AGRICULTURAL EMPLOYMENT LAW AND POLICY

A Study of the Impact of Modern Social and Labor Relations Legislation on Agricultural Employment

by

Donald B. Pederson
Professor of Law
The Law School
Capital University
Columbus, Ohio

and

Dale C. Dahl
Professor of Agricultural and Applied Economics
and Adjunct Professor of Law
University of Minnesota
St. Paul, Minnesota

Minnesota Agricultural Experiment Station
University of Minnesota
St. Paul, Minnesota
July 1981

TABLE OF CONTENTS

Chapter 1 INTRODUCTION 1

Farm Labor Cost 1

The Farm Labor Force 2

Downward trends 2
Dominance of family labor 2
Hired farmworkers 2
Geographic and seasonal distribution of the farm labor force 3
A note on the adequacy of farm labor data 3

Scope and Purpose of This Study 4

Notes to Chapter 1. 17

Chapter 2 WAGE AND HOUR LAWS: AGRICULTURAL EMPLOYMENT 18

Historical Development. 18

Wage Law Development in General 18

Wage Law Development in Agriculture 19

The Sugar Act of 1937 19
The Fair Labor Standards Act of 1938 19

Current Status of the Law 20

Federal Law 20

State Legislation 22

Enforcement Efforts 23

Emerging Developments 24

Evaluation 24

Recommendations 26

Notes to Chapter 2. 27

Chapter 3 CHILD LABOR IN AGRICULTURE 32

Historical Development. 32

Current Status of Federal Law 33

Ages 16 and 17. 34
Ages 14 and 15. 34
Ages 12 and 13. 35
Ages 10 and 11. 35
Under age 10. 35

Current Status of State Law: An Example. 36

Ages 16 and 17. 36
Ages 14 and 15. 36
Ages 12 and 13. 37
Children under age 12 37
Summaries 37

Enforcement 37

Recent Developments 39

Recommendations 40

Notes to Chapter 3 42

Chapter 4 OCCUPATIONAL SAFETY AND HEALTH IN AGRICULTURE. 48

History 48

Current Status of the Law 49
Employment-related Housing 50
Storage and Handling of Anhydrous Ammonia 51
Slow-moving Vehicles 51
Farm Tractor Safety Regulations 52
Farm Machinery Safety Regulations 52
Field Worker Exposure to Organophosphorous Products 52
Regulation of Transporters of Migrant Workers 53
Exposure to Cotton Dust in Cotton Gins. 53
Enforcement Problems 53
Emerging Developments 54
Recommendations 56
Notes to Chapter 4 58

Chapter 5 REGULATION OF FARM LABOR CONTRACTORS 65
Historical Development. 65
Current Status of the Law 66
Enforcement 69
Recent Developments 70
Exemptions. 70
Sole Proprietors. 70
Farm Corporations 71
Employees 72
Agricultural Cooperatives 73
Day-Haul Operators. 74
Recordkeeping 75
Insurance 75
Recommendations 76
Notes to Chapter 5 77

Chapter 6 UNEMPLOYMENT INSURANCE AND AGRICULTURAL EMPLOYMENT 84
Historical Development. 84
General Unemployment Compensation 84
Farmworker Coverage 86
Current State of the Law 88
Evaluation 89
Recommendations 91
Notes to Chapter 6 91

Chapter 7 WORKERS' COMPENSATION IN AGRICULTURE 96
Historical Development. 96
Current Status of the Law 97
Recent Developments 99
Recommendations and Conclusions 100
Notes to Chapter 7. 102

Chapter 8 SOCIAL SECURITY FOR HIRED FARMWORKERS. 106
Historical Development. 106
Development of Scoial Security in General 106
Special Treatment of Farmworkers. 107
Current State of the Law. 108
Evaluation. 109
Current Developments. 111
Recommendations 112
Notes to Cahpter 8 113

Chapter 9 HEALTH CARE POLICY AND THE HIRED FARMWORKER FORCE. 117
Historical Development. 118
Migrant Health Act. 119
The Rural Health Initiative 121
Medicare and Medicaid 122
Nutrition and Food Programs 123
The Hill-Burton Act 125
Health Maintenance Organizations 127
Evaluation. 128
Recommendations 128
Notes to Cahpter 9. 129

Chapter 10 FARMWORKER EMPLOYMENT AND TRAINING PROGRAMS 135
Historical Development. 135
Current Status of the Law 139
Programs of the United States Employment Service. 139
Programs of the Office of National Programs 143
Evaluation. 145
ES Laws and Their Impact. 145
MSFW Programs and Their Administration. 146
General Policy Considerations 147
Recommendations 147
Future Government Support 147
Nature of Training. 148
Attractiveness of ES Services 148
Goals of ES and MSFW Programs 148
Continued Study of the MSFW Problem 148
Notes to Chapter 10 148

Chapter 11 AGRICULTURAL LABOR-MANAGEMENT LAW 154
Historical Development of Labor Relations Legislation 154
Development in General. 154
Agricultural Exemption 155
Current Status of the Law 155

Early Regulation of Agricultural Labor Relations. 155
Secondary Boycott and Anti-injunction Acts 156
Jurisdictional Strick Acts. 156
Antitrust Statutes. 157
The Tort of Interference with Business Relations 157
Agricultural Labor Relations Legislation. 158
Emerging Developments 165
Evaluation. 165
Recommendations 168
Notes to Chapter 11 169
Chapter 12 ALIEN FARMWORKERS AND IMMIGRATION AND NATURALIZATION LAWS 176
Historical Development. 176
Current Status of the Law 177
"H-2" Workers 177
"Commuters" 178
"Illegal" Aliens. 179
Emerging Developments 180
Recommendations 181
Notes to Chapter 12 184
Chapter 13 OVERVIEW. 188
A General Commentary on Agricultural Employment Policy. 188
Labor Supply. 188
Compensation and Benefits 189
Workable Regulation 189
Special Subgroups 191
Migrant Farmworkers 191
Family Members. 191
Sharecroppers 191
Farm Labor Contractors. 192
Youthful Workers. 192
Illegal Aliens. 192
General Recommendations 192
Review of Regulatory Schemes. 192
Economic Study. 193
Coordination of Future Legislation and Rulemaking 193
The Information Problem 193
Special Subgroups 193
Labor-Management Legislation. 194
Notes to Chapter 13 194

LIST OF FIGURES

Figure 1. Use of selected farm inputs. 6
Figure 2. Indices of farm expenses 6
Figure 3. Farm production expenditures 6
Figure 4. People employed on farms 6
Figure 5. Indices of numbers of persons employed on farms, 1963-1979, 1967=100 7
Figure 6. Farm population. 7
Figure 7. Family farm labor and hired farm labor as percent of total farm labor, 1910-1979 8
Figure 8. Seasonality of U.S. farm labor, 1978-1980. 8
Figure 9. Average annual number of workers on farms by Standard Federal Region, 1979 . . 9
Figure 10. Standard Federal Regions 10

LIST OF TABLES

Table 1. Number of hired farmworkers, by duration of farmwork, 1945-77 11
Table 2. Number of hired farmworkers and trends by race, age, and duration of farmwork, averages 1965-67 and 1975-77. 12
Table 3. Hired farmworkers: Average annual earnings by primary employment status, 1977. 13
Table 4. Number and distribution of hired farmworkers, by racial/ethnic group and Standard Federal Regions, 1977. 13
Table 5. Geographic seasonality of farm labor: Workers on farms, selected weeks, by Standard Federal Regions and United States, in thousands, 1978-1980. 14
Table 6. Workers on farms, annual averages, with U.S. indices, 1975 to 1979. 15

