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**Friday
January 31, 1992**

Part VII

Department of Labor

**Employment Standards Administration,
Wage and Hour Division**

29 CFR Part 500

**Employment Standards Administration;
Migrant and Seasonal Agricultural Worker
Protection Act; Final Rule**

DEPARTMENT OF LABOR

Employment Standards
Administration, Wage and Hour
Division

29 CFR Part 500

Employment Standards
Administration; Migrant and Seasonal
Agricultural Worker Protection Act

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

ACTION: Final rule.

SUMMARY: The U.S. Department of Labor is effecting a regulatory change that requires increased amounts of vehicle liability insurance as mandated by the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), 29 U.S.C. 1841(b)(1)(C). The Act and the pertinent regulation, 29 CFR 500.121(b), require that the vehicle liability insurance carried by covered employers engaged in transporting migrant and seasonal farmworkers be no less than the amount established by the Interstate Commerce Commission (ICC) for carriers which transport passengers. The ICC, in accordance with the requirements established by the Department of Transportation, increased the amount of vehicle liability insurance coverage required for passenger common carriers (49 FR 1991, Jan. 17, 1984) effective November 19, 1985. The MSPA vehicle liability coverage insurance requirement, therefore, must also increase by operation of law. The MSPA regulation is modified so the new, higher insurance requirements will be enforced effective February 1, 1992.

EFFECTIVE DATE: These final regulations will become effective February 1, 1992.

FOR FURTHER INFORMATION CONTACT: Solomon Sugarman, Chief, Branch of Farm Labor Programs, Division of Farm Labor, Child Labor, and Polygraph Standards, Office of Program Operations, Wage and Hour Division, Employment Standards Administration; Telephone (202) 523-7605. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department issued a Notice (56 FR 64216, December 8, 1991) of its intent to conform the vehicle liability insurance coverage provisions of these regulations to the amounts established for passenger common carriers by the Interstate Commerce Commission (ICC) effective November 19, 1985, and enforce the higher insurance requirements effective February 1, 1992. The notice requested comments on how the increased liability insurance

coverage required for the transportation of agricultural workers will affect their transportation and employment. The notice also stated that the insurance increases are required by law. While the public's views on the potential impact of the regulatory change would not provide a basis for not implementing the change required by operation of law, the Department nevertheless requested public input to more fully understand the impact on the regulated community. While several comments opposing the regulatory change have been received, the change, as indicated above, is necessitated by operation of law. Thus, the comments can not be addressed in this rulemaking.

I. Paperwork Reduction Act

This regulation does not contain any new information collection requirements and does not modify any existing requirements. Thus, the regulation is not subject to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3504(h).

II. Background

Pursuant to section 401(b)(3) of MSPA (29 U.S.C. 1841(b)(3)), farm labor contractors, agricultural employers, and associations which transport migrant and seasonal agricultural workers are required to maintain certain minimum levels of insurance coverage sufficient to satisfy liability for personal injury and damage to property, unless the worker(s) being transported are covered by workers' compensation insurance or a liability bond that has been approved by the Secretary of Labor. Section 401(b)(3) of MSPA provides that the required level of vehicle liability insurance coverage shall be at least the amount required for common carriers of passengers under part II of the Interstate Commerce Act (49 U.S.C. 301 *et seq.*), and any successor provision of subtitle IV of title 49 United States Code, and regulations prescribed thereunder. This MSPA statutory directive was implemented in the Department of Labor regulation promulgated in 1983 after the enactment of MSPA (29 CFR 500.121(b)). That regulation sets forth the ICC and Department of Transportation (DOT) insurance requirement in effect at the time that the MSPA regulation was originally promulgated.

The insurance requirements under the Interstate Commerce Act were increased through rulemaking by the ICC on January 17, 1984, effective on November 19, 1985. The revised ICC regulation (49 CFR 1043.2(b)(1)(ii)) prescribes minimum vehicle liability insurance coverage requirements for

various classes of passenger carriers based on motor vehicle seating capacity:

15 or fewer passengers	More than 15 passengers
\$1,500,000	\$5,000,000

The current ICC regulation sets a combined minimum coverage requirement for personal injury and property damage, rather than prescribing separate minimum requirements for each of these insurance categories, as was done in the previous DOT regulation incorporated into the MSPA regulation in 1983. The Department recognizes that the revised insurance coverage minimums apply by operation of law under MSPA and, therefore, must be incorporated into the MSPA regulations. The Department also recognizes that a reasonable transition period is necessary to allow affected members of the public to respond to the change. Therefore, on December 9, 1991, the Department issued a Notice (56 FR 64216) of its intent to conform the MSPA regulations and enforce the above-listed higher vehicle liability insurance coverage requirements, effective February 1, 1992.

