

## Appendix A

### MIGRANT WORKER TRANSPORTATION SAFETY

#### I. Definitions under Federal Law

##### A. United States Code

##### 1. Transportation—Motor Carrier Safety—49 USC 31501 *et seq.*

a. **“Migrant worker”** means an individual going to or from employment in agriculture as provided under the Internal Revenue Code or the Fair Labor Standards Act. 49 U.S.C. 31501(1); *see* 26 U.S.C. 3121(g); 49 U.S.C. 501.

b. **“Motor carrier of migrant workers”** means a person (except a motor common carrier) providing interstate transportation by a motor vehicle (except a passenger automobile or station wagon) for at least 3 migrant workers at a time to or from their employment. 49 U.S.C. 31501(3).

“Motor carrier of migrant workers” does **not** include a migrant worker providing transportation for migrant workers and their immediate families. 49 U.S.C. 31501(3).

c. **“Transportation”** means use of a motor vehicle for the movement of passengers. 49 U.S.C. 13102(19).

##### 2. Migrant and Seasonal Agricultural Worker Protection Act (MSPA), 29 USC 1801 *et seq.*

a. **“Migrant agricultural worker”** means a person who is employed in agricultural employment of a seasonal or other temporary nature, and who is required to be absent overnight from the person’s permanent place of residence. 29 USC 1802(8)

**NOTE:** “Migrant agricultural worker” does **not** include (1) any immediate family member of an agricultural employer or a farm labor contractor; or (2) any temporary nonimmigrant alien who is authorized to work in agricultural employment in the United States.

b. **“Farm labor contracting activity”** includes **transporting** any migrant or seasonal agricultural worker. 29 USC 1802(6)

- c. **“Farm labor contractor”** means any person, other than an agricultural employer, an agricultural association, or an employee of an agricultural employer/association, who, for compensation, performs any farm labor contracting activity. 29 U.S.C. 1802(7).

See similar definitions for “migrant farmworker” and “seasonal farmworker” under Migrant and Seasonal Farmworker Programs, 49 U.S.C. 2912(3), (4)

## **B. Code of Federal Regulations**

### **1. Transportation of Migrant Workers, 49 CFR §398**

- a. **“Migrant worker”** means any individual proceeding to or returning from employment in agriculture as defined in the Fair Labor Standards Act or the Internal Revenue Code. 49 CFR §398.1(a).
- b. **“Carrier of migrant workers by motor vehicle”** means any person who transports in interstate or foreign commerce three or more migrant workers to/from work by any motor vehicle other than a passenger automobile or station wagon, **except** a migrant worker transporting himself or his immediate family. The definition includes any “contract carrier by motor vehicle” but does not include any “common carrier by motor vehicle.” 49 CFR §398.1(b); *see* 29 CFR §500.20(o) (defining “immediate family”).
- c. **“Motor carrier”** means any carrier of migrant workers by motor vehicle as defined above.

### **2. Migrant and Seasonal Agricultural Worker Protection Act (MSPA)—29 CFR §500**

**“Common carrier by motor vehicle”** means a carrier which publicly transports passengers for hire and which holds a valid transportation certificate from an appropriate government agency. 29 CFR §500.30(c).

## **II. Definitions under Oregon Law**

### **A. Oregon Revised Statutes**

- 1. **“Migrant worker”** means an individual engaged in agricultural labor that does not regularly reside in the county in which the individual is performing the agricultural labor. ORS 343.810(2) (ORS ch. 343--Special Education Services).

2. **“Seasonal farmworker”** means an individual who performs temporary paid labor for another in the
  - a. production of farm products; or
  - b. planting, cultivating or harvesting of seasonal agricultural crops; or forestation or reforestation of lands. ORS 652.145 (Hours; Wages; Wage Claims; Records)
3. **“Transportation”** includes the carrying, conveying or moving of passengers from one place to another. ORS 308.505(4) (ORS ch. 308-- Assessment of Property for Taxation)
4. **“Worker Transport Bus”** means a vehicle that is described under Worker Transport Safety Code (ORS 820.010 *et seq.*) that has a seating capacity of 12 or more passengers. ORS 801.610.

