

under any such superseded regulation, order, instruction, or like direction prior to the effective date of this part. Nothing in this part, however, shall be deemed to supersede any of the following (including future amendments thereof): (1) Executive Orders 10925 and 11114, and regulations issued thereunder, (2) The "Standards for a Merit System of Personnel Administration," issued jointly by the Secretaries of Defense, of Health, Education, and Welfare, and of Labor, 28 F.R. 734, or (3) any other regulation or instruction insofar as it prohibits discrimination on the grounds of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibits discrimination on any other ground.

(b) *Supervision and coordination.* The Secretary may from time to time assign to officials of other departments or agencies of the government (with the consent of such department or agency) responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this part (other than responsibility for final decision as provided in § 31.11), including the achievement of effective coordination and maximum uniformity within the Department and within the Executive branch of the Government in the application of Title VI and this part to similar programs and in similar situations.

PART 40—FARM LABOR CONTRACTOR REGISTRATION

- Sec.
- 40.1 Purpose and scope.
- 40.2 Definitions.
- 40.3 Certificate of Registration required.
- 40.4 Application for Certificate of Registration.
- 40.5 Corporations, partnerships, associations, and other organizations.
- 40.6 Farm Labor Contractor Employee Identification Cards, Applications.
- 40.7 Office of filing, action.
- 40.8 Regional Administrator; duties, action.
- 40.9 The Administrator; duties, action.
- 40.10 Terms of Certificates of Registration, other conditions and obligations.
- 40.11 Cancellation of insurance, review of financial responsibility, change of ownership.
- 40.12 Report of violation, investigation.
- 40.13 Action following investigation, Regional Administrator.
- 40.14 Action following investigation, Administrator.
- 40.15 Voluntary compliance.

- Sec.
- 40.16 Notice of proposed denial of an application for or renewal of a Certificate of Registration or a Farm Labor Contractor Identification Card or suspension or revocation thereof.
- 40.17 Notice and hearing.
- 40.18 Answer.
- 40.19 Service by mail.
- 40.20 The hearing—presiding officer.
- 40.21 The hearing—appearances.
- 40.22 The hearing—evidence.
- 40.23 The hearing—witnesses.
- 40.24 The hearing—Examiner's decision.
- 40.25 The hearing—exceptions to Examiner's decision.
- 40.26 Issuance of order.
- 40.28 Compliance with other Federal and State statutes.
- 40.29 Amendment to the regulations in this part.

AUTHORITY: The provisions of this Part 40 issued under sec. 14, 78 Stat. 924, 7 U.S.C. 2053.

SOURCE: The provisions of this Part 40 appear at 29 F.R. 18156, Dec. 22, 1964, unless otherwise noted.

§ 40.1 Purpose and scope.

The Farm Labor Contractor Registration Act of 1963 requires certain persons to obtain Certificates of Registration prior to performing any activities which constitute engagement in farm labor contracting within the meaning of the Act. This part sets forth the Regulations of the Secretary of Labor, United States Department of Labor, which are promulgated pursuant to section 14 of the Act to provide the procedure for applying for Certificates of Registration and allied documents, the issuance, renewal, suspension, or revocation thereof and rules of practice for administrative hearings relating thereto.

§ 40.2 Definitions.

For the purposes of this part:

(a) The term "person" includes any individual, partnership, association, joint stock company, trust, or corporation.

(b) The term "farm labor contractor" means any person, who, for a fee, either for himself or on behalf of another person, recruits, solicits, hires, furnishes, or transports ten or more migrant workers (excluding members of his immediate family) at any one time in any calendar year for interstate agricultural employment. The term "farm labor contractor" does not include (1) any nonprofit charitable organization, public or nonprofit private educational institution, or similar organization; (2) any farmer,

processor, canner, ginner, packing shed operator, or nurseryman who engages in any such activity for the purpose of supplying migrant workers solely for his own operation; (3) any full-time or regular employe of any entity referred to in subparagraph (1) or (2) of this paragraph; or (4) any person who engages in any such activity for the purpose of obtaining migrant workers of any foreign nation for employment in the United States, if the employment of such workers is subject to (i) an agreement between the United States and such foreign nation, or (ii) an arrangement with the government of any foreign nation under which written contracts for the employment of such workers are provided for and the enforcement thereof is provided for in the United States by an instrumentality of such foreign nation.

(c) The term "fee" includes any money or other valuable consideration paid or promised to be paid to a person for services as a farm labor contractor.