Chapter 4

OCCUPATIONAL SAFETY AND HEALTH IN AGRICULTURE

The national workforce suffers more than 14,000 on-the-job deaths and approximately 2,000,000 work-related injuries annually.1/ The National Safety Council estimates that agriculture is the third most hazardous industry in the United States.2/ It is estimated that in 1972 there were 2,200 fatalities and 200,000 disabling injuries related to agricultural work.3/ In 1975, approximately 5,500 farm people lost their lives and more than 500,000 suffered disabling injuries. Figures for 1977 indicate approximately 5,400 accidental deaths and 480,000 disabling injuries involving farm people.4/ The figures include farm family members as well as hired farmworkers. The figures on disabling injuries include both temporary and permanent disabilities. One recent study of farm accidents in 16 selected states revealed that 75.6 percent of the accidents reported during the survey were work-related.5/ Employees, both full- and part-time, accounted for about 15.9 percent of the injuries.6/ The 15.9 percent appears to be a percentage of all accidents, work-related and non-work related. The full- and part-time farmworkers accounted for about 20.8 percent of the work-related accidents.7/ It has been suggested that this sort of statistical data for agriculture, as dramatic as it may seem, minimizes safety and health problems since many incidents of illness and injury go unreported.8/ Data on work-related illness have not been located during this study and the statistics presented above in no way reflect the extent of that problem. The valuable efforts of some state regulatory bodies, extension programs, farm organizations, farm-related industries, and even international bodies, while not to be discounted, have failed to curb the constant increase in safety and health problems in American agriculture.9/

History

Perceiving the seriousness of the problem and given the absence of systematic state efforts to regulate, Congress after decades of tentative discussion 10/ decided to include agriculture when it moved to enact the Williams-Steiger Occupational Safety and Health Act of 1970.11/ While a variety of state and federal agencies are now active in the field, no single agency has been more important or more controversial than the Occupational Safety and Health Administration (OSHA), a creature of the Williams-Steiger Act. Since April 28, 1971, OSHA has administered the statutory mandate that requires almost every employer in the nation, including agricultural employers, to maintain a safe and healthful workplace for each employee.12/ Public regulation of employee safety and health conditions has become a reality in American agriculture with a goal of reducing employment-related personal injuries, illnesses, and deaths.

What did the framers of the legislation have in mind as a method of fighting the climbing job-related death and accident rate? Given the many vastly different industries and countless specialized safety and health problems, it was apparent that the Congress should not attempt detailed legislation. Thus, the act imposed a "general duty" on an employer to "furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to employees."13/ Elaboration was left to the secretary who was given the power to promulgate specific regulations having the force and effect of law.14/ The act directs employers to "comply with occupational health and safety standards promulgated under this Act" as well as the "general duty" clause.15/

While the act does include features utilizing educational, research, and incentive approaches, the primary theory of the legislation is that safer and more healthful work surroundings will lead to an improvement in statistics on employment-related accidents, illnesses, and deaths.16/ The regulations, therefore, are primarily designed to outlaw certain physical hazards and to require certain safety and health equipment. Employers who fail to eliminate hazards, to update existing equipment, or modify or replace old facilities as required by regulation are subject to civil and, under certain circumstances, criminal penalties.17/ Arguably, the major thrust of the program is to punish "bad" behavior, rather than to reward "good" behavior. Some have alleged this to be a serious defect in the entire scheme.18/

While OSHA is the focal point for much of the current discussion of safety and health regulation, it is essential to understand that it is not the only agency active in the area. The William-Steiger Act is designed to encourage states to become active in safety and health matters and contemplates states stepping into the primary position in the administration and enforcement of regulations. A state may file a plan with OSHA which, if approved, allows the state to establish and enforce its own safety and health standards, if at least equivalent to the federal.19/ The states which have adopted plans and have undertaken the enforcement of state standards have frequently proceeded by incorporating OSHA regulations into state regulations by reference. This, of course, fulfills the requirement that the state have standards equivalent to the federal. However, unless the state continually readopts the federal regulations or has a system of regularly incorporating federal changes, inconsistencies creep in. Recognizing this problem, the Secretary of Labor established requirements on October 6, 1975, requiring states with approved plans to update within 30 days of promulgation of a federal emergency temporary standard and within six months of the date of promulgation of a new permanent federal standard.20/ It is obvious that recent OSHA regulations may well become effective in the various states that have elected to have their own plans at different times over a period of several months.

In addition, other federal agencies are active in the area of agricultural employment including the Environmental Protection Agency (EPA), the Employment and Training Administration (ETA),21/ the Department of Labor (DOL) under the child labor provisions of the Fair Labor Standards Act, the Federal Highway Administration, and the DOL when administering the Farm Labor Contractor Registration Act.

OSHA has had particular problems in developing regulations for agriculture because, unlike some industries where public regulation of safety and health matters predated OSHA by many years, there had been little previous regulation of most matters of special concern to agriculture.22/ Thus, it was determined that most regulations would have to be created from scratch, there being no real hope of adopting existing private standards or scattered state regulations as interim regulations.23/ Accordingly, in agriculture OSHA has engaged in the promulgation of regulations on a piece-meal basis. So far OSHA has moved in the areas of employment-related housing, storage and handling of anhydrous ammonia, pulpwood logging,24/ slow-moving vehicles, farm tractors, shielding of farm machines, and cotton dust. Other areas, such as field sanitation, are under consideration. OSHA did make an abortive effort to regulate field reentry by employees following application of pesticides and herbicides, but that area is now under the control of the EPA. Regulation of standards for vehicles used in transportation of farmworkers falls in part under the province of the Federal Highway Administration. Certain safety and health concerns about child labor in agriculture are dealt with under the child labor provisions of the Fair Labor Standards Act. Many safety and health aspects of agricultural employment remain largely unregulated.

Current Status of the Law

As a prelude to considering specific OSHA regulations, it is important to establish the scheme of the regulations as they apply to agriculture. Of the hundreds of pages of substantive regulations promulgated under the Williams-Steiger Act, the only regulations that are applicable to agricultural employment are those included in Volume 29, Code of Federal Regulations, Part 1928. Under this scheme the regulations fall into two categories, those that are actually included full text in Part 1928, and those that are pulled into Part 1928 by reference. The latter category is explained by a reading of 29 C.F.R. §1928.21 which provides:

> Applicable standards in 29 C.F.R. Part 1910
>
> (a) The following standards in Part 1910 of this Chapter shall apply to agricultural operations:
>
> (1) Temporary labor camps - §1910.142;
> (2) Storage and handling of anhydrous ammonia - §1910.111(a) and (b);
> (3) Pulpwood logging - §1910.266;
> (4) Slow-moving vehicles - §1910.145.
>
> (b) Except to the extent specified in paragraph (a) of this section, the standards contained in Subparts B through T and Subpart Z of Part 1910 of this title do not apply to agricultural operations.

Most OSHA regulations are contained in the specified nonapplicable subparts of Part 1910.25/

It would be misleading to assume, however, that an agricultural employer will never be cited as long as the regulations set forth at or incorporated into 29 C.F.R., Part 1928 are complied with. The general duty clause of the Williams-Steiger Act has application to agriculture and it has been used on at least one occasion in an agricultural employment case. The case involved the electrocution of an agricultural employee when a piece of irrigation equipment, a 20-foot-long galvanized pipe, came into

contact with a power line. It was found that the employer was aware of the hazard and had taken no steps to free the workplace of it. The general duty clause was resorted to in the proceedings against the employer when it was determined that because of 29 C.F.R., Part 1928 existing regulations dealing with this type of hazard had no application.26/

Employment-related Housing

OSHA regulations dealing with "temporary labor camps" apply to facilities supplied by agricultural employers.27/ "Temporary labor camps" can be construed to refer to most facilities supplied as living or cooking quarters to local as well as seasonal out-of-state farmworkers. OSHA regulations and those adopted by corresponding state agencies 28/ cover a variety of matters including site, shelter, water supply, toilet facilities, sewage facilities, laundry and bathing set-ups, lighting, and cooking and dining facilities. Many of these may also be covered by different standards in local building and housing codes or landlord tenant laws.29/ In addition to the regulations just described, farmers using the Bureau of Employment Services of a particular state have been required to comply with the ETA regulations governing housing.30/ The fate of these regulations will be discussed later.

While there may be narrow, but justificable, criticism of specific standards in the regulations of a particular agency, a far more pressing problem in the employment-related housing area is the existence of inconsistent regulation of the same site by several agencies. For example, in Minnesota a particular housing site for farmworkers may be regulated by OSHA,31/ the Minnesota Occupational Safety and Health Commission 32/ (hereinafter MOSHC), the Minnesota Health Department,33/ ETA,34/ the Minnesota Landlord-Tenant Law,35/ and local building and housing regulations.36/ With the exception of the OSHA and MOSHC regulations, which are identical, the remaining standards may be in conflict with each other. Such a proliferation of conflicting standards creates serious compliance problems since meeting the standards of one agency may necessarily mean violating those of the next.