**B. Oregon Administrative Regulations**

**OAR 437-004-3410(2)(b)—“Commercial-type vehicles”**

Defined as motor vehicles used primarily for the transportation of persons or material on roads. Commercial-type vehicles used to transport workers are:

1. Class A—A bus-type vehicle that can carry 12 or more workers; or the “work crew” vehicle built or altered for carrying passengers.
2. Class B—A vehicle especially built for transporting work crews in compartments separate from the space used to transport supplies, tools and equipment.
3. Class C—A flatbed, pickup body or dump truck type vehicle, or of similar open body construction.
4. Class D—A passenger car or station wagon type vehicle.

**III. Application of United States Code to Motor Carriers of Migrant Workers**

**A. Safety and Equipment Requirements—49 U.S.C. 31502**

The Secretary of Transportation prescribes requirements for the comfort of passengers, qualifications and maximum hours of service of operators, and safety of operation and equipment of a motor carrier of migrant workers. The requirements only apply to a carrier transporting a migrant worker at least 75 miles; and across the boundary of a State, territory, or possession of the United States. 49 U.S.C. 31502(c); *see* 49 CFR part 398.

**B. Migrant and Seasonal Agricultural Worker Protection Act—29 U.S.C. 1801 *et seq.***

**1. Motor Vehicle Safety**

Farm labor contractors who furnish transportation must also furnish proof to United States Department of Labor that:

- a) their transportation vehicles meet safety requirements; and
- b) each driver of any vehicle has a valid driver's license.

## **2. Insurance**

Farm labor contractors who furnish transportation must also furnish proof to United States Department of Labor that the vehicles are insured for amounts specified in MSPA and regulations (\$100,000 per seat; \$5M per vehicle cap).

# **IV. Application of Code of Federal Regulations to Motor Carriers of Migrant Workers**

## **A. Interstate Commerce**

Federal regulations apply **only** to motor carriers of migrant workers that transport a migrant worker more than 75 miles, and then only if such transportation is in interstate commerce. 49 CFR §398.2; *see* 49 U.S.C. 31502(c).

## **B. Passenger Autos—MSPA**

Passenger automobiles and station wagons that transport migrant workers 75 miles or less are subject to separate standards. 29 CFR § 500.104.

## **C. Motor Vehicle Safety and Insurance Requirements—MSPA**

Federal regulations in 29 CFR §§ 500.100 through 500.128 state motor vehicle safety and insurance requirements for transportation of migrant and seasonal agricultural workers. The regulations prohibit the transport of migrant workers unless the vehicles have adequate service brakes, parking brakes, steering mechanisms, windshield wipers, tires, and rearview mirrors.

Current law **does not** mandate designated seating positions or an operational **seat belt** for each passenger.

# **V. Exemptions under Federal Law**

## **1. “Common Carrier by Motor Vehicle”**

MSPA exempts a “common carrier by motor vehicle” if the carrier would be a farm labor contractor solely because it is engaged in the farm labor contracting activity of transporting any migrant or seasonal agricultural worker. 29 USC

1803(3)(a); 29 CFR §500.30(c). See definition of “common carrier by motor vehicle” at section I.B.2., above.

**2. Transportation to/from Work Only**

MSPA applies only to the **transportation to or from work** of any migrant or seasonal agricultural worker and not to the transportation of any migrant or seasonal agricultural worker on farm machinery and equipment while the worker is actually engaged in agricultural work. 29 USC 1841.

**3. Small Business**

MSPA exempts farm operators (not farm labor contractors) from MSPA protection provisions if they qualify for the 500 man-days exemption under Fair Labor Standards Act.

**4. Family Business**

MSPA exempts individuals or immediate family members who engage in farm labor contracting activities on behalf of their exclusively owned or operated agricultural operation.

