engaged in the production of agricultural plants inside any structure or space that is enclosed with a nonporous covering and is of sufficient size to permit worker entry.

Polyhouses, mushroom houses, rhubarb houses, and similar structures are included, but not malls, atriums,

<sup>12</sup>For more details see (9).



**Table 4--Worker Protection Standard: Summary of applicability to agriculture and penalties for violations**

| Provisions  | Exemptions for agriculture | Basis for agricultural exemptions   | Enforcement  |
|---|----------------------------|---|--|
| <b>Labeling</b>   |                            |   |  |
| Requires everyone applying pesticides to obey instructions printed on the pesticide container's label.  | None                       | None  | U.S. Environmental Protection Agency.                              |
| <b>Worker</b>   |                            | <b>Penalties</b>  |  |
| 1. Only appropriately trained and equipped workers allowed in area during pesticide application.  | Partial                    | Limited to crop production. Owner or operator and immediate family exempted from some but not all provisions. | Both civil and criminal on a case-by-case basis for any violation. |
| 2. Workers may enter a treated area before the restricted entry interval (REI) has expired only if the worker will have no contact with pesticide residue, will not be performing hand labor, or is entering for a short term, emergency, or specifically excepted tasks. |                            |   |  |
| 3. Workers must be provided with protective equipment in proper working order.  |                            |   |  |
| 4. Workers must be notified of pesticide applications, treated areas must be posted, and/or oral warnings must be given to workers as directed by labeling.   |                            |   |  |
| 5. Workers must have received safety training during the past 5 years before being allowed to enter a treated area during an REI.   |                            |   |  |
| 6. Pesticide safety poster must be on display in a central location.  |                            |   |  |
| 7. Decontamination site must be provided and maintained if workers are required to enter treated area during REI and ensuing 30 days.   |                            |   |  |
| 8. Emergency assistance must be provided to any worker when there is reason to believe the worker was poisoned or injured by pesticides.  |                            |   |  |

Continued--

**Table 4--Worker Protection Standard: Summary of applicability to agriculture and penalties for violations--Continued**

| Provisions   | Exemptions for agriculture | Basis for agricultural exemptions       | Enforcement   |
|--|----------------------------|---|---|
| <b><i>Pesticide Handler</i></b>  |                            |   |   |
| <b><i>Protection Standard</i></b>  |                            |   |   |
| 1. Handler must provide information to handler employer prior to applying any pesticide.   | Partial                    | Owner or operator and immediate family. | <b><i>Penalties</i></b><br>Both civil and criminal on a case-by-case basis for any violation. |
| 2. Only appropriately trained and equipped handlers allowed in area being treated.   |                            |   |   |
| 3. Handler employee must have knowledge of label, safe use of equipment, and posted information before starting handling activity.       |                            |   |   |
| 4. Handler fumigating in a greenhouse must be in continuous voice or visual contact with another handler.                                |                            |   |   |
| 5. Handlers must use protective equipment specified on the label for use with the product.   |                            |   |   |
| 6. Handlers must be provided with a decontamination site.  |                            |   |   |
| 7. Emergency assistance must be provided to any worker when there is reason to believe the worker was poisoned or injured by pesticides. |                            |   |   |

Source: Compiled by ERS from 40 Code of Federal Regulations, and EPA's *The Federal Insecticide, Fungicide, and Rodenticide Act as Amended, 1988* and *The Worker Protection Standard for Agricultural Pesticides, How Soon Do You Need to Comply?* 1993.

conservatories, arboretums, or office buildings where agricultural plants are present primarily for aesthetic or climate modification” (3).

*Hand labor* “means any agricultural activity performed by hand or with hand tools that causes a worker to have substantial contact with surfaces (such as plants, plant parts, or soil) that may contain pesticide residues. Most hand labor activities, other than operating, moving or repairing irrigation or watering equipment, or scouting, are included” (3).