It is incredible that two sets of conflicting standards that were for a time applicable to agricultural housing originated from the same agency, the DOL. These are the regulations promulgated by OSHA and ETA. ETA's regulations, which applied only to employers using state employment services, were adopted in 1968 before the passage of the Williams-Steiger Act.37/ The OSHA regulations, which applied to all labor camps, were promulgated later.38/ Substantial differences and inconsistencies existed in the two sets of regulations with confusion and enforcement problems resulting.39/ For a time, in an effort to alleviate the situation, the Department of Labor adopted the policy that an agricultural employer whose housing met either standard would be deemed in compliance under both the Wagner-Peyser Act and the Occupational Safety and Health Act.40/

One effort to permanently deal with the problem failed. The DOL proposed changes in the OSHA regulations,41/ hoping that a set of regulations would emerge that would also be acceptable to the ETA. The OSHA proposal was strongly opposed by employer and employee groups and on December 29, 1975, additional hearings were ordered.42/ Those hearings concluded and the record was closed in March of 1976.43/ On April 29, 1976, OSHA announced that it had concluded that the record did not provide an adequate basis for the publication of a new final standard, so the proposal was withdrawn.44/

ETA announced on December 9, 1977, that it was revoking its standards on temporary housing leaving the OSHA standards, which by their terms apply to all temporary labor camps.45/ Employers who had met ETA standards were granted until January 1, 1979, to bring their housing into compliance with OSHA standards.46/ This provoked a suit on behalf of a number of migrant farmworkers asking that the secretary be enjoined from failing to enforce the deleted standards. It was alleged that in numerous respects the deleted ETA standards were more rigid than the OSHA standards and further that the OSHA scheme made no provision for preoccupancy inspection as was the case under the ETA regulations.47/ On May 5, 1978, OSHA announced some changes in its regulations.48/ Then, on August 15, 1978, ETA republished its regulations.49/ On September 1, 1978, ETA published a notice of proposed rulemaking which would allow for a modified application of the ETA housing standards.50/ The new controversy was initially resolved pursuant to a DOL directive issued on October 11, 1978, which provided that migrant housing built after December 31, 1978, comply with OSHA standards.51/ However, facilities constructed before January 1, 1979, could comply with either OSHA or ETA standards. The revocation of the ETA standards was postponed indefinitely.52/

Under regulations effective April 3, 1980, employers whose housing was completed or under construction before the effective date, or who entered into a contract for the construction of specific housing before March 4, 1980, may continue to follow ETA standards.53/ Employers undertaking housing construction on or after April 3, 1980, must follow the OSHA standards.54/

The agencies charged with carrying out OSHA or ETA inspections have agreed to coordinate their efforts beginning in fiscal 1980.55/ The ETA inspections will go forward as usual, with state employment services offices conducting preoccupancy inspections where the employer is using the agency's placement services. Wage and hour inspectors of the Employment Standards Administration (ESA) will continue to inspect farm labor contractor housing. The ESA, however, will work from a list which omits ETA-inspected camps. Unless complaints have been registered or accidents reported, OSHA will limit its inspection activity to those camps not inspected by state employment services personnel or wage and hour inspectors.

A remaining problem is whether a supplier of housing regulated under ETA standards can lose the option of complying with ETA standards by doing remodeling, renovation or expansion work. While "cosmetic remodeling" will not result in the structures being subject to OSHA standards, careful inquiry is advisable before any substantial work is begun.56/

An employer was able to apply for a permanent structural variance from specific ETA standards by filing by June 2, 1980, a written application with the local Job Service Office serving the area in which the housing was located.57/ After that date, housing which varies structurally from the ETA standards become subject to OSHA standards where no variance exists.58/

Viewed in isolation, this episode in the regulation of agriculture might seem tolerable given the need for the regulated to be somewhat understanding of the problems of the regulators. However, when viewed in the overall context of the complexities of OSHA and other safety and health regulations and the myriad complexities in the overall effort to regulate employment in agriculture, such manifestations of administrative infighting and inability to have a comprehensible scheme of regulation is unacceptable and contributes to the general disrespect for and perceived ineffectiveness of the regulatory process.

Storage and Handling of Anhydrous Ammonia

Certain OSHA regulations dealing with anhydrous ammonia equipment used by agricultural employees have been nullified in a curious manner. The OSHA general industrial standards set forth general standards governing anhydrous ammonia systems.59/ Two of the subdivisions of the relevant section are designed to have specific application to agricultural operations.60/ However, 29 C.F.R. 1928.21, which enumerates the OSHA general industrial standards which have application to agriculture does not mention those subdivisions, but makes only a definitional section and a general section operative.61/ The effect is to nullify the provisions which were, by their very terms, to apply in farming operations. An amendment to the regulations, proposed in 1973, was designed to correct this apparent "error," but the amendment was never acted upon.62/ On October 28, 1978, massive revisions of the OSHA regulations appeared designed to delete many sections as a part of a general governmental project to simplify regulatory schemes by eliminating unneeded provisions.63/ The deletions affected the anhydrous ammonia regulations in only a few very minor respects and the basic scheme remains in effect. Remarkably, even after what must be presumed to be a thorough review, the problem remains. It is difficult to believe that the continued nullification of the regulations designed to apply strictly to farm operations, which regulations remain "on the books," is unintentional and it must be supposed that the current OSHA policy is to refrain from regulating those aspects of this agricultural activity. No comment is intended in this study on the merits of the substance of these regulations, but the matter is discussed to point out yet another confusing aspect of this regulatory scheme.

Slow-moving Vehicles

OSHA promulgated general industrial standards requiring warning signs on slow-moving vehicles and in the vicinity of biological and radiation hazards.64/ In listing the provisions which apply to agriculture 29 C.F.R. 1928.21(a)(4) refers to "slow-moving vehicles - 1910.145." Of course, 1910.145 is the entire set of rules on signs. While some confusion existed, it was presumed that the intent was to severely circumscribe the effect of 1910.145 in agriculture by making applicable only the provisions with respect to slow-moving vehicles. This, of course, could have been accomplished quite easily by a specific reference to the particular subsection rather than to the entire section. The effect of OSHA regulations and corresponding state regulations was to require that vehicles which by design travel at less than 25 miles per hour on public roads display a slow-moving vehicle emblem, a florescent yellow-orange triangle with a dark red reflecting border.65/

As a part of the general revision of OSHA regulations announced on October 24, 1978, it appears that the intent was to delete this regulation as unnecessary. However, as a result of an apparent error the amending regulation deleted only the emblem illustration and not the subsection requiring the display of the emblem. Presumably, there will be no enforcement of this regulation, except by those states

that elect to keep it active in their approved regulatory scheme, but these recent developments simply add another element of confusion, technical though it may be.66/

Farm Tractor Safety Regulations

One of the leading causes of injuries to farm employees has been the rolling or tipping of tractors.67/ OSHA regulations now require farm employers to equip most farm tractors of over 20-engine-horsepower manufactured after October 25, 1976, with roll-over protection structures (ROPS).68/ The regulation also requires installation of seat belts.69/ Exemptions allow removal of ROPS from "low profile" tractors when clearance is a substantial problem as in orchards, vineyards, hopyards, or inside buildings and greenhouses.70/ An exemption also applies when tractors must be operated with incompatible mounted equipment, such as corn pickers and vegetable pickers.71/

Because OSHA regulations govern working conditions of employees only, a farmer employer may remove the ROPS when he is operating the tractor himself. However, the ROPS must be reinstalled if an employee is to operate the tractor for a nonexempt use.72/ Similar provisions apply to the seat belt regulations. OSHA and corresponding state regulations also require that employees be given a specified set of operating instructions when initially assigned to the tractor and at least annually thereafter.73/

