WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

Fact Sheet #50: Transportation under the Migrant and Seasonal Agricultural Worker Protection Act

Revised June 2016

The Migrant and Seasonal Agricultural Worker Protection Act (MSPA), administered by the Wage and Hour Division (WHD) of the U.S. Department of Labor (DOL), protects migrant and seasonal agricultural workers by establishing employment standards related to wages, housing, transportation, disclosures and recordkeeping and farm labor contractor registration requirements. This Fact Sheet provides information concerning the transportation requirements of MSPA. Additional information about the other MSPA requirements can be found in WHD Fact Sheet # 49.

MSPA Transportation Safety Standards

Under Section 401 of the MSPA,any non-exempt person who uses, or causes to be used, a vehicle to transport migrant or seasonal agricultural workers must comply with the applicable vehicle safety standards contained in the regulations and with all other applicable Federal and State safety standards. This language encompasses the use of seat belts where already required under Federal or State law. Under MSPA, vehicles must comply with either the DOL standards at 29 CFR § 500.104 or the Department of Transportation (DOT) standards incorporated at 29 CFR § 500.105. Which standard applies depends on the type of vehicle and how the vehicle is to be used, as summarized in the chart below. The chart is an aid and is not a substitute for the regulatory language. Definitions of the terms follow the chart.

TYPE OF USE and SAFETY STANDARD

Type of Vehicle	75 miles or less*	More than 75 miles or Day Haul
Passenger automobile	500.104	500.104
Station Wagon	500.104	500.104
Bus	500.104	500.105
Truck/Truck Tractor/Semi-trailer	500.104	500.105
Low Speed Vehicle	500.104	500.105

VAN

	75 miles or less*	More than 75 miles or Day Haul
10 or fewer passengers	500.104	500.104
More than 10 passengers	500.104	500.105
"Windowless" cargo van	500.104	500.105**

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Pick-up Truck

	75 miles or less*	More than 75 miles or Day Haul
Workers riding in cab	500.104	500.104
Workers riding in truck bed	500.104	500.105

Multipurpose Passenger Vehicle

	75 miles or less*	More than 75 miles or Day Haul
Not meeting truck features	500.104	500.104
Meeting truck features	500.104	500.105

*The mile limitation applies to the entire trip. One trip may have numerous intermediate stops and normally ends when the vehicle returns to its starting point.

**Vans without windows or means to assure ventilation are not permitted.

WHD will use the following descriptions of vehicle types when enforcing the motor vehicle safety standards in the MSPA regulations. This information is largely based on DOT regulations and guidance.

- ***Passenger automobile***
  a motor vehicle with motive power designed for carrying 10 persons or less (except a low-speed vehicle, a multipurpose passenger vehicle, a truck, a motorcycle, or a trailer). This includes a vehicle designated by the manufacturer as a station wagon.
- ***Bus***
  a motor vehicle with motive power, except a trailer, designed for carrying more than 10 persons.
- ***Multipurpose passenger vehicle***
  a motor vehicle with motive power, except a low-speed vehicle or trailer, designed to carry 10 persons or less which is constructed either on a truck chassis or with special features for occasional off-road operation (e.g. SUV). For MSPA enforcement purposes, a multipurpose passenger vehicle will be treated as a *passenger automobile* with the exception of those that meet the criteria of a *truck* (see below).
- ***Pickup truck***
  a *truck* (see below) whether extended cab, crew cab, etc. When transporting passengers *only* within the cab they will be treated as a *station wagon* as allowed in 29 CFR § 500.102(f).
- ***Truck***
  motor vehicle with motive power, except a trailer, designed primarily for the transportation of property or special purpose equipment. This includes a *light truck*, which is an automobile (other than a passenger automobile) that meets the characteristics in either a) or b) below:

a) Designed to perform at least one of the following functions:

- Transport more than 10 persons;
- Provide temporary living quarters;
- Transport property on an open bed;
- Provide greater cargo-carrying than passenger-carrying volume; or
- Permit expanded use of the automobile for cargo-carrying purposes or other nonpassenger-carrying purposes through the removal of seats by means installed for that purpose by the automobile's manufacturer or with simple tools, such as screwdrivers and wrenches, so as to create a flat, floor level surface extending from the forward most point of installation of those seats to the rear of the automobile's interior.