*Handler* means any person who for any type of compensation: (1) mixes, loads, transfers, applies, disposes of, or transports open containers of pesticides; (2) acts as a flagger; (3) cleans, adjusts, or repairs the parts of mixing, loading, or application equipment that may contain pesticide residues; (4) must enter an area being treated with pesticides to assist in the application of pesticides; (5) must enter a greenhouse or other enclosed area after the application of a fumigant, smoke, mist, fog, or aerosol product to operate ventilation equipment or to monitor air levels before the exposure level listed in the labeling or one of the ventilation criteria has been met; (6) must enter a treated area to move chemigation equipment (used to apply pesticides with irrigation water) before a restricted entry interval has expired; or (7) must enter a treated area outdoors after application of any soil fumigant to adjust or remove soil covers such as tarpaulins. The term does not include any person who is only handling pesticide containers that have been emptied or cleaned according to pesticide labeling instructions or, in the absence of such instructions, have been subject to triple-rinsing or its equivalent (3).

*Handler employer* means “any person who is self-employed as a handler or who employs any handler, for any type of compensation” (3).

*Immediate family* includes “only spouse, children, stepchildren, foster children, parents, step parents, foster parents, brothers, and sisters” (3).

*Nursery* means “any operation engaged in the outdoor production of any agricultural plant to produce cut flowers and ferns or plants that will be used in their entirety in another location. Such plants include, but are not limited to: flowering and foliage plants or trees; tree seedlings; live Christmas trees; vegetable, fruit, and ornamental transplants; and turfgrass produced for sod” (3).

*Owner* means “any person who has a present possessory interest (fee, leasehold, rental, or other) in an agricultural establishment covered by this part, unless that person has both leased such agricultural establishment to another person and granted that same person the right and full authority to manage and govern the use of such agricultural establishment” (3).

*Pesticide* means “(1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant...” (24).

*Restricted entry interval* means “the time after the end of a pesticide application during which entry into the treated area is restricted” (3).

*Treated area* means any area to which a pesticide is being directed or has been directed (3).

*Worker* means any person, including a self-employed person, who is employed for any type of compensation to perform activities relating to the production of agricultural plants on a farm or in a greenhouse, nursery, or forest. These activities include hand harvest tasks (weeding, planting, cultivating, and harvesting) and other tasks in the production of agricultural plants (such as operating or moving irrigation equipment). While workers are performing pesticide handling activities, they are considered to be handlers subject to the requirements for handlers in the WPS (3 and 25).

## Exceptions and Exemptions

In addition to the above definitions, the terms “exceptions” and “exemptions” require explanation. Unless specifically stated in the WPS as an exception or an exemption, the standard covers all pesticide use on a farm, greenhouse, nursery, or forest that produces agricultural plants.

*Exceptions to WPS* are for pesticide application on agricultural establishments in the following circumstances:

- For mosquito abatement, Mediterranean fruit fly eradication, or similar wide-area public pest control programs sponsored by governmental entities.
- On livestock or other animals, or in or about animal premises.

- On plants grown for other than commercial or research purposes, which may include plants in habitations, home fruit trees and vegetable gardens, and home greenhouses.
- On plants in ornamental gardens, parks, and private lawns and grounds intended only for aesthetic purposes or climatic modification.
- By injection directly into agricultural plants. Direct injection does not include “hack and squirt,” “frill and spray,” chemigation, soil incorporation, or soil injection.
- In a manner not directly related to the production of agricultural plants, including, but not limited to, structural pest control, control of vegetation along rights-of-way and in noncrop areas, and pastures and range use.
- For control of vertebrate pests.
- As attractants or repellents in traps.
- On the harvested portions of agricultural plants or on harvested timber.
- For research uses of unregistered pesticides (3).