Farm Machinery Safety Regulations

The National Safety Council has estimated that approximately 20 percent of all injuries to farm employees are the result of accidents with farm machinery.74/ Power take-off drives, conveying augers, straw spreaders and choppers, cotton gins, rotary beaters, and rotary tillers are just a few of the machines involved. OSHA has adopted regulations requiring various safety devices on all such farm equipment manufactured on or after October 25, 1976.75/ Certain existing equipment must also be brought into compliance.76/ Affected equipment must have a variety of guards, shields, and access doors designed to protect employees from hazards associated with moving machinery parts.77/

Such machinery must also have audible warning devices which must sound if the shield or access door is not properly closed while the machine is in operation.78/

In the original version of the regulations, it was provided that a machine would be considered guarded "by location" if during operation, maintenance, or servicing, an employee could not inadvertently come into contact with the hazard.79/ Concern over the "absolute liability" imposed by this provision was expressed, the view being that the employer was in the wrong no matter how bizarre the circumstances by which the employee came into contact with and was injured by the machine.80/ An amendment was promulgated changing the provision to allow the employer to show that the machine was guarded by location if it could be demonstrated that the accident resulted from employee conduct which constituted an isolated and unforeseeable event.81/

Field Worker Exposure to Organophosphorous Products

Using the emergency rulemaking power granted in the Williams-Steiger Act,82/ OSHA, on May 1, 1973, announced temporary standards relative to field worker exposure to organophosphorous products.83/ As a result of petitions by the Florida Peach Growers Association and others, the regulations did not become effective as scheduled 84/ but revised emergency standards did go into effect on July 13, 1973, regulating field reentry for 12 pesticides.85/ Arguing that "no grave danger" existed with regard to the pesticides, the growers mounted an attack on the theory that the secretary had abused his emergency rulemaking power. The Fifth Circuit in Florida Peach Growers Association vs. United States Department of Labor 86/ agreed and struck down the emergency regulations.

Since the decision in Peach Growers, the major effort at the federal level to protect field workers from pesticides has originated in the EPA. Under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended by the Federal Environmental Pesticide Control Act of 1972. and the Federal Pesticide Act of 1978,87/ EPA has promulgated regulations which establish limited worker protection. These regulations in current form forbid application of pesticides if unprotected workers or others are in the field, mandate certain warnings, and state rules with respect to reentry by workers with respect to 12 chemicals.88/ The act makes it unlawful to use a product in a manner inconsistent with its label or contrary to EPA regulations and farmers who ignore either may be subject to civil or criminal penalties.89/

In 1978, the DOL was advised by the EPA that the field worker reentry standards developed by EPA were based on estimated adult tolerances to pesticide exposure. Thus, concern was expressed over the

new administrative waiver procedure that was being developed to allow children age 10 and 11 to work in harvesting certain short-season crops. It was indicated that a "safe" standard for children could not be written because no data existed on which to base tolerance limits for children.90/ Studies were then undertaken to determine whether certain pesticides and chemicals, if applied at specified preharvest intervals in connection with the production of strawberries and potatoes, would adversly affect the health or well-being of 10- and 11-year-old workers.91/ Until satisfactory data are generated relative to safe tolerance levels for 10 and 11 year olds, no administrative waivers will be issued given an existing court order to that effect.92/

Regulation of Transporters of Migrant Workers

Pursuant to the provisions of the Interstate Commerce Act,93/ regulations have been promulgated governing safety in the transportation of migrant workers.94/ These regulations cover qualifications of drivers, certification of drivers, driving rules, requirements for rest and meal stops, vehicle specifications, vehicle inspections, and numerous other matters.95/ These regulations are applicable to motor carriers of migrant workers only in the case of transportation of any such worker for a distance of more than 75 miles and then only if across a state boundary.96/ Migrant worker, for purposes of these regulations, means an individual proceeding to or returning from employment in agriculture as defined in the Fair Labor Standards Act or in the Social Security Act.97/

The matter of motor transport safety is also dealt with in regulations promulgated pursuant to the Farm Labor Contractor Registration Act and in the regulations of ETA promulgated pursuant to the Wagner-Peyser Act.98/

Exposure to Cotton Dust in Cotton Gins

The most recent aspect of agricultural employment to receive attention by OSHA is ginning cotton. Cotton has historically been ginned in small gins owned by farmers and located on farms. Recently, there has been a trend toward construction of larger gins often operated by agricultural cooperatives.99/ Studies indicate a relationship between cotton dust exposure and respiratory ailments. Thus, OSHA believes standards are needed.

On June 23, 1978, OSHA announced two cotton dust standards, one to have application in nonagricultural operations of an industrial nature, and the other to cotton ginning whether in an industrial or an agricultural setting.100/ The application of the ginning standards to agriculture is accomplished by adding a subpart of 29 C.F.R. Part 1928,101/ which is identical to the general standard for cotton ginning found elsewhere in the OSHA regulations.102/ The standards which are applicable in agriculture set no permissible exposure limit for cotton dust in ginning operations. The main thrust of the regulations is to require worker training, medical surveillance, and provision of respirators at the employee's request. In some cases, the respirators may have to be provided even though there is no worker request. There are also provisions requiring cleaning operations to be conducted with vacuum devices rather than "bow-down" equipment.

The standards became effective September 4, 1978, except for those provisions requiring medical surveillance and respirators for certain employees, which were to become effective on September 4, 1979.103/

On October 20, 1978, the Circuit Court of Appeals for the District of Columbia stayed the implementation of the industrial standard pending review.104/ A decision on October 24, 1979, upheld the standard, except for its application to the cottonseed oil industry.105/ The stay was continued temporarily, giving petitioners an opportunity to show cause why it should continue pending appeal. This temporary stay was lifted January 11, 1980 and a schedule for implementation of the industrial standards was established.106/ With respect to the standards applicable to agriculture, a stay was ordered by the Fifth Circuit Court of Appeals on May 29, 1979, pending a decision on the merits in a suit brought by the Texas Independent Ginners' Association and others.107/

Enforcement Problems

Once an OSHA inspector has found a violation, he serves upon the employer a citation and a notice of proposed penalty. The employer must post the citation at or near the place where the violation allegedly occurred. A nonserious violation may carry a civil penalty of up to $1,000. Willful, repeated, or serious violations may justify a civil penalty of up to $10,000. De minimus violations carry no penalties.108/

The employer may contest the citation, the proposed penalty, or both, by giving notice of appeal to the Secretary of Labor within 15 days. If the citation calls for the abatement of a violation, an employee or representative of an employee may also contest raising the issue of the reasonableness of the period of time set for the employer to come into compliance. The case is docketed with the Occupational Safety and Health Review Commission (OSHRECOM) and assigned to an administrative law judge. A hearing is ordinarily conducted in the community where the violation occurred. After the hearing, at which the secretary has the burden of proof, the judge issues an order affirming, modifying, or vacating the citation or proposed penalty. This order becomes final 30 days thereafter unless one of the three members of the commission directs that the matter be reviewed by the commission itself. Once there has been a decision by the commission, or if 30 days expire without an order for commission review, any person adversely 109/ affected may petition the U.S. Court of Appeals for review. Effective March 1, 1980, new simplified procedures are available as an alternative in all but a few specified instances if requested by any party and no objection is raised.110/

The Senate committee on appropriations noted that there were 920 federal compliance officers in fiscal year 1974, recommended a total of 1,420 for fiscal year 1975, and advocated an increase to 2,265 for fiscal year 1976.111/ The latter increase would provide for an addition of approximately 10,000 inspections or an increase from 120,000 to 130,000.112/ These figures relate to all OSHA activities, not just those in the area of agriculture. Considering that some highly industrialized and heavily populated states such as Ohio have left the entire matter to the federal government, it is apparent that relatively few compliance officers have been available to work in agriculture. Hearings in 1974 before the Senate brought out that of 72,000 inspections, presumably in the preceding fiscal year, only 278 involved agriculture.113/ Of 292,000 violations cited, only 298 were in agriculture.114/ In California, one of the most progressive states in the agricultural job safety area, 3,788 inspections were made in the third quarter of 1975 and of those 158 were in agriculture. In the fourth quarter of the same year, 4,489 inspections were conducted and of those 197 were in agriculture. For a program which has as its premise the punishment of "bad" behavior, it is legitimate to ask whether this level of enforcement is likely to bring significant results.

