



May 26, 2015

Attn: Mary Ziegler  
Director, Division of Regulations, Legislation, and Interpretation,  
Wage and Hour Division,  
U.S. Department of Labor, Room S-3502  
200 Constitution Avenue NW.  
Washington, DC 20210D

Re: 80 FR 15822 (March 25, 2015)  
Document Number: 2015-06758

SUBMITTED VIA EMAIL: [WHDPRAComments@dol.gov](mailto:WHDPRAComments@dol.gov).

Dear Ms. Ziegler:

Farmworker Justice is a national, non-profit advocacy and education organization that works to improve working and living conditions for migrant and seasonal farmworkers and their families. Since its founding 30 years ago, Farmworker Justice has advocated for farmworkers in matters that affect their immigration status, working conditions, health occupational safety and access to justice. Farmworker Justice submits these comments in response to the request of the U.S. Department of Labor ("DOL") for comments on the following proposed forms: WH-514, WH-514a, WH-515, and WH-530.

We are writing to weigh in specifically on the issue of workers' compensation coverage in lieu of vehicle insurance. Item 10 of form WH-530 seeks evidence of compliance with the insurance or financial responsibility requirements of the Migrant and Seasonal Agricultural Worker Protection Act and the regulations issued thereunder. The instructions specifically note that "[i]f worker's compensation coverage is provided in lieu of vehicle insurance, submit proof of a worker's compensation coverage policy of insurance plus a \$50,000 property damage policy or a Farm Labor Contractor Motor Vehicle Liability Certificate of Insurance showing that workers are covered by liability insurance while being transported."

When Congress enacted the AWPAs, it recognized the need to provide migrant and seasonal agricultural workers with certain basic protections against unsafe transportation. Sadly, the transportation safety measures implemented under the AWPAs to date have not prevented farmworkers from continuing to suffer one of the highest highway fatality rates of any occupation outside of the trucking and transportation industries. While particularly horrific fatalities have produced sporadic calls for governmental action, the dangers of the highway continue unabated for farmworkers. Short of comprehensive legislative overhaul, administrative changes could significantly improve safety on the road for farmworkers as well as workers' medical treatment and compensation when injuries occur. We believe the Department must tighten its administration of existing rules allowing employers to substitute workers' compensation insurance for liability.



### **Transportation Authorization for a Contractor Based on an Employer's Workers' Compensation Coverage Must be Limited to Transportation Only for the Employer that has the Coverage**

One major weakness with the AWPAs' transportation protections is that the law allows employers to provide workers' compensation insurance in place of liability insurance on the vehicle. A problem arises when an FLC uses one employer's workers' compensation coverage to meet the AWPAs' registration requirements—and then moves on to another employer who does not have workers' compensation coverage for its workers. The DOL's registry of licensed contractors will still show that the FLC is authorized to transport workers, even though in reality the FLC no longer has any coverage for accidents. The next employer who checks the FLC certificate sees that the contractor is authorized to transport workers, thereby seemingly satisfying its obligation only to employ properly-authorized FLCs. It would be a simple matter to correct this problem. To the extent that a farm labor contractor is issued a transportation authorization certification based on workers' compensation insurance provided by an employer, the certificate should clearly state that the transportation authorization is limited to such times as the contractor is actually working for that particular employer.

### **Transportation Authorization Based on Workers' Compensation Coverage Must be Limited to Transportation within the Scope of Such Coverage**

In addition to the above problem, workers' compensation policies vary from state to state, and some states' policies do not cover workers being transported to and from work.<sup>1</sup> And most states' policies do not cover transportation to the grocery store or laundromat,<sup>2</sup> necessities for most migrant farmworkers who live in isolated areas.<sup>3</sup> The Department's treatment of workers' compensation as a substitute for liability insurance generally assumes that both sets of coverage are comparable. This assumption is incorrect. Accordingly, when the Department issues a transportation authorization certification based on workers' compensation insurance, the certificate should clearly state that the transportation authorization is limited to transportation within the scope of workers' compensation coverage pursuant to 29 U.S.C. § 1841(c)(2) and 29 C.F.R. § 500.122(a)(2). The Department should also communicate to employers and labor contractors their obligation to obtain insurance coverage for transportation that is not covered by workers' compensation.

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<sup>1</sup> See, e.g., *Tew v. E.B. Davis Elec. Co.*, 541 S.E.2d 764, 766, 142 N.C. App. 120 (N.C. Ct. App. 2001).

<sup>2</sup> See, e.g., Fla. Stat. 440.092(4).

<sup>3</sup> See *Marshall v. Buntings' Nurseries of Selbyville, Inc.*, 459 F. Supp. 92, 97 (D. Md. 1978); *Soto v. Mclean*, 20 F. Supp. 2d 901, 910 (E.D.N.C. 1998).



We believe the revision of these forms provides an opportunity to make these meaningful clarifications.

Thank you for the opportunity to comment on these forms.

Sincerely,

A handwritten signature in black ink, appearing to read "Ali Beydoun". The signature is fluid and cursive, with a large loop at the end.

Ali Beydoun  
Director of Litigation

Adrienne Dervartanian  
Director of Immigration and Labor Rights