Three specific exceptions have been added to the standard. These exceptions are for limited contact activities, irrigation activities, and for harvesting greenhouse-grown cut roses during the restricted entry interval (REI). The limited contact activities exception is for performing “limited contact tasks that could not have been foreseen and which, if delayed, would cause significant economic loss” (1). The irrigation activities exception is for performing “irrigation tasks that could not have been foreseen and which, if delayed, would cause significant economic loss” (1). Both of these exceptions have the following conditions for early entry activities:

- The worker’s contact with treated surfaces is minimal and is limited to the feet, lower legs, hands, and forearms;
- The pesticide product does not have a statement in the labeling requiring double notification;
- Personal protective equipment (PPE) for early entry is provided to the worker and must either conform with the label’s requirements or include at least coveralls, chemical-resistant gloves, socks,

chemical-resistant footwear, and eyewear (if eyewear is required by the product handling);

- No hand labor activity (such as hoeing, picking, pruning, etc.) is performed;
- The time in treated areas under an REI for any worker may not exceed 8 hours in a 24-hour period;
- The workers do not enter the area during the first 4 hours, nor until applicable ventilation criteria have been met, nor until any label-specified inhalation exposure level has been reached; and
- Before workers enter a treated area under an REI, the agricultural employer shall give them oral or written notification of the specifics of the exception to early entry in a language that the workers understand (1).

**Exemptions from specific** provisions of the WPS apply only to owners of agricultural establishments and crop advisors. Owners of agricultural establishments are exempt from the following provisions while they are performing tasks related to the production of agricultural plants on their own agricultural establishments:

- *Entry Restrictions Provision* (3, Section 170.112 ). Owners of agricultural establishments are not required to provide assurance to themselves and members of their immediate family that they have read or understood all labeling requirements related to human hazards and precautions before entering a restricted area. They are not required to provide and maintain personal protective equipment, or to wear personal protective equipment to perform early-entry activities. They are not required to provide decontamination sites. They do not have to prohibit members of their immediate family from wearing or taking home any clothing or personal protective equipment that have been contaminated with pesticides.
- *Notice of Application Provision* (3, Section 170.120). Owners of agricultural establishments are not required to give notice to themselves and members of their immediate family of any pesticide application.
- *Providing Specific Information About Applications Provision* (3, Section 170.122 ). Owners of

agricultural establishments are not required to display information to themselves and members of their immediate family about the location and description of the treated area, the product name, EPA registration number, and active ingredient(s) of the pesticide, time and date of the application, and the restricted-entry interval for the pesticide within 30 days of a pesticide application or during a REI.

- *Pesticide Safety Training Provision* (3, Section 170.130). Owners of agricultural establishments are not required to provide assurance to themselves and members of their immediate family that before they are allowed to enter a treated area during a REI, they have received safety training within the past 5 years.
- *Posted Pesticide Safety Information Provision* (3, Section 170.135). Owners of agricultural establishments are not required to display pesticide safety information when only themselves and members of their immediate family will be present within 30 days of pesticide application or the expiration of the REI.
- *Decontamination Provision* (3, Section 170.150). Owners of agricultural establishments are not required to provide decontamination supplies (see section 170.150 of 3) for themselves and members of their immediate family performing an activity in the area where a pesticide was applied within 30 days of the pesticide application.
- *Emergency Assistance Provision* (3, Section 170.160). Owners of agricultural establishments are not required to provide prompt transportation to an appropriate emergency medical facility, and provide to the injured person or medical personnel, promptly on request, any obtainable information described in the standard when there is reason to believe that an employee has been poisoned or injured by exposure to pesticides.

The owner of the agricultural establishment must provide all of these protections to other workers and other persons who are not members of his or her immediate family.

Certified or licensed crop advisors and persons under their direct supervision are exempt from WPS provisions except for the pesticide safety training required for handlers of pesticides. A person is under the direct supervision of a crop advisor when the crop

advisor exerts the supervisory controls stated in the standard. Direct supervision does not require that the crop advisor be physically present at all times, but he or she must be readily accessible to the employees at all times. The conditions for this exemption are as follows:

- The certification or licensing program requires pesticide safety training equivalent to that for handlers of pesticides.
- The exemption applies only when performing crop advisory tasks in the treated area.
- The crop advisor must make specific determinations regarding the appropriate PPE, appropriate decontamination supplies, and how to conduct the tasks safely. The crop advisor must convey this information to each person under his or her direct supervision in a language that the person understands.
- Before entering a treated area, the certified or licensed crop advisor must inform, through an established practice of communication, each person under his or her direct supervision of the pesticide product and active ingredient(s) applied, method of application, time of application, the REI, which tasks to undertake, and how to contact the crop advisor (1).