**5. Certain Farm Labor Contractors**

MSPA exempts farm labor contractors who work within a 25-mile intrastate radius of their permanent residence for less than 13 weeks per year.

**6. Carpooling**

MSPA vehicle insurance requirements do not apply to vehicles used in carpooling arrangement made by workers using one of the worker’s own vehicles and not involving the employer or done at employer’s direction.

**7. Other Entities**

Labor organizations, non-profit charitable organizations, and employees of exempt employers are exempt from MSPA provisions.

**VI. Application of Oregon Law to Migrant Worker Transportation**

**A. Oregon Revised Statutes**

- 1. ORS chapters 801 through 826** (Oregon Vehicle Code)—applies to vehicles used to transport migrant farm workers to and from work. Exemptions exist for “farm vehicles” used in incidental transportation. *See* ORS 805.390; ORS 805.300(6).

2. **ORS 651.110** (Bureau of Labor and Industries)—applies Fair Labor Standards Act of 1938 to farm workers; Oregon BOLI may assist federal agencies enforcement of FLSA within Oregon.
3. **ORS 820.010 et seq.** (Worker Transport Safety Code)—applies to migrant worker transport vehicles **furnished by an employer**, if the employer uses two or more workers. If the vehicle is a “worker transport bus” (see definition at section II.A.4., above), it may be subject to additional statutory safety measures. *See* ORS 811.520; ORS 816.300, and ORS 811.155.
4. **ORS 658.415(2)** (Farm Labor Contractors)—requires farm labor contractor to carry insurance all vehicles used to transport migrant workers pursuant to licensing by BOLI.
5. **ORS 653.010 through ORS 653.261** (General Employment Conditions)—do not provide coverage to certain farm workers but should cover most migrant farm workers. *See* ORS 653.020.
6. **ORS 654.001 et seq.** (Oregon Safe Employment Act)—provide statutory basis for worker transportation safety regulations.
7. **ORS 656.001 et seq.** (Workers’ Compensation)—Oregon workers’ compensation act covers agricultural workers the same as all other workers.

**B. Oregon Administrative Regulations**

1. **OAR 740-100-0010**—Oregon has adopted the U.S. DOT rules and regulations contained in 49 CFR §398 (Transportation of Migrant Workers) for observance by motor carriers conducting operations in interstate and intrastate commerce.
2. **OAR 437-004-3410(3) – (9)** state operation, safety, inspection, etc., requirements for vehicles used to transport workers.

**VII. Migrant Worker Transportation Statutes and Regulations—Other States**

**A. California—Farm Labor Transportation Act of 1999/Seat Belt Act of 2000**

1. **Cal. Vehicle Code § 322—Definitions**  
 Defines “**farm labor vehicle**” as any motor vehicle used to transport of **nine or more** farm workers, in addition to the driver, to or from a place of employment or employment-related activities. "Farm labor vehicle" does **not** include any vehicle carrying only members of the immediate family of

the owner or driver of the vehicle or operated under specific authority of the Public Utilities Commission or a city/county transit system.

Defines “**farmworker**” as any person who works for pay in connection with the production or harvesting of any farm products.

**2. Cal. Vehicle Code § 36000—Implement of Husbandry**

Provides generally that an “**implement of husbandry**” does **not** include a vehicle if the vehicle is designed primarily for transportation of persons or property on a highway.

**3. Cal. Vehicle Code § 31400—Vehicles Transporting Workers**

Requires that trucks used for transportation of workers have:

- a. seats securely fastened to the vehicle.
- b. a railing or suitable enclosure on the sides and end of the vehicle not less than 46 inches above the vehicle floor, if a motor truck.
- c. steps, stirrups, or other equivalent devices so placed and arranged that the vehicle may be safely mounted and dismounted.