How effective has the governmental effort to curb work-related injury and fatality rates? As previously noted, it has been reported that in 1975, 5,500 farm people lost their lives and more than 500,000 were disabled as a result of accidents.115/ These are rough figures and they include nonwork-related accidents for the entire farm population and work-related accidents of family members. Estimates for 1977 indicate 480,000 disabling injuries and about 5,400 fatalities.116/ Again, these figures include work-related and nonwork-related accidents for the entire farm population. Thus little can be said on the basis of these figures other than that they demonstrate a very slight decline in the overall farm accident and fatality picture.

Bureau of Labor Statistics estimates do not give as good a picture and unfortunately these figures relate to the accident rate for employment in agriculture, forestry, and fishing. There was an increase and it was the largest increase for an industry division. The injury incidence changed from 10.2 per 100 full-time workers in 1976 to 10.7 in 1978.117/ The statistics do not apply to workers who work for an employer with 10 or few employees. The national picture for occupational fatalities showed increases of approximately 20 percent among those workers employed by employers with 10 or more employees.118/ These are not encouraging figures, but they demonstrate the reversal of a five-year trend of falling rates.119/ In fairness to governmental efforts in agriculture, it must be said that it is too early to judge the real potential of OSHA and related programs given all of the difficulties discussed above and given the rather meager resources available for enforcement. Obviously, there is room for improvement and some possibilities are discussed in the recommendations section that follows the next section.

Emerging Developments

One of the ongoing battles in this area has to do with the status under OSHA of the employer with 10 or fewer workers. Several issues have emerged. Should such employers be totally exempted from the operation of the act? Should they be covered, but protected in some way from being cited for violations unless those violations are "serious," willful, or repeated? Should they be exempted from the recordkeeping requirements of the act?

Some have expressed grave concern about the burden of compliance and recordkeeping, particularly when the employer is the operator of a small farm. It has even been suggested that the continued application of OSHA regulations to small farm operations would result in many ceasing to use hired workers to the detriment of the operator and the potential employees.120/ Others have argued that it is just as dangerous to work on a small farm as on a large one and that farm employees have a right to the

protections afforded by the act and the regulations regardless of how many employees the farm operator hires.121/

Those who favor special treatment for employers who have no more than 10 employees have won some temporary battles. Regulations which became effective July 26, 1977, provide that such employers, agricultural and nonagricultural, need not comply with OSHA recordkeeping and reporting requirements except the duty to report fatalities and multiple hospitalization accidents.122/ While there is at first reading an embiguity in these regulations 123/ as to whether an employer with no more than 10 employees must maintain a log of occupational injuries and illnesses (OSHA Form 200), a reading of the history of the regulations makes it clear that under the regulations such recordkeeping is not required unless the Bureau of Labor Standards notifies the employer in writing that he has been selected to participate in an annual statistical survey whereupon the log will be kept and reports made as required by the regulations.124/

These regulations were promulgated as a reaction to the actions of the Congress which had inserted into the DOL appropriations acts for fiscal years 1975 and 1976 recordkeeping exemptions for employees with 10 or fewer employees, except in the circumstances outlined above.125/ There was concern that some of the states might treat this as a "green light" to enlarge the recordkeeping exemption. The regulations provide that while the states may have requirements stricter than those of OSHA, they may not have less demanding requirements.126/

Congress has included other restraints on the enforcement of the act in later appropriation bills. The appropriations bill for fiscal 1979 provided that none of the funds appropriated were to be used for the assessment of civil penalties in first violation situations unless the inspection results in citation for 10 or more violations or for one or more serious or willful violations.127/ That proviso applies whether the employer is agricultural or not. Of special interest to agriculture is a further proviso that states that none of the funds appropriated shall be used to "prescribe, issue, administer, or enforce any standard or regulation under the Act to farming operations where the farmer does not maintain temporary labor camp and employs 10 or fewer employees."128/ The effect of this proviso, even without the recordkeeping regulation discussed above, is to exempt most farmers with 10 or fewer employees from the operation of the act and the regulations promulgated pursuant thereto. A literal reading of the proviso suggests that farm employers are exempt even from the limited reported and conditional recordkeeping requirements of the regulations.

Farm employers must be aware, however, that restrictions in appropriation bills expire at the end of the fiscal year and may not necessarily be reimposed. Since the Congress has not been consistent in the type of provision inserted in appropriation bills, there is a need for all concerned to reexamine the law from year to year.

In order to give some degree of permanency to certain of these regulations and provisos, an effort was made in the 95th Congress to amend the Occupational Safety and Health Act to provide by statute the same limitations on issuance of civil penalties on initial inspections and the same limits on recordkeeping requirements as are currently in effect by virtue of the regulations and the provisions of the appropriation bill.129/ However, there was no provision for the blanket exemption of farm employers. While this legislation passed both houses it was vetoed by the president on October 25, 1978. The matter does not appear to be dead, however, and bills are currently pending in the 96th Congress to amend the act to totally exempt agricultural and nonagricultural employers with 10 or fewer employees, to require the issuance of warnings only in the case of certain first instance violations, and to bar the assessment of penalties in certain cases where 10 or fewer violations are cited.130/ One bill proposes an exemption for the "small farmer" and uses a seven man-years test.131/ Another suggests an exemption for the farm employer with 25 or fewer employees.132/

Whatever the merits of the exemption for most agricultural employers with 10 or fewer employees, it must be observed that such a provision introduces another threshhold requirement into the law and raises the problem of defining "farming operation" and setting the time frame in which the count of employees must be made.133/ Viewed in isolation and only in the context of safety and health laws, this probably presents no great problem. However, viewed in the larger context of all the law affecting the employer-employee relationship in agriculture with the myriad number of thresholds and exemption schemes, this type of scheme has the effect of contributing to the increased complexity of the law and all the problems that result.

On April 27, 1979, a notice of proposed rulemaking was published by OSHA proposing an amendment adding a new standard requiring sanitation facilities in the field for agricultural workers. The proposal included requirements regarding handwashing facilities, potable drinking water, toilets, and

field food consumption.134/ The proposal provides that toilet facilities shall be located within a five-minute walk from each employee's place of work in the field. Exceptions would apply if the work is to be under two hours in duration or the crew consists of fewer than five employees who have transportation to a satisfactory toilet. The required facility can be either a water-flushed toilet, chemical toilet, combustion toilet, recirculating toilet, or sanitary privy. The proposal has not been popular. Farmers say it is an expensive way to replace the toilet tissue they now carry in the cabs of their trucks.135/ The Senate Agriculture Committee approved a resolution which called the proposed standard "a hardship on small, family farm operation."136/ Others noted that the proposal seemed designed for the vegetable fields and vineyards of California and New Jersey, but were totally impractical for many farms with vast open pastures and fields of grain and cotton measuring hundreds of acres.137/

Litigation is pending involving these proposed regulations, as well as certain other matters.138/ An order, December 21, 1978, provides that OSHA's failure to complete development of the field sanitation standard while giving attention to other matters, affecting fewer workers was an "abuse of discretion" and the agency was given 30 days to file a timetable for the issuance of the final rule.139/ While an appeal was pending, a timetable was filed setting various progress dates and December 28, 1979, for publication of the final rule in the Federal Register.140/ On December 27, 1979, a decision issued allowing the secretary to temporarily delay development of field sanitation standards given other higher priority matters demanding attention.141/

The plaintiffs were also seeking to compel OSHA to promulgate agricultural standards for noise, nuisance dust, and personal protective equipment.142/ These standards are on inactive status. OSHA takes the position that they have inadequate information on these matters and that the hazards involved are of low severity. With regard to noise standards, OSHA intends to wait until there has been a review of the general industry standard before looking at the case of agriculture.143/

Several bills were introduced in the 96th Congress, 1st Session, which would require the awarding of attorney's fees to employers who successfully contest a citation or penalty.144/ This provision, if enacted, would apply to both agricultural and nonagricultural employers.