This exemption applies only after the pesticide application ends and while crop advisory tasks are being performed.

### **How the Certification of Pesticide Applicators Standard Applies to Agricultural Employment**

The EPA classifies pesticides for general and restricted use. The Certification of Pesticide Applicators Standard (CAS) requires an individual applying restricted-use pesticides to be certified by a certifying agency as competent and thus authorized to use or supervise the use of restricted-use pesticides. Certification programs are conducted by States, territories, and tribes, but must at least meet requirements established by EPA. The definitions listed above for the WPS, also apply to the CAS.

*Applicators* are classified as private and commercial. *Private applicators* use or supervise the use of any restricted-use pesticide for producing any agricultural commodity on property owned or rented by the applicators or their employer, or (if applied without

compensation other than trading of personal services between producers of agricultural commodities) on the property of another person (1). *Commercial applicators* use or supervise the use of any restricted-use pesticide for any purpose or on any property other than as provided by the definition of “private applicator” (1).

Standards for certification differ between private and commercial applicators. According to the standard for certification of private applicators:

- They must show a practical knowledge of pest problems and control practices associated with their agricultural operations; proper storage, use, handling, and disposal of pesticides and containers; and legal responsibility.
- The knowledge must include the ability to recognize common pests and the damage caused by them, read and understand labels and labeling, apply pesticides according to label instructions and warnings, recognize local environmental situations to be considered during application to avoid contamination, and recognize poisoning symptoms and procedures to follow in case of a pesticide accident.
- Competence will be determined by a written or oral testing procedure, or an equivalent system, approved as part of a State plan.

According to the standard for certification of commercial applicators:

- They must demonstrate practical knowledge of the principles and practices of pest control and the safe use of pesticides.
- Competence will be determined on the basis of a written exam and, as appropriate, performance testing in the areas of label and labeling comprehension, safety, environment, pests, pesticides, equipment, application techniques, and laws and regulations.
- Tests must also be given on a particular category of the certification. The pest control categories are agricultural (plants and animals), forest, ornamental and turf, seed treatment, aquatic, right of way, industrial, institutional, structural and health related, public health, regulatory, and demonstration and research (1).

All States, territories, and tribes must ensure a continuing level of competency for certified applicators. This involves training and recertification every 3 to 5 years.

## Enforcement

States have primary enforcement responsibility for pesticide-use violations if the Administrator of EPA determines the State: (1) has adopted adequate pesticide-use laws and regulations; (2) has adopted or is implementing adequate procedures for the enforcement of its laws and regulations; and (3) has kept records and made reports showing compliance with (1) and (2) above, as the Administrator may require by regulation (4).

The Administrator of EPA may also enter into cooperative agreements with States and Indian tribes to delegate the authority to cooperate in the enforcement of FIFRA (4). Violations of FIFRA, WPS, CAS, and other EPA regulations carry both civil and criminal penalties.

## Summary

The FIFRA plus the EPA regulations are comprehensive and apply to anyone who uses pesticides. They require any person applying restricted pesticides to become a certified applicator. According to the WPS, farm employers must warn employees of any danger of pesticide exposure and not require their employees to work in areas where they might be sprayed with pesticides or come in contact with them before the reentry period has expired. Farm employers using pesticides or having them applied need to remember that there are no exemptions to WPS.

WPS covers more agricultural employers than most other laws and regulations that affect agricultural employment (2). Although many of the laws and regulations affecting agricultural employment discussed in the report exempt farming enterprises that employ small numbers of hired farmworkers, the WPS has no exemptions based on the number of employees.

According to the CAS, an individual applying restricted-use pesticides must be certified by a certifying agency as competent and thus authorized to use or supervise the use of restricted-use pesticides. Certification programs are conducted by States,

territories, and tribes, but must at least meet requirements established by EPA.