**4. Cal. Vehicle Code § 31401—Vehicles Transporting Workers**

- a. Requires DOT to adopt regulations for safe operation of farm labor vehicles and to inspect every farm labor vehicle at least once annually to ascertain whether vehicle’s construction, design, and equipment comply with all provisions of law.
- b. Prohibits driving any farm labor vehicle without attached DOT inspection certificate.
- c. Provides that DOT may inspect any farm labor vehicle in maintenance facilities, terminals, labor camps, or other private property of vehicle owner or farm labor contractor to insure compliance with provisions of the vehicle code and regulations.
- d. Requires that owner of any farm labor vehicle or any farm labor contractor who rents a farm labor vehicle or who otherwise uses a farm labor vehicle to transport individuals bear responsibility for having the vehicle inspected.
- e. Prohibits operation of farm labor vehicle by an owner or any farm labor contractor unless the vehicle has a current inspection certificate.
- f. Provides that violation of any provision of regulations or statute is unlawful.

**5. Cal Vehicle Code § 31401.5—Vehicles Transporting Workers**

Requires DOT to develop regulations and specifications for display sticker to be displayed on every farm labor vehicle. Sets forth procedure for vehicle owners to schedule vehicle inspections. Prohibits operation of farm labor vehicle unless certification requirements are met.

- 6. Cal. Vehicle Code § 31402—Vehicles Transporting Workers**  
Prohibits operation of farm labor vehicle except to return to residence, business, or garage once DOT gives notice that vehicle is unsafe or not properly equipped. The prohibition continues until the vehicle and its equipment conform to vehicle code and DOT approves. Violation of this section is a misdemeanor subject to **\$1,000 - \$5,000 fine and/or not more than 6 months in jail**. Allows Highway Patrol to impound farm labor vehicle operated in violation of law.
- 7. Cal. Vehicle Code § 31403—Vehicles Transporting Workers**  
Prohibits transportation of passengers in farm labor vehicle that is known to be unsafe or improperly equipped until it is examined and repaired/equipped as required by vehicle code and certified by a competent mechanic to be safe and lawfully equipped.
- 8. Cal Vehicle Code § 31404—Vehicles Transporting Workers**  
Provides for fines for misdemeanor operation of farm labor vehicle in violation of vehicle code (minimum \$1,000 fine for conviction on each violation; \$500 fine for each passenger in vehicle, not to exceed \$5,000).
- 9. Cal. Vehicle Code § 31405—Vehicles Transporting Workers**  
Generally requires that all farm labor vehicles be equipped with seat belts in conformance with 49 CFR § 571.209. No inspection certificate issued if seat belts are not installed. Seat belts must be in good working order. Vehicle may not be operated on highway unless passengers properly restrained by seat belts.  
(Until January 1, 2007, the above section does not apply to a **bus used to carry more than 15 persons**, including the driver, so long as the bus meets all state and federal safety/construction standards and currently is not required to have seatbelts. On or after January 1, 2007, any bus as described above must be equipped at each passenger position with a seatbelt assembly, unless exempted.)
- 10. Cal Vehicle Code § 31406—Vehicles Transporting Workers**  
Effective March 31, 2002, prohibits transporting of any person in a farm labor vehicle that does not have all passenger seating positions in compliance with 49 CFR § 571.207. Also prohibits installation of a seat or seating system in a farm labor vehicle unless that seat or seating system complies with 49 CFR § 571.207.
- 11. Cal. Vehicle Code § 31407—Vehicles Transporting Workers**  
Requires placing all cutting tools or tools with sharp edges carried in the passenger compartment of a farm labor vehicle in securely latched containers that are firmly attached to the vehicle. Requires securing tools, equipment, or materials carried in the passenger compartment to the body of the vehicle to prevent their movement while the vehicle is in motion.

Tools, equipment, or materials must not obstruct an aisle or an emergency exit.

12. **Cal. Vehicle Code § 31408—Vehicles Transporting Workers**  
Requires illumination of headlamps on farm labor vehicles regardless of time of day.
13. **Cal Vehicle Code § 31409—Vehicles Transporting Workers**  
Requires that public transit vehicles used to transport farm workers comply with farm labor vehicle statutes and regulations relating to annual farm labor vehicle inspection and certification. After initial certification, requires inspection and certification of buses that carry **more than 15 persons**, including the driver, for seatbelt installation, illumination of headlamps, and storage/securing tools in passenger compartments.