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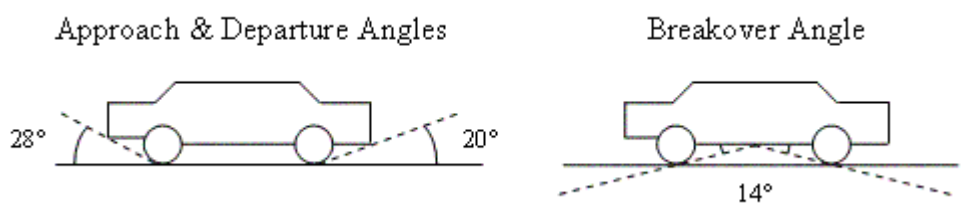
b) Designed for off-highway operation:

§ (i) That has 4-wheel drive; or
(ii) Is rated at more than 6,000 pounds gross vehicle weight; and

§ That has at least four of the following characteristics calculated when the automobile is at curb weight, on a level surface, with the front wheels parallel to the automobile's longitudinal centerline, and the tires inflated to the manufacturer's recommended pressure:

(i) Approach angle of not less than 28 degrees (see diagram below);
(ii) Breakover angle of not less than 14 degrees (see diagram below);
(iii) Departure angle of not less than 20 degrees (see diagram below);
(iv) Running clearance of not less than 20 centimeters;
(v) Front and rear axle clearances of not less than 18 centimeters each. (See 49 CFR §523.2 for further details.)



A *light truck* designed to transport more than 10 passengers that meets all the passenger compartment requirements in 29 CFR § 500.105(b)(3)(vi) and none of the other characteristics above as a “truck” will be treated as a “bus.”

- ***Van***
  a light *truck* (see (a)(5) under *truck* above). A van with windows along both sides of the passenger-carrying area which is designed to carry 10 persons or less will be treated as a *passenger automobile* or when designed to carry more than 10 persons will be treated as a “bus” as long it meets all of the passenger compartment requirements in 29 CFR § 500.105(b)(3)(vi) and no other “truck” characteristics other than passenger capacity. A van designed for carrying cargo, typically without windows along both sides of the passenger-carrying area, is a *truck*. This regulation specifically prohibits the use of closed vans without windows or means to assure ventilation.
- ***Trailer***
  a motor vehicle with or without motive power, designed for carrying persons or property and for being drawn by another motor vehicle.
- ***Semi-trailer***
  a trailer so constructed that a substantial part of its weight rests upon or is carried by another motor vehicle.
- ***Truck tractor***
  a truck designed primarily for drawing other motor vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and the load so drawn.
- ***Low-speed vehicle***
  a 4-wheeled motor vehicle, other than a truck, whose speed attainable in 1.6 km (1 mile) is more than 32 kilometers per hour (20 miles per hour) and not more than 40 kilometers per hour (25 miles per hour) on a paved level surface.

“Designed” as used in this fact sheet is restricted to actions taken by the original manufacturer of the vehicle. Where further guidance is needed beyond the above definitions, the manufacturer’s designation of the vehicle type can be determined by researching the specific vehicle identification number (VIN). Aftermarket modifications or alterations are not a part of the vehicle design and do not change the designation of the vehicle type from the type originally manufactured. The driver is included in the term “person” or “passenger” when determining seating capacity.