Also introduced in the 96th Congress, 1st Session, were bills that would require economic impact statements in connection with proposed standards.145/ The obvious intent of such legislation would be to force the secretary, before promulgating, to think through the balance between the cost of the regulation and the benefit to be derived. No doubt such bills were introduced in response to proposals such as the field sanitation proposal which is thought by some to have costs that would far outweigh benefits to workers.146/

Other legislation has been introduced that addresses the basic theory of the act and seeks to move things more in the direction of consultation, training and technical aid to employers.147/ For example, one bill provided:

> In order to further carry out his responsibilities under this section, the Secretary shall establish programs for the education and training of employers and employees which, to the extent practicable, shall be conducted in local communities and shall deal with hazards in particular industries.148/

Legislation has also been proposed that would compel the secretary to do on-site consultations if requested by an employer with a view to giving advice on the interpretation or applicability of standards as well as on possible ways of complying.149/

Several bills were introduced in the 96th Congress, 2d Session, designed to reward good safety records by granting employers with fewer than a set number of lost work day injuries in the preceding calendar year an exemption from all safety inspections and investigations except in certain serious instances described in the bills. Special treatment is also proposed for employers maintaining an advisory safety committee which meets statutory requirements with respect to make-up and operation.150/

Also introduced in the 96th Congress, 1st Session, were the perennial bills calling for the total repeal of the Occupational Safety and Health Act of 1970.151/

Recommendations

There is a need in this area of the law for policymakers to do some serious thinking about the wisdom of what is being attempted in agriculture. No doubt the kind of regulation that is being attempted can do much to advance the cause of safety if it is taken seriously by farm operators and

agricultural employees. There can be little argument with the proposition that attitudes are extremely important and, therefore, it is extremely distressing to hear repeatedly that two-thirds or more of surveyed farmers are opposed to the activities of OSHA and certain other safety and health schemes.152/ It is possible to understand some of this opposition. Farm employers who are faced with a vast array of technical regulations, instances of inconsistent regulations, instances of mistakes in the language of the regulations, increased costs for tractors and other machinery, and yet another set of recordkeeping requirements are going to be inclined to be cynical and bitter about state and federal activities. Some farm employers, large and small, already faced with a broad array of regulations, may have difficulty in seeing the safety and health activities as anything other than further evidence of the emergency of "The Leviathan."153/

Farm employers are not the only ones who have manifested skepticism. An attorney for the United Farm Workers has been quoted as saying, "Enforcement is a very big problem." With respect to field reentry regulations, the same individual commented, "We do not have much confidence in state or federal standards because of the enforceability problem." Apparently, UFW prefers to have safety and health protection schemes written into its contracts so it can enforce the standards through the grievance procedure.154/

Regretably, the Standards Advisory Committee on Agriculture was not perceived to include a good cross section of the nation's farmers. This compounded the public relations problem for OSHA. Unless the bureaucracy can gain the confidence of a substantial percentage of farm employers and employees. the prospect for a good test of the present legislation and regulations does not seem very likely.155/ It should be noted that the Standards Advisory Committee on Agriculture has been disbanded as part of the general move to reduce the number of advisory committees and because "the most pressing safety and health hazards in agriculture have been addressed."156/

What can be done to improve the existing situation? There are no guaranteed answers, but there are a number of possibilities to consider.

First, the criticisms of the overall scheme of the act must be given serious attention. No doubt the regulations that have been promulgated will do much to advance the cause of safety and health even if enforcement is not mounted on a large scale. It is not likely that there will be widespread removal of factory-installed ROPS or machine guards and if these safety devices are well designed their existence should help bring down accident figures for all farm personnel. However, much more attention needs to be given to the education of agricultural employers and employees and this must be accomplished in such a way so as to avoid alienating all concerned. Money spent on consultation visits by OSHA officials might be well spent. Funding for research that will give good accident statistics might yield results. The recent 18-state report begins to get at the kind of accident breakdown that can lead to sound policymaking. However, there may well be a need to go further to determine when accidents occur, not just in terms of months of the year, but days of the week, hours of the day, point during the work shift, etc. Accident patterns may well show up and recommendations can be made for employer-employee safety meetings, work breaks, and periods of intense supervision. A system of recognizing and rewarding good safety records needs to be developed. One government agency, the United States Forest Service, has many employees doing extremely hazardous work and the experience there has demonstrated that attention to this kind of detail can yield positive results. Providing safe working conditions is important, but it is but one of many factors that go to holding down accidents and job-related illnesses.

A second area of concern has to do with the legislation and regulations as such. Inconsistent regulation by different agencies must be eliminated. At both the federal and state levels, concerted efforts should be made to have safety and health programs administrered by a single agency. Unnecessary complications in the regulations should be rooted out, including those that result from mistake, unneeded threshold requirements, regulations that are designed to have broad application but which in effect are relevant only to certain regions or certain specialized farming operations, and regulations which are not readily comprehendable by the average layperson.

A third area of concern has to do with enforcement of existing regulations. Inadequate resources in the DOL and other agencies continues to be a problem. Perhaps a clear picture of the cost of employment-related accidents and illnesses is needed to convince policymakers of the need, even in the time of budget cutting for increased spending for enforcement. The use of new enforcement dollars for more than punishment schemes might make those who appropriate funds more willing to consider such additional funding.

A fourth area of concern relates to those matters now pending in Congress. Recordkeeping and broader exemptions for those with 10 or fewer employees ought not to be a permanent part of the law, at

least not for agricultural employment. There is nothing to indicate that there is something inherently safer about a place of employment in agriculture because there are 10 or fewer employees. If there is sufficient concern for lawmakers to act at all in the safety and health area, artificial thresholds ought to be shunned. There may well be legitimate concerns about the burden of recordkeeping requirements and about compliance costs for small operators. Some of these concerns could be eliminated if the reporting scheme were made simply and if it could be part of a uniform reporting system for all government programs involving agricultural employment. Some of the concern over OSHA recordkeeping requirement is simply a mainifestation of a larger concern over all the recordkeeping and reporting requirements being imposed on agriculture today. Much more attention needs to be given to the elimination of piecemeal requirements. Attitudes might well improve if a comprehensive system were introduced with adequate instruction and assistance given to farm employers and their employees. If there is a desire to regulate agricultural employment at the current level, the regulator has to communicate with the regulated on a more frequent and effective basis.

If there is a continued insistence upon exempting small operators, some attention should be given to creating a uniform system of exemption that applies not only to OSHA, but also to other schemes. Such exemption schemes ought to have some permanency and not be subject to annual expiration. The existing system leaves employers and employees with the task of constantly wondering what has happened and this promotes disdain for the whole regulatory process.

The pending field sanitation regulations are controversial because they have no practical application in many cases. The credibility of the regulator is damaged and, as in this case, long delays and costly litigation result. More input from employers and employees prior to the publication of proposed regulations might well have headed off many problems.

Some of the problems in promoting safety and health in agriculture in the 1970's are the result of evolving standards and practices where there was little past experience. Safety and health concerns have existed in the past, but large-scale systematic regulation and education has not. Thus, some of what has happened must be attributed to natural "growing pains." However, enough experience has been gained to move to a new level where cooperation, rather than conflict, will predominate. The entire repeal of OSHA, while advocated by a few, seems remote as does the enactment of a total exemption for agriculture. Promoting safety consciousness and rewarding good records could well serve as the primary thrust of occupational safety and health efforts as we move toward the second decade of experience with OSHA and many related programs.

Notes to Chapter 4

1. Letter, with Fact Sheet enclosed, from Dir. of Information, Occupational Safety and Health Review Commission, to Donald B. Pedersen, June 8, 1976.

2. 41 Fed. Reg. 10190 (1976).

3. Id.

4. Farm/Ranch Standardized Accident Survey: An 18-State Report, National Safety Council (1979) p. 2. (hereinafter 18-State Report).

5. 18-State Report, supra note 4 at 12.

6. 18-State Report, supra note 4 at 4.

7. 18-State Report, supra note 4 at Table 11, p. 12.

8. See Catz and Guido, "A Demonstrated Need for Agricultural Standards Under the Occupational Safety and Health Act of 1980," 9 Gonzaga L. Rev. 439, 440 (1976).