## **B. Florida**

1. **§§316.001(61)** (State Uniform Traffic Control) and **450.181** (Migrant Labor) define migrant farm worker/migrant laborer.
2. **§316.001(62)** defines “migrant farm worker carrier” as transporting **nine** or more migrant workers to/from employment by motor vehicle other than a passenger auto or station wagon.  
EXCEPTION: Migrant worker transporting own family.
3. **§450.271** (Migrant Labor) states that Florida administers federal Migrant and Seasonal Worker Protection Act under state Farm Labor Registration Law.
4. **§450.28 (2002 Supp.)** (Farm Labor Registration) defines “farm labor contractor” as a person who, for compensation, transports into or within the state one or more farm workers and supervises or controls the work of such workers.
5. **§450.29(2)** (Farm Labor Registration) excludes carpools from MSPA requirements.
6. **§450.33(5) (2002 Supp.)** requires farm labor contractor to meet state insurance requirements for motor vehicles.
7. **§450.33(9) (2002 Supp.)** requires farm labor contractor to prove that transport vehicle complies with federal requirements and specifications for migrant worker transportation.
8. **§316.620** (State Uniform Traffic Control—Transportation of Migrant Farm Workers) sets forth inspection, maintenance, and equipment requirements for migrant farm worker carrier but does **not** require seat

belts on vehicles that transport workers. *Does not apply to common carriers.*

### C. Maryland

1. **Labor and Employment Code §§7-101(i)** (farm labor contractors) and 9-210 (farm workers) define migrant agricultural worker similarly to Oregon law and include day-haul provision.
2. **Labor and Employment Code §7-101(j)** includes transportation of migrant workers as a farm labor contracting service.
3. **Labor and Employment Code §7-404** (transportation of migrant agricultural workers) requires that:
  - a) Farm labor contractors ensure that the vehicle used to transport migrant agricultural workers meets applicable state and federal safety standards;
  - b) Driver of vehicle is licensed under state driver's licensing standards; and
  - c) Insurance coverage is provided for bodily injury/property damage that arises from ownership/operation of vehicle.
4. **Transportation Code §22-412.3** (vehicle equipment) requires that motor vehicles be equipped with seat belts under CFR safety standards.

Maryland law does not contain exemptions from vehicle safety requirements for farm labor vehicles.

### D. Michigan

**Michigan Compiled Laws §§286.601; 286.602** provide **only** for establishment of minimum safety standards, rules and regulations for transportation of migrant agricultural workers and encourage compliance with regulations.

### E. North Carolina

#### **§§ 20-215.1 through 20-215.5**—Motor Carriers of Migratory Farm Workers

1. **§20-215.1** defines “motor carrier of migratory farm workers” as a person who for compensation transports **five or more** migratory farm workers to/from employment by any motor vehicle other than passenger auto or station wagon.  
EXCEPTIONS:
  - a) Migratory farm worker who transports immediate family;
  - b) Carriers regulated by utilities or U.S. DOT; or

- c) Farmer/employer owns vehicle used to transport migratory workers.
- 2. **§20-215.2** requires that DMV make motor carrier of migratory farm worker rules/regulations applicable to:
  - a) Construction and equipment of vehicles
  - b) Operation of vehicles; and
  - c) Safety/comfort of passengers; however, **seat belts are not required.**
- 3. **§ 20-215.4** provides that violation of regulations is a misdemeanor.
- 4. **§§ 20-135.2 and 20-135.2A** provide that seat belt law applies only to “passenger motor vehicles” of 9/10-person capacity or less, and mandates that all persons 16 years old and over must buckle up. Section does not apply to vehicles where seat belts are not mandated by federal law.