Farm operators and employers and pesticide applicators should remember that many States have pesticide safety laws and regulations that are more

restrictive than Federal laws and regulations. Familiarity with pesticide safety in States where they operate is absolutely necessary for agricultural employers and highly recommended for operators who are nonemployers and risk exposure to pesticides.

## Migrant and Seasonal Agricultural Worker Protection Act of 1983

The Migrant and Seasonal Agricultural Worker Protection Act (MSPA), enacted in 1983, was designed to provide migrant and seasonal farmworkers with protections concerning transportation, housing, pay, working conditions, and work-related conditions. The act also requires farm labor contractors to register with the U.S. Department of Labor and assures necessary protections for farmworkers. The act exempts farm operators (not farm labor contractors) from the migrant and seasonal worker protection provisions if they qualify for the 500-man-days exemption under the Fair Labor Standards Act (FLSA).

Two rules changing and clarifying MSPA were published in 1996 and 1997. The 1996 rule, a result of statutory amendments to MSPA, changed MSPA regulations regarding disclosure of workers' compensation information and reconsideration of the MSPA-required transportation liability insurance. The 1997 rule, amended the definition of "employ" under MSPA to include a definition of "independent contractor" and to clarify the definition of "joint employment."

### Requirements

The law contains several requirements for agricultural employers. First, farm labor contractors and each of their employees who will be performing farm labor contracting activities must obtain a certificate of registration from the U.S. Department of Labor before they can undertake farm labor contractor activities. Farm labor contractors who furnish transportation and housing must also:

- Furnish proof to the U.S. Department of Labor that their transportation vehicles meet safety requirements,
- Furnish proof to the U.S. Department of Labor that their transportation vehicles are insured for the amounts specified in the statute and regulations (\$100,000 per seat with a \$5 million cap for each vehicle); workers' compensation insurance may be used to meet all or part of the insurance requirements, and
- Identify the housing that will be used and show that it meets State and Federal safety and health standards and is approved for occupancy.

Second, farm labor contractors, agricultural employers, and agricultural associations must provide written

information to their workers on wages, hours, State workers' compensation (if applicable), other working conditions, and housing when they recruit.

Third, farm labor contractors, agricultural employers, and agricultural associations must make and preserve written payroll records. They must also provide each employee with a written statement of earnings, deductions (plus reasons for deductions), and net pay.

Finally, agricultural employers and associations, to the extent they own or control migrant housing or use or cause to be used a vehicle for the transportation of agricultural workers, are responsible, individually or jointly with a farm labor contractor, for compliance with the MSPA standards.

Table 5 summarizes MSPA provisions and penalties for violations.

### Definitions

The following definitions are limited to key terms to show the law's range of coverage. Readers seeking more detailed information should contact the nearest office of the Wage and Hour Division, U.S.

Department of Labor, and consult *29 Code of Federal Regulations* and *Title 29, United States Code*.

*A farm labor contractor* is a person (other than an agricultural employer, an agricultural association, or an employee of an agricultural employer or agricultural association) who receives a fee or other valuable consideration for performing farm labor contracting activities.

*Farm labor contracting activity* consists of "recruiting, soliciting, hiring, employing, furnishing, or transporting of any migrant or seasonal agricultural worker" (2).

*A migrant agricultural worker* is a person employed in agricultural work of a seasonal or other temporary nature who is required to be absent overnight from his or her permanent place of residence. Exceptions are immediate family members of an agricultural employer or a farm labor contractor, and temporary H-2A foreign workers.<sup>13</sup>

<sup>13</sup>H-2A temporary foreign workers are nonimmigrant aliens authorized to work in agricultural employment in the United States for a specified time period, normally less than 1 year.