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Compliance with Other Applicable Federal and State Safety Standards

MSPA and DOL regulations impose an affirmative obligation on vehicles covered under MSPA to follow all other applicable Federal and State safety regulations, in addition to those specifically required under MSPA itself. See Title IV, Section 401(b)(1)(A) of the Act and 29 CFR § 500.100(a) respectively. It is imperative that a person subject to MSPA who is not otherwise exempt from the Act and who is transporting migrant or seasonal agricultural workers in a manner subject to MSPA comply with all safety obligations imposed by the State in which it operates, including, but not limited to, any seat belt requirements under State law. Therefore a violation of the State's operating requirement, particularly regarding seat belt law requirements, is a violation under MSPA for failure to comply with other safety regulations.

MSPA Drivers' License Requirements

Under MSPA, any non-exempt person who uses or causes to be used a vehicle to transport any migrant or seasonal agricultural worker is required to ensure that each driver has a currently valid motor vehicle operator's permit or license to operate the vehicle (as provided by applicable State law). If, for example, State law requires the driver to have a commercial drivers' license (CDL) to operate a given vehicle, then the driver must have a valid CDL before driving the vehicle. In addition, each FLC and Farm Labor Contactor Employee (FLCE) who drives must have and carry a Doctor's Certificate. (WH-515).

MSPA Insurance Requirements

Any person subject to the Act who uses, or causes to be used, a vehicle to transport covered workers must ensure that the vehicle is properly insured against liability for damage to persons or property. The specific insurance requirements are found in the MSPA regulations under 29 29 CFR §§ 500.120-.128. Generally, the owner or lessor of the vehicle will be responsible for providing the required insurance. There are three ways to meet the insurance requirement:

Option A

Obtain vehicle liability insurance coverage in the amount of not less than $100,000 for each seat in the vehicle (up to a maximum of $5,000,000 for any one vehicle). The policy must be maintained in full force and effect at all times for transportation subject to the Act's requirements.

Option B

Obtain a liability bond from a U.S. Department of Treasury approved "surety," assuring payment for any liability up to $500,000 for damages to persons or property arising out of transportation of workers in connection with the business, activities or operations of the person doing the transporting. Any liability bond obtained pursuant to the requirements of the Act must be maintained in full force and effect for the entire period during which workers may be transported.

Option C

Obtain State workers' compensation insurance coverage. The policy must be maintained in full force and effect at all times when transportation subject to the Act's requirements occurs. However, the person responsible for the transportation must also have:
- a minimum of $50,000 in property damage insurance coverage for loss or damage in any one accident to the property of others (excluding cargo) to protect the workers against property loss; or evidence of vehicle liability insurance coverage or a general liability insurance policy that provides the same protection.

It is important to note that for Option C, workers' compensation insurance provides specific coverage which varies from state to state and may not cover all circumstances in which the workers are transported. If the transportation being provided is not covered under the applicable State law, then certain adjustments in the insurance requirements apply.

For instance, transportation for a non-work-related purpose, such as a visit to the grocery store or laundromat, may not be covered under the State policy. Additionally, State workers' compensation coverage may not apply to travel outside the state, or in some states it may not apply to travel to and from work. If using a State workers' compensation policy to meet the insurance requirements for transportation authorization under MSPA, it is important to be aware of precisely what type of travel is covered by the State policy, and if necessary, to procure additional coverage through a liability insurance policy or liability bond for transportation not covered by the State law.

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Also note that if transportation authorization (TA) is issued to an FLC based on a workers' compensation insurance policy provided by a specific employer, the insurance coverage is limited to transportation provided to the employees of that specific employer within the scope of that employers' workers' compensation policy.

Are "Raiteros" Subject to MSPA?

Generally, the term "raitero" refers to a person (usually a fieldworker) who, for a fee, provides transportation for farm workers both to and from the work site. Generally, workers are charged a daily roundtrip fee with the specific amount usually contingent upon the distance traveled. If the amount charged each worker transported exceeds the actual cost of providing the transportation, the raitero will most likely meet the MSPA definition of a FLC (i.e., transporting MSPA covered workers for a fee). In such a case, the raitero should be registered with DOL as a FLC, and is responsible for complying with the registration, transportation safety, drivers' licensing, and insurance requirements of the Act.