9. See Hearings on S. 586, S. 976, S. 1147, S. 1249, S. 2823, S. 3147, S. 3451, and S. 3651 Before the Subcomm. on Labor of the Senate Comm. on Labor and Public Welfare, 93d Cong., 2nd. Sess. (1976); Implementation of the Occupational Safety and Health Act, Hearings Before the Subcomm. on Labor of the Senate Comm. on Labor and Public Welfare, 92nd Cong., 2nd Sess. (1972); Fundamentals of Machine Operation, Agricultural Machinery Safety (Deere ed. 1974); International Labour Office Codes of Practice Safety and Health in Agricultural Work (Atar, Geneva, 1965).

10. See BNA Operations Manual, The Job Safety and Health Act of 1970 (1971) at 14-17.

11. Occupational Safety and Health Act of 1970, Pub. L. No. 92-596, §§2-34, 84 Stat. 1590 (codified at 29 U.S.C. §§651-78 (1976) (hereinafter cited as Williams-Steiger Act).

12. As subsequent discussion reveals, regulations and annual appropriation bills have limited the application to agricultural employment to some degree.

13. 29 U.S.C. §654(a) (1976).

14. 29 U.S.C. §655 (1976).

15. 29 U.S.C. §654(b) (1976).

16. This theory was reiterated by President Carter in his Proclamation 4645 of March 15, 1979, designating National Farm Week, 1979, 44 Fed. Reg. 16355 (March 19, 1979).

17. 29 U.S.C. §666 (1976).

18. See Hearings on S. 586, supra note 9 at 60 and 468.

19. See 29 U.S.C. §667 (1970): Comment, "The Occupational Safety and Health Act of 1970: An Overview," 4 Cumb.-Sanford L. Rev. 525, 531 (1974); Frazier, "OSHA and the Farmers: An Analysis and Critique," 1972 Ins. L. J. 439, 446 (1972); Before state laws take precedence over the federal requirements, the state plan must be submitted and approved. This approval is contingent upon the plan containing requirements at least as stringent as the federal standards. Even after the state plan is approved, however, the federal plan remains applicable for three years to enable the Secretary of Labor to ascertain whether the state act in operation meets the requirements. After the three-year temporary period, although the federal standards no longer apply, the Secretary of Labor retains jurisdiction to evaluate the state plan and its enforcement continually.

20. 40 Fed. Reg. 48679 (1975), codified at 29 C.F.R. §1953.23(a)(1) & (2) (1980).

21. Until recently the Employment and Training Administration of the Department of Labor was known as the Manpower Administration.

22. 41 Fed. Reg. 22267 (1976).

23. See 29 U.S.C. §667(h) (1976).

24. Since the pulpwood logging industry is not agriculture in the context of this study, these regulations will not be discussed.

25. It appears that the various procedural regulations found at 29 C.F.R. §§1901-06, 1910(a), 1911-13; 1950-52, 1975 & 1977 (1978) have application in agricultural cases.

26. Marion Stephen d/b/a Chapman & Stephens Company (No. 13535); See BNA Occupational Safety and Health Reporter (5/19/77), at 1559; Rev. Com. 1977, 1977-1978 OSHD ¶21,802.

27. 29 C.F.R. 1928-21(a)(1) (1978); 29 C.F.R. §1910.142 (1978).

28. An example of such state regulations are those promulgated in Minnesota. See The Minnesota Occupational Safety and Health Act of 1973. Minn. Sess. Laws 2177 (codified at Minn. Stat. §§182.655-674 (1974), as amended, (Supp. 1975), as amended Act of Apr. 3, 1976, ch. 134, §§48-49 (1976) Minn. Legis. Serv. 253 (West); Minn. Occupational Safety & Health Code Regs. 40-129 (1975) (hereinafter cited as MOSHC). MOSHC currently is contained in volume 6, MCAR.

29. See, e.g. Minn. Stat. §504.18 (1974). This has been construed to impose a "coveant of habitability" upon all lessors of residential property. See, Fritz v. Warthen 298 Minn. 54, 57-58, 213 N.W. 2d 339, 341 (1973).

30. See Housing for Agricultural Workers, 20 C.F.R., pt. 620 (1978), as amended, 41 Fed. Reg. 7092 (1976); (sentence deleted from 20 C.F.R. §620.3), as revised, 41 Fed. Reg. 13339 (1976); (20 C.F.R. §620.3, revisions corrected by 41 Fed. Reg. 15004 (1976); deleted 42 Fed. Reg. 62133 (1977);

repromulgated 43 Fed. Reg. 36058 (1978); modification proposed 43 Fed. Reg. 39124 (1978); application of present standards extended 44 Fed. Reg. 4667 (1979).

31. 29 C.F.R. §1928(a)(1) (1978); 29 C.F.R. §1910.142 (1978).

32. MOSCH 40-129 (1975).

33. See Rules and Regulations of the Minnesota State Board of Health governing Migrant Labor Camps Reg. 204 (1974) (hereinafter cited as MHD). MHD currently is contained in volume 13, MCAR. Regulations dealing with Migrant Labor Camps have also been promulgated in New York pursuant to N.Y. Public Health Law §225(m), 10 NYCRR, part 15 (1978).

34. See note 28, supra.

35. See Minn. Stat. §504.18 (1974).

36. The problem also exists in North Carolina, Hearings on H.R. 8232, H.R. 8233, H.R. 8234, H.R. 8249, H.R. 8894, H.R. 10053, H.R. 10631, H.R. 10810, H.R. 10922 Before the Subcommittee on Economic Opportunity of House Committee on Education and Labor, 95th Cong., 2nd, Sess. (1978), pp. 193-4.

37. BNA Occupational Safety and Health Reporter (12/29/77) at 1176.

38. Id.

39. BNA Occupational Safety and Health Reporter (12/29/77) at 1176; 5/4/78) at 1809.

40. See 41 Fed. Reg. 3095 (1976); 41 Fed. Reg. 18131 (1976).

41. 39 Fed. Reg. 34057 (1974).

42. 39 Fed. Reg. 44456 (1974).

43. Telephone conference between Donald B. Pedersen and Office of Standards Development, OSHA, March 11, 1975.

44. See 41 Fed. Reg. 18430 (1976).

45. 42 Fed. Reg. 62133 (1977).

46. Id.

47. Salvador Molina, et al. v. Marshall (D.C. Dist. Col. No. 78-0651 filed April 11, 1978).

48. 43 Fed. Reg. 19480 (1978).

49. 43 Fed. Reg. 36058 (1978).

50. 43 Fed. Reg. 39124 (1978).

51. DOL Program Directive 500-80 (Oct. 1, 1978).

52. 44 Fed. Reg. 4667 (1979).

53. 45 Fed. Reg. 14182 (1980); ETA standards at 20 C.F.R. §§654.404-654.417.

54. 45 Fed. Reg. 14180 (1980); OSHA standards at 29 C.F.R. §1910.142.

55. CCH OSHA Compliance Guide ¶9762; BNA Occupational Safety and Health Reporter (12-13-79) at 665-6.

56. CCH OSHA Compliance Guide ¶9599.

57. 45 Fed. Reg. 14180 (1980).

58. Id.

59. 29 C.F.R. §1910.111 (1978).

60. 29 C.F.R. §1910(g) and (h) (1978).

61. 29 C.F.R. §1910.111(a) and (b) are the sections made operative by 29 C.F.R. §1928.21 (1978).

62. See 38 Fed. Reg. 26459 (1973).

63. 43 Fed. Reg. 49748 ff. (1978), codified at 29 C.F.R. §1910.111 thru §1910.144 (1980).

64. 29 C.F.R. §1910.145 (1978).

65. 29 C.F.R. §1910.145(d)(10) (1978).

66. 29 C.F.R. §1910.145(d)(10) survives the deletions at 43 Fed. Reg. 49749 (1978), but the emblem illustration is out by virtue of item 417 at 43 Fed. Reg. 49749 (1978).

67. See 39 Fed. Reg. 4536 (1974); St. Paul Pioneer Press, July 24, 1976 at 11.

68. See 29 C.F.R. §1928.51 (1978).

69. 29 C.F.R. §1928.51(b)(2) (1978).

70. See 29 C.F.R. §1928.51(b)(5)(i)-(ii) (1978); 40 Fed. Reg. 21474 (1975).

71. 29 C.F.R. §1928.51(b)(5)(iii) (1978).