**Table 5--Migrant and Seasonal Agricultural Worker Protection Act of 1983: Summary of applicability to agriculture and penalties for violations**

| Provisions   | Exemptions for agriculture | Basis for agricultural exemptions   | Enforcement  |
|--|----------------------------|---|--|
| <p><b><i>Farm labor contractor registration</i></b><br/>           Farm labor contractors and each of their employees who will perform farm labor contractor activities must obtain a certificate of registration from the U.S. Department of Labor before they can start farm labor contractor activities.</p>  | Total                      | <ol style="list-style-type: none"> <li>1. Agricultural employers and associations or their employees.</li> <li>2. Farm labor contractors who work within a 25-mile intrastate radius of their permanent residence for less than 13 weeks per year.</li> <li>3. Custom combine, hay-harvesting, or sheep-shearing operations.</li> <li>4. Seed production operations.</li> <li>5. Custom poultry operations.</li> <li>6. Common carriers.</li> <li>7. Labor organizations.</li> <li>8. Nonprofit charitable or educational institutions.</li> <li>9. Persons hiring or recruiting students or other nonagricultural employees for employment in seed production or in stringing and harvesting shade-grown tobacco.</li> </ol> | <p><b><i>Responsible agency</i></b><br/>           Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.</p> <p><b><i>Penalties</i></b><br/>           1. Criminal sanctions.<br/>           a. For first violation: not more than \$1,000 fine and sentenced to prison for not more than 1 year.<br/>           b. For subsequent violations: not more than \$10,000 fine and/or sentenced to prison for not more than 3 years.<br/>           2. For each violation: civil fine up to \$1,000.<br/>           3. Administrative sanctions (revocation or denial of farm labor contracting certificate).</p> |
| <p><b><i>Migrant and seasonal agricultural workers protection</i></b><br/>           Farm labor contractors, agricultural employers, agricultural associations must provide migrant and seasonal agricultural workers with information on wages, hours, and other working conditions. In the case of housing, housing providers must provide migrant and seasonal workers with information on housing.</p> | Partial                    | <ol style="list-style-type: none"> <li>1. Individuals or immediate family members who engage in farm labor contracting activities on behalf of their exclusively owned or operated operation.</li> <li>2. Any person, except a farm labor contractor (for example, a farm operator), who qualifies for the 500-man-days exemption under the Fair Labor Standards Act. Also, all those listed for the farm labor contractor registration, except number 1.</li> </ol>  |  |

Source: Compiled by USDA, ERS from 29 Code of Federal Regulations and Title 29 United States Code.

A *seasonal agricultural worker* is a person employed in agricultural work of a seasonal or other temporary nature who is not required to be absent overnight from his or her permanent place of residence. Such a worker is covered by MSPA when the worker is performing fieldwork, or when the worker is employed in a packing, processing, or similar operation and is transported by day haul. The same exceptions listed above for migrant agricultural workers apply here.

A *day-haul operation* is "the assembly of workers at a pick-up point waiting to be hired and employed, transportation of such workers to agricultural

employment, and the return of such workers to a drop-off point on the same day" (2).

*Agricultural employment* is any service or activity defined as agricultural employment under section 3(f) of the FLSA or section 3121(g) of the Internal Revenue Code of 1954. In addition, the handling, planting, drying, packing, packaging, processing, freezing, and grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state are also considered agricultural employment.

*Fieldwork* is work related to planting, cultivating, or harvesting operations (which occurs in the field rather than in a processing plant or packing shed).

*Fieldworkers* are employees who plant, cultivate, and harvest agricultural products and include workers in nursery and mushroom-growing operations.

An *agricultural employer* is a “person who owns or operates a farm, ranch, processing establishment, cannery, gin, packing shed or nursery, or who produces or conditions seed, and who either recruits, solicits, hires, employs, furnishes, or transports any migrant or seasonal agricultural worker” (2).

An *agricultural association* is a “nonprofit or cooperative association of farmers, growers, or ranchers, incorporated or qualified under applicable State law which recruits, solicits, hires, employs, furnishes, or transports any migrant or seasonal agricultural worker” (2).

The *immediate family of an employer* consists of “spouse, children, stepchildren, and foster children; parents, stepparents, and foster parents; and brothers and sisters” (2).