(d) The term "interstate agricultural employment" means employment in any service or activity included within the provisions of section 3(f) of the Fair Labor Standards Act of 1938, as amended (29 USC 203(f)), or section 3121(g) of the Internal Revenue Code of 1954 (26 USC 3121(g)), when such service or activity is performed by an individual worker who has been transported from one State to another or from any place outside of a State to any place within a State.

(e) The term "migrant worker" means an individual whose primary employment is in agriculture, as defined in section 3(f) of the Fair Labor Standards Act of 1938, as amended (29 USC 203(f)), or who performs agricultural labor, as defined in section 3121(g) of the Internal Revenue Code of 1954 (26 USC 3121(g)), on a seasonal or other temporary basis.

(f) The term "immediate family" includes only (1) a spouse; (2) children, step-children, and foster children; and (3) parents, step-parents, and foster parents.

(g) The "Regional Administrator" is the administrative officer in charge of a regional office of the Bureau of Employment Security, United States Department of Labor.

(h) The term "Secretary" means the Secretary of Labor, United States Department of Labor.

(i) The "Administrator" means the Manpower Administrator of the United States Department of Labor or his authorized representative.

(j) The "Examiner" is an examiner appointed pursuant to § 11 of the Administrative Procedure Act and is the officer who presides at hearings conducted pursuant to §§ 40.17-40.26.

(k) The term "State" means any of the States of the United States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, and Guam.

(l) "Convicted" means that a final judgment of guilt has been rendered by a court of competent jurisdiction from which no opportunity for appeal remains.

(m) A "full-time or regular employee" is a person who performs farm labor contracting activities solely on behalf of one employer and is not an independent contractor.

(n) A "Certificate of Registration" is the certificate issued by the Secretary which permits a person to engage in activities as a farm labor contractor.

(o) A "Farm Labor Contractor Identification Card" is a card issued pursuant to this part permitting a full-time or regular employe of a person holding a valid Certificate of Registration to engage in activities as a farm labor contractor.

§ 40.3 Certificate of Registration required.

(a) On or after January 1, 1965, the effective date of the Farm Labor Contractor Registration Act of 1963, any person who desires to engage in activities as a farm labor contractor, as defined in the Act, must first obtain a Certificate of Registration.

(b) A farm labor contractor who holds a valid Certificate of Registration is responsible for assuring that his full-time or regular employes have filed applications for Farm Labor Contractor Employee Identification Cards before they participate in any of the activities enumerated in section 3(b) of the Act.

[31 F.R. 14773, Nov. 22, 1966]

§ 40.4 Application for Certificate of Registration.

(a) The application for a Certificate of Registration on Form ES-410 is available and must be executed and filed in any office of the Employment Service of the various States, except that in States

requiring licensing or registration of farm labor contractors under State law, such application shall be available and shall be filed at the Employment Service office of such State or the same office where the State registration or license is filed, whichever may be designated by the Governor of such State.

(b) The application shall set forth the information required thereon, shall be subscribed and sworn to by the applicant and shall have attached the applicant's fingerprints on a completed Form FD-258.

(c) Before any person may transport, within the meaning of the Act, migrant workers and their property in any vehicle which he owns, operates, or causes to be operated, he shall have complied with the insurance or financial responsibility requirements of the Act by having submitted the following:

(1) A completed Farm Labor Contractor Automobile Liability Certificate of Insurance, showing that the passenger hazard is included (as evidence of liability insurance which covers the workers while being transported). Such certificate represents that an automobile liability insurance policy including a Farm Labor Contractor Liability Endorsement provides insurance in an amount not less than that required under the law or regulation of any State in which such applicant operates a vehicle in connection with his business, activities, or operations as a farm labor contractor; but in no event less than \$5,000 for bodily injuries to or death of one person; \$20,000 for bodily injuries to or death of all persons injured or killed in any one accident; \$5,000 for the loss or damage in any one accident to property of others, and that it was obtained from an insurance carrier licensed or otherwise authorized to do business in the State in which the insurance is obtained; or

(2) Proof of financial responsibility evidenced by (i) a completed Farm Labor Contractor Standard Accident Policy Certificate of Insurance, as evidence of the issuance of a Farm Labor Contractor Standard Accident Policy, in addition to a completed Farm Labor Contractor Automobile Liability Certificate of Insurance, if the Farm Labor Contractor Automobile Liability Certificate of Insurance shows that the passenger hazard has been excluded; or (ii) a liability bond executed by the applicant, identified in the instrument as the

"principal," together with a third party, identified in the instrument as the "surety," to assure payment of any liability up to \$50,000 for damages to persons or property arising out of the applicant's ownership of, operation of, or his causing to be operated any vehicle for the transportation of migrant workers in connection with his business, activities, or operations as a farm labor contractor. The "surety" shall be one which appears on the list contained in Treasury Department Circular 570, with an underwriting limit of not less than \$50,000 or which has been approved by the Secretary under the Welfare and Pension Plan Disclosure Act, as amended. Treasury Department Circular 570 may be obtained from the U.S. Treasury Department, Bureau of Accounts, Division of Deposit and Investments, Surety Bonds Branch, Washington, D.C. 20226.