72. 29 C.F.R. §1928.51(b)(6) (1978).

73. See 29 C.F.R. §1928.51(d) (1978) (refers to Appendix A-Employee Operating Instructions of 1928 for specific operating instructions).

74. 41 Fed. Reg. 10190 (1978); a detailed report appears in 18-State Report at 31-2.

75. 29 C.F.R., pt. 1928, subpt. D (1978).

76. All new equipment manufactured on or after Oct. 25, 1976, must comply with this regulation; however, it does not apply to certain equipment manufactured before Oct. 25, 1976. See 41 Fed. Reg. 22268 (1976), changing 41 Fed. Reg. 10195 (1976) (not applicable to certain equipment manufactured before June 7, 1976).

77. 29 C.F.R. §1928.56(a)(7) (1978).

78. 29 C.F.R. §1928.57(b)(4)(ii), (c)(4)(ii) (1978).

79. 29 C.F.R. §1928.57(a)(9) (1978).

80. BNA Occupational Safety and Health Reporter (10/28/76) at 623.

81. 41 Fed. Reg. 46598 (1976).

82. 29 U.S.C. §655(c) (1976).

83. 38 Fed. Reg. 10715 (1973).

84. See 38 Fed. Reg. 15729 (1973).

85. 38 Fed. Reg. 17214 (1973). See 29 C.F.R. 1910.267(a)-Table I (1974) deleting 39 Fed. Reg. 28878 (1974) (field reentry safety intervals in days for crops treated with organophosphorus pesticides).

86. 489 F.2d 120 (5th Cir. 1974), discussed in Comment, "Farmworkers in Jeopardy: OSHA, EPA and the Pesticide Hazard," 5 Ecology L.Q. 69, 90-96 (1975).

87. 7 U.S.C. §§135-36y (1970) as amended, (Supp. III, 1979).

88. The 12 chemicals are ethyl parathion, methyl parathion, guthion, demeton, azodrin, phosalone, carbophenothion, metasystoz-R, EPN, bidrin, endrin and ethion, 40 C.F.R. §170.1-4 (1978) promulgated pursuant to 7 U.S.C. §136w (Supp. III. 1979).

89. 7 U.S.C. §136j(a)(G) (Supp. III 1979).

90. BNA Occupational Safety and Health Reporter (5/25/78) at 1930-31.

91. 43 Fed. Reg. 36623 (1978), and 45 Fed. Reg. 55175 amending 29 C.F.R. §575.5(d) (1978).

92. National Association of Farmworkers Organizations et al v. Marshall, No. 79-1587 (C.A.D.C. March 20, 1980).

93. 49 U.S.C. §§303, 304 (1976).

94. 49 C.F.R., pt. 398 (1977).

95. 49 C.F.R. §§398.3-.18 (1977).

96. 49 C.F.R. §398.2 (1977).

97. 49 C.F.R. §398.1(a) (1977).

98. These regulations are discussed in other parts of this study.

99. 43 Fed. Reg. 27419 (1978).

100. 43 Fed. Reg. 27434 (1978), amended by 43 Fed. Reg. 28474 (1978), and 43 Fed. Reg. 35036 (1978); codified as 29 C.F.R., pt. 1928, subpt. I.

101. 29 C.F.R., pt. 1928, subpt I.

102. 29 C.F.R. §1910.1046 (1978).

103. 29 C.F.R. §1928.113(i) (1978).

104. CCH OSHA Compliance Guide ¶2164.

105. AFL-CIO et al v. Marshall et al., 1979 CLH OSHD ¶23,963 (CADC 1979).

106. CCH OSHA Compliance Guide ¶9789.

107. Texas Independent Ginners Assn. v. Marshall, No. 78-2663 (5th Cir. 1979).

108. These provisions are summarized in Fact Sheet, see note 1, supra; 29 C.F.R., Subparts A-G.

109. Id.

110. 29 C.F.R., Subpart M.

111. See Dept. of Labor and Health, Education and Welfare and Related Agencies Appropriations Bill, 1975, Rept. No. 94-1146, 93d. Cong., 2d Sess. 23: Dept. of Labor and Health, Education and Welfare and Related Agencies Appropriations Bill, 1976, Rept. No. 94-366, 94th Cong., 1st. Sess. 19-20.

112. See Rept. No. 94-366, supra note 111 at 20.

113. See Hearings on S. 586, supra note 9 at 476.

114. Id.

115. St. Paul Pioneer Press, July 24, 1976 at 11.

116. 18-State Report at 2.

117. BLS statistics reported in BNA Occupational Safety and Health Reporter (11/30/78) at 1121-23.

118. Id.

119. Id.

120. BNA Occupational Safety and Health Reporter (5/19/77) at 1560.

121. BNA Occupational Safety and Health Reporter (4/28/77) at 1475.

122. 29 C.F.R. §1904.15 (1978).

123. Note the confusion that arose in BNA Occupational Safety and Health Reporter (10/19/78) at 669, corrected in BNA Occupational Safety and Health Reporter (11/16/78) at 8623.

124. 29 C.F.R. §1904.15 (1978).

125. 42 Fed. Reg. 38568 (1977).

126. 29 C.F.R. §1952.4 (1978).

127. See Dept. of Labor and Health, Education and Welfare and Related Agencies Appropriations Bill, 1978 Rept. No. 95-480, 95th Cong., 1st Sess.

128. Id.

129. H.R. 11445, 95th Cong., 1st Sess.

130. H.R. 795; H.R. 2116; H.R. 428; 96th Cong., 1st Sess., S. 1486; S. 1572; 96th Cong., 2d Sess.

131. H.R. 4397, 96th Cong., 1st Sess.

132. H.R. 4831, 96th Cong., 1st Sess.

133. An OSHA interpretation indicates that the exemption applies only if the farmer had 10 or fewer employees on the day of the inspection and no more than 10 at any time during the preceding 12 months. OSHA Instruction CPL 2.33, April 6, 1979.

134. 41 Fed. Reg. 17576 (1976).

135. St. Paul Pioneer Press, Aug. 20, 1976, 5/World and Nation.

136. BNA Occupational Safety and Health Reporter (6/24/76) at 131.

137. BNA Occupational Safety and Health Reporter (7/1/76) at 166 and 169.

138. National Congress of Hispanic American Citizens (El Congreso) v. Marshall (No. 2142-73) (U.S.D.C. Dist. of Col.).

139. 6 OSHC 2157.

140. BNA Occupational Safety and Health Reporter (2/1/79) at 1390-1.

141. National Congress of Hispanic American Citizens, 1979 CCH OSHD ¶24,115 (CADC, 1979), see comment at 13 Clearinghouse Rev. 907 (1980).

142. BNA Occupational Safety and Health Reporter (9/28/78) at 541.

143. BNA Occupational Safety and Health Reporter (9/28/78) at 542.

144. S.251; S.270; H.R. 664; 96th Cong., 1st Sess.

145. H.R. 187; H.R. 3696; 96th Cong., 1st Sess.

146. BNA Occupational Safety and Health Reporter (8/19/76) at 352.

147. H.R. 794; H.R. 187; 96th Cong., 1st Sess.

148. H.R. 794; Folio 22 at 3; 96th Cong., 1st Sess.

149. H.R. 794; H.R. 187; 96th Cong., 1st Sess.

150. H.R. 6539; H.R. 6692; H.R. 7006; 96th Congress, 2d Sess; see also S. 2153 96th Congress, 1st. Sess.; compare H.R. 6861, 96th Congress, 2d Sess.

151. H.R. 425; H.R. 738; H.R. 771; H.R. 1376; H.R. 2310; H.R. 3032; 96th Cong., 1st Sess.

152. St. Paul Pioneer Press., July 24, 1976 at 11.

153. See Hobbes, The Leviathan.

154. BNA Occupational Safety and Health Reporter (9/1/77) at 423.

155. Statement of Richard McGuire, American Farm Bureau Federation, Seante Hearings, Subcommittee on Labor of Committee on Labor and Public Welfare, Aug. 13, 1974 at 466.

156. BNA Occupational Safety and Health Reporter (9/28/78) at 542.