FLC Employees Who Operate Vehicles to Transport Workers

Employees of FLCs who recruit, solicit, hire, employ, furnish, or transport migrant or seasonal agricultural workers on behalf of their employer (the FLC), must be registered with DOL as a Farm Labor Contractor Employee (FLCE) prior to engaging in any of those named activities. To lawfully drive a vehicle used to transport workers, the FLCE must obtain specific authorization to do so from the DOL. In order to obtain the authorization, the FLC must submit documentation showing that the vehicle is safe and properly insured, and documentation must be submitted by the FLCE to establish that he or she holds a valid drivers' license to operate the vehicle in question. In addition, a valid and unexpired Doctor's Certificate must be submitted with the application.

MSPA Trailer Towing Requirements

Towing a trailer behind any vehicle (other than a truck subject to DOT standards) transporting MSPA workers is permitted only if it meets the applicable DOL or DOT safety standards. A truck subject to DOT standards while transporting MSPA workers may not tow a trailer.

A vehicle transporting MSPA workers and towing a trailer will be examined to ensure that both the vehicle and towed trailer meet the applicable safety standards. Safety standards applicable to towed trailers include the following:

When subject to DOL standards:

· external lights	29 CFR § 500.104(a)
· brakes	29 CFR § 500.104(b)
· tires	29 CFR § 500.104(c)
· safe loading	29 CFR § 500.104(k)

When subject to DOT standards:

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· equipment and emergency devices (including trailer brake connections and coupling devices)	29 CFR § 500.105(b)(2)(vi)
· safe loading	29 CFR § 500.105(b)(2)(vii)
· lighting devices and reflectors	29 CFR § 500.105(b)(2)(xi)
· parts and accessories (including lighting devices, brakes, and tires)	29 CFR § 500.105(b)(3)

Additional safety factors to consider include, but are not limited to, whether workers were transported in the trailer and the overall safe operation of the vehicle and trailer

Factors to consider in determining that the vehicle and trailer have been safely loaded include, but are not limited to, whether the load has been balanced from side to side and cargo weight distributed evenly along the length of the trailer; whether items have been secured and braced to prevent them from moving during travel; and for most situations, whether the trailer and tow vehicle are level (parallel to the ground) during travel (information from the trailer manufacturer may be needed to make sure this is correct for this combination of vehicles). This guidance is based on materials provided by DOT's Federal Motor Carrier Safety Administration (FMCSA)

Some states and municipalities may have special requirements and DOT may have requirements applicable to vehicles under its jurisdiction that are towing trailers (e.g. some states require brakes on loaded trailers weighing in excess of a set amount; special permits based on the size and weight of a trailer; or additional equipment such as side view mirrors). Vehicles subject to MSPA transportation safety requirements must meet other applicable Federal and State safety standards, including seat belt provisions..

Vehicles towing trailers must also carry proper insurance coverage.

Exclusions from MSPA Transportation Requirements

The following types of transportation are not subject to the requirements of MSPA:

· Transportation on tractors, combines, harvesters, pickers, or other similar machinery and equipment if the worker is actually engaged in the planting, cultivating, or harvesting of any agricultural commodity or in the care of livestock or poultry.

· Bona fide carpooling arrangements in which: the FLC does not participate; the workers make all of the arrangements themselves; the workers use one of the workers' own vehicles; and the workers are not specifically directed or requested by the employer to participate.

· Transportation if the only other occupants of the person's vehicle are members of his or her immediate family.

Penalties and Sanctions

Violators may be subject to the payment of back wages; assessment of civil money penalties; and/or revocation of FLC registration. Violators may also be subject to enforcement through civil action and/or criminal prosecution in federal court.

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Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: http://www.dol.gov/agencies/whd and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

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