## F. Pennsylvania

- 1. **Seasonal Farm Labor Act, 43 P.S. §§1301.101 through 1301.606**, contains no specific safety code exemptions or regulations for farm worker transportation.
- 2. **Worker Transportation Act, 34 Pa. Code §§31.11 through 31.31**, sets forth Pennsylvania’s comprehensive statutory regulation of migrant farm worker transportation. *See* 34 Pa. Code Chapter 31, Migrant Labor.

## G. Texas

### **Transportation Code §§647.001 et seq.**—Motor Transportation of Migrant Agricultural Workers

- 1. **§647.001**—Definitions  
 “Migrant agricultural worker” means a person who performs farm labor of a seasonal nature and occupies living quarters other than the individual’s permanent home during the period of employment.
- 2. **§647.002**—Application and exemptions  
 Chapter 647 applies to any carrier who uses a motor vehicle to transport to or from work at least five migrant agricultural workers for a total distance of more than 50 miles.  
 Chapter 647 does not apply if the:
  - (a) carrier is a common carrier;
  - (b) motor vehicle used is a station wagon or passenger automobile; or

- (c) carrier is a migrant agricultural worker transporting the worker or a member of worker’s immediate family.

**3. §647.003—Type of vehicle allowed**

A carrier may transport migrant agricultural workers only in a:

- (a) bus;
- (b) truck to which a trailer is not attached; or
- (c) semitrailer attached to a truck tractor.

A carrier may **not**:

- (a) attach a trailer to a semitrailer; or
- (b) use a closed van that does not have windows or ventilation. *See* Tex. Stat. § 647.001(1), (4), (6), (7), (8), which define above vehicles.

- 4. §§647.004 through 647.019** generally state requirements that carriers comply with Chapter 647 and operate vehicles in accordance with law. These provisions include operator age, experience, and physical condition; limitation on operation of vehicle; stopping at railroad crossings, fuel restrictions, vehicle equipment, seating requirements (but seat belts not required), passenger protection from weather, and certificate of compliance with federal regulations. Violation of the act is a misdemeanor punishable by a **\$5-\$50 fine**.

## **H. Washington**

Neighboring Washington State has no “specific” migrant worker transportation statutes; however, the Vehicle Code and corresponding regulations provide some coverage for migrant worker transportation.

### **1. Revised Code of Washington**

- a. **§46.61.688—Seat belts**  
“Motor vehicle” includes buses for purpose of seat belt law.
- b. **§46.04.181—Farm vehicles**  
“Farm vehicle” means vehicles only incidentally operated on public highways. State patrol may adopt rules exempting operator or occupants of “farm vehicles.”
- c. **§§19.30.010(3); 19.31.020—Farm labor contracting activity**  
“Farm labor contracting activity” includes transporting agricultural workers; however, no specific mention of transportation safety issues. Does not apply to “common carriers” or their employees **unless** a fee is received. *See* RCW 19.30.101(6).

### **2. Washington Administrative Code**

- a. **§204-32-010 *et seq.***—Regulations for private carrier buses  
“Private carrier bus” includes motor vehicles seating 11 or more persons and used for organized agricultural purposes.
- b. **§204-32-020 through 204-32-090**  
Equipment standards and requirement that bus stop at railroad crossing.
- c. **§204.32-100**  
Discretionary inspection of buses by state patrol.

### **VIII. Child Passenger Safety—Oregon Safety Belt Law (ORS 811.210)**

ORS 811.210(1) requires anyone who operates a motor vehicle to use seat belts.

ORS 811.210(2)(a) requires anyone who operates a motor vehicle and transports a child who is less than 4 years old and weighs less than 40 pounds to use a child safety seat.

Effective January 1, 2002, ORS 811.210(2)(b) requires anyone who operates a motor vehicle and transports a 4- to 6-year old child weighing between 40 and 60 pounds to use a child safety system that elevates the child so that a safety belt properly fits the child.

**Exempt:** Privately owned “commercial vehicles”(does not include pickup trucks). ORS 801.210.