An *illegal alien* is “any person who is not lawfully admitted for permanent residence in the United States or who has not been authorized by the Attorney General to accept employment in the United States” (2).

The definition of *employ under MSPA* is the same as under FLSA and may include consideration of whether an independent contractor or employment relationship exists under the FLSA.

*Joint employment* means a condition in which a single individual is an employee of two or more persons at the same time.

### **Determining Joint Employment**

The rule published in 1997 amended the definition of “employ” under MSPA to include a definition of “independent contractor” and to clarify the definition of “joint employment.” When a farm labor contractor is engaged by an agricultural employer or association, a determination must be made regarding the relationship of the contractor and his or her employees to the person or association. The factors determining whether the farm labor contractor is an independent contractor are as follows:

- The nature and degree of the employer’s control over the manner in which the work is performed;
- The employee’s opportunity for profit or loss depending upon his or her managerial skill;
- The employee’s investment in equipment or materials required for the task, or the employee’s employment of other workers;
- Whether the services rendered by the employee require special skills;
- The degree of permanency and duration of the working relationship; and
- The extent to which the services rendered by the employee are an integral part of the employer’s business.

If it is determined that a farm labor contractor is a bona fide independent contractor, then it must be determined whether the employees of the farm labor contractor are also jointly employed by the agricultural employer or association. The factors to determine whether an employment relationship exists between the agricultural employer or association and the agricultural worker are as follows:

- Whether the agricultural employer or association has the power, either alone or through control of the farm labor contractor to direct, control, or supervise the worker or work performed (such control may be either direct or indirect, taking into account the nature of the work performed and a reasonable degree of contract performance oversight and coordination with third parties);
- Whether the agricultural employer or association has the power, either alone or in addition to another employer, directly or indirectly, to hire or fire, modify the employment conditions, or determine the pay rates or the methods of wage payment for the worker;
- The degree of permanency and duration of the relationship of the parties in the context of the agricultural activity at issue;
- The extent to which the services rendered by the worker are repetitive, rote tasks requiring skills acquired with relatively little training;

- Whether the activities performed by the worker are an integral part of the overall business operation of the agricultural employer or association;
- Whether the work is performed on the agricultural employer's or association's premises, rather than on premises owned or controlled by another business entity; and
- Whether the agricultural employer or association undertakes responsibilities in relation to the worker commonly performed by employers, such as preparing and making payroll records, preparing and issuing paychecks, paying FICA taxes, providing workers' compensation insurance, providing field sanitation facilities, housing or transportation, or providing tools and equipment or materials required for the job (taking into account the amount of the investment).

### **Fulfilling the Requirements of Conditions of Employment**

A major requirement of employers and contractors under MSPA is to provide workers with a statement of the conditions of their employment. This law requires that each farm labor contractor, agricultural employer, and agricultural association that recruits any migrant or day-haul worker must provide the following information in writing to each worker, unless sufficient justification exists to excuse noncompliance (2):

- Place of employment;
- Wages to be paid;
- Crops and kinds of activities in which the worker is to be employed;
- Period of employment;
- Transportation, housing, and any other employee benefits to be provided, and any costs to be charged to workers;
- The name of the workers' compensation carrier (if workers' compensation is provided), the name of the policy holder of such insurance, the name and telephone number of the person who must be notified of an injury or death, and the time period within which such notice must be given. (The notice can be in writing or as 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 the photocopied notices contain all required information.);
- Existence of any strike, work stoppage, slowdown, or interruption of operations by employees at the place of employment; and
- Whether the farm labor contractor, the agricultural employer, or the agricultural association is paid a commission or receives a benefit for items that may be sold to workers while employed.

This same information must be provided in writing to any seasonal worker who requests it. The information must be provided in the language in which the farmworker is fluent or literate.

Each farm labor contractor, agricultural employer, and agricultural association that employs any migrant or seasonal worker (including day-haul workers) must make the following records for each employee and preserve them for 3 years:

- Basis on which wages are paid;
- Number of piecework units earned, if paid on a piecework basis;
- Number of hours worked;
- Total earnings per pay period; and
- Specific sums withheld and the purpose of each sum withheld, and net pay.