Executive Order 12291

The changes made in this rulemaking are necessitated by operation of law (29 U.S.C. 1841(b)(3)). Of approximately 12,000 current MSPA registrants (including 2,100 full-time farm labor contractor employees who are not subject to these insurance requirements), fewer than 1,000 (943) farm labor contractors obtained transportation authorization and were subject to these insurance requirements. Growers and associations may also be subject to insurance requirements but the number of such potentially affected growers and associations, who are not required to register under MSPA, is unknown. Moreover, an unknown portion of the MSPA-regulated community is independently subject to the same vehicle liability insurance coverage requirements under the Interstate Commerce Act. Thus, this regulation is not considered a major rule under Executive Order 12291, because this rule will not independently result in (1) an annual effect in the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the

ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Analysis

While the Department has invited input from the public on the potential effects of implementing the increases in the liability insurance coverage required under MSPA, no notice of proposed rulemaking was required for this rule under 5 U.S.C. 553(b). Therefore, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) pertaining to regulatory flexibility analyses do not apply to this rule. See 5 U.S.C. 601(2).

Administrative Procedure Act

On December 9, 1991 (56 FR 64216), notice was published in the *Federal Register*, announcing that the new vehicle liability insurance levels set forth herein would be enforced as of February 1, 1992. These levels were established by Interstate Commerce Commission regulations effective November 19, 1985, and, pursuant to the statutory provisions of MSPA, are, as a matter of law, required to be implemented under MSPA. Because of the statutory requirements, and to avoid undue confusion caused by changing the date previously announced, good cause is found to waive the normal requirement for publication not less than 30 days before the effective date of the rule.

Document Preparation

This document was prepared under the direction and control of John R. Fraser, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 500

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

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

Signed at Washington, DC, on this 29th day of January 1992.

Lynn Martin,
Secretary of Labor.

Carl M. Dominguez,
Assistant Secretary for Employment Standards.

John R. Fraser,
Acting Administrator, Wage and Hour Division.

PART 500—MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION

1. The authority citation for Part 500 continues to read as follows:

Authority: Pub. L. 97-470, 98 Stat. 2583 (29 U.S.C. 1801-1872), Secretary's Order No. 6-84, 49 FR 32473; Sec. 210A(f), Pub. L. 99-603, 100 Stat. 3359 (8 U.S.C. 1161(f)).

2. Paragraphs (a) and (b) of § 500.121 are revised to read as follows:

§ 500.121 Coverage and level of insurance required.

(a) Except to the extent that a liability bond pursuant to § 500.124 of this part has been approved by the Secretary, or

that workers' compensation insurance is applicable as provided in § 500.122, a farm labor contractor, agricultural employer or agricultural association shall, in order to meet the insurance requirements in § 500.120, obtain a policy of vehicle liability insurance. As required by section 401(b)(3) of MSPA, 29 U.S.C. 1841(b)(3), the level of insurance shall be at least the amount required for common carriers of passengers under Part II of the Interstate Commerce Act (49 U.S.C. 301 *et seq.*), and any successor provision of subtitle IV of title 49, United States Code, and regulations prescribed thereunder.

(b) The amounts of vehicle liability insurance required by the Secretary are those set forth in Interstate Commerce Commission (ICC) regulations, 49 CFR 1043.2(b)(1)(ii) for passenger carriers, which provisions are incorporated in this part. Users of these regulations are cautioned to research in the *Federal Register* and the Code of Federal Regulations whether amendments to 49 CFR 1043.2(b)(1)(ii), have been promulgated by the ICC. The amounts of vehicle liability insurance set forth below are those that existed as of January 31, 1992 and are provided for information purposes only:

Insurance Required for Passenger Equipment

	15 or fewer passengers	More than 15 passengers
\$1,500,000		\$5,000,000

(Source: 49 CFR 1043.2(b)(1)(ii)—1985)

Note: The ICC regulation listed above sets a combined minimum coverage requirement for personal injury and property damage.

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