Workers must be paid every 2 weeks or twice a month. Each employee must be provided with an itemized written statement showing the name and address of the employer and the information listed above for each pay period. The information furnished to employees must be in a language common to the workers.

Farm labor contractors must also furnish wage records to each agricultural employer and agricultural association for which the contractor provides workers. The agricultural employers and agricultural associations who receive these records are required to keep them for 3 years from the end of the employment period.

### **Enforcement**

The Administrator of the Wage and Hour Division of the U.S. Department of Labor or a designated representative may enter a facility and inspect the employment conditions, practices, and employment records, and may conduct any investigation deemed necessary to determine if any violations of MSPA have occurred. In addition to Wage and Hour inspections, if a compliance officer of the Occupational Safety and

Health Administration conducting investigations is presented with information concerning noncompliance with MSPA, this information will be referred to the Wage and Hour Division.

Violations of MSPA carry criminal and civil penalties and administrative sanctions. MSPA also permits persons whose rights have been violated under MSPA to bring legal action against alleged violators.

### **Sanctions**

Under the criminal sanctions, anyone knowingly and willfully violating MSPA or its regulations may be fined not more than \$1,000 or sentenced to prison for not more than 1 year, or both, for first violations. Subsequent violations carry a fine of not more than \$10,000 or a prison sentence of not more than 3 years, or both (2). An unregistered farm labor contractor who employs an illegal alien may be fined not more than \$10,000 or sentenced to prison for not more than 3 years, or both.

Under civil sanctions, any person who commits a violation of MSPA or any regulations under it may be assessed a civil money penalty of not more than \$1,000 for each violation (13). A violator may also be subject to civil injunctive action as well as legal action to recover unpaid wages.

Under administrative sanctions, farm labor contractors who violate MSPA or any of its regulations may be subject to having their current certificate revoked or future applications for certificates denied. These sanctions also include the denial of facilities and services authorized by the Wagner-Peyser Act (established the U.S. Employment Service) (2).

### **Private Right of Action**

A unique feature of MSPA is that it permits anyone aggrieved by a violation of any provision by a farm labor contractor, agricultural employer, agricultural association, or other person to file suit in any Federal District Court having jurisdiction over the parties (11). The suits may be filed regardless of the amount in controversy, the citizenship of the parties, and whether all administrative remedies available under the act have been exhausted. The court may appoint an

attorney for the complainant. Finally, the court may award up to \$10,000 for each plaintiff for each violation, or other equitable relief when violations are intentional.

### **Summary**

The MSPA is the major Federal law that deals exclusively with agricultural employment. It was enacted to protect migrant and seasonal farmworkers on matters of pay and working and work-related conditions, to require farm labor contractors to register with the U.S. Department of Labor, and to assure necessary protections for farmworkers.

The major requirements of MSPA are: (1) farm labor contractors and each of their employees who will be performing farm labor contractor activities must obtain a certificate of registration from the U.S. Department of Labor before they can undertake farm labor contractor activities; (2) farm labor contractors, agricultural employers, and agricultural associations must disclose to migrant and seasonal agricultural workers information about wages, hours, workers' compensation (when available), and other working conditions, and about housing when provided; (3) workers must be provided with written statements of earnings and deductions; (4) if transportation is provided, vehicles used must be safe and properly insured; and (5) if housing is provided, it must meet health and safety standards.

The law requires people who use the services of a farm labor contractor to take reasonable steps to determine that the contractor has a valid certificate of registration. This information can be verified by calling the U.S. Department of Labor's toll-free number (1-800-800-0235). The law designates criminal and civil penalties and administrative sanctions against violators.

The amended "joint employment" regulation, by focusing more closely on tests established by the Federal courts and by clarifying certain concepts, has been strengthened. Therefore, agricultural employers and associations using the services of farm labor contractors should become familiar with the provisions of MSPA and other labor laws.