(d) (1) No certificate of insurance filed by an insurance carrier in accordance with this section will be accepted, unless said insurance carrier meets the following requirements:

(i) The insurance carrier possesses and maintains surplus funds (policyholders' surplus) of not less than \$500,000, which minimum shall be determined on the basis of the values of assets and liabilities as shown in its financial statements filed with and approved by the insurance department or other insurance regulatory authority of the State of domicile (home State) of such company, except in instances where in the judgment of the Administrator additional evidence with respect to such values is considered necessary; and

(ii) The insurance carrier has a general policyholder's rating of B or better in the current issue of "Best's—Insurance Reports—Fire and Casualty," or a "recommended" rating in the current issue of "Best's—Insurance Reports—Life."

(2) If the insurance carrier is not listed in the current issue of Best's, or, if listed, is not assigned a general policyholder's rating of B or better or "recommended" whichever is applicable, such carrier may request approval for eligibility by submitting to the Administrator its latest financial statement, as filed with the insurance department of its home State, on the Convention form statement, with all exhibits and schedules included, and copies of reports of examination on conditions and affairs, as prepared by State supervisory authorities and such other

information as the Administrator may request.

(e) Any insurance policy or liability bond which is obtained pursuant to this Act should provide the required coverage for the full period during which the applicant for a Certificate of Registration shall be engaged in transporting migrant workers within the meaning of the Act during a calendar year. If a policy or liability bond shall expire within 30 days of the date of filing an application for a Certificate of Registration, such Certificate will not be issued unless the applicant shall have submitted written evidence of renewal or extension of said policy or liability bond for the period of time during which migrant workers will be transported. In the event that a policy or liability bond shall expire on a date which exceeds 30 days from the date of application for a Certificate of Registration, proof of renewal or extension of a policy or of a liability bond must be submitted promptly to the Regional Administrator who has issued the Certificate of Registration. The requirements of this paragraph do not excuse compliance with the provisions hereinafter set forth in § 40.11.

(f) Before any person may transport migrant workers within the meaning of the Act, he shall submit evidence satisfactory to the Regional Administrator that he is in compliance with the rules and regulations promulgated by the Interstate Commerce Commission that are applicable to his activities and operations in interstate commerce.

(g) The holder of a valid Certificate of Registration may request the renewal of his Certificate of Registration by executing and filing with a local office of the Employment Service of the various States or any office designated by the Governor of a State pursuant to section 40.4 the following: (1) An application which shall set forth the information required thereon; (2) proof of insurance coverage as required in paragraph (c) (1) of this section or proof of financial responsibility as required in paragraph (c) (2) of this section; (3) upon request, a completed Form FD-258 Fingerprint Card; and (4) upon request, evidence of compliance with applicable rules and regulations promulgated by the Interstate Commerce Commission.

(h) If a Certificate of Registration is lost or destroyed, a duplicate Certificate of Registration may be obtained by submission to any Regional Office of the Bu-

reau of Employment Security of a written statement explaining its loss or destruction, indicating where the original application was filed and requesting that a duplicate be issued.

[31 F.R. 14773, Nov. 22, 1966, as amended at 32 F.R. 10649, July 20, 1967]

§ 40.5 Corporations, partnerships, associations, and other organizations.

Any corporation, partnership, association, or other organization which is a farm labor contractor within the meaning of the Act must obtain a Certificate of Registration. If any officer, director, partner, or member of a corporation, partnership, association, or other organization, engages in any of the covered farm labor contracting activities as a full-time or regular employee of such business organization, he must comply with the requirements for obtaining a Farm Labor Contractor Employee Identification Card.

[31 F.R. 14774, Nov. 22, 1966]

§ 40.6 Farm Labor Contractor Employee Identification Cards, Applications.

(a) Any person who intends to be employed as a full-time or regular employee in any of the covered farm labor contracting activities by a farm labor contractor who is a holder of a valid Certificate of Registration must obtain a Farm Labor Contractor Employee Identification Card. This can be obtained by submitting Form ES-412, Application for Farm Labor Contractor Employee Identification Card, which shall be subscribed and sworn to by the applicant. The applicant shall submit a completed Form FD-258, Fingerprint Card. These forms are available at any local office of the Employment Service of the various States or any office designated by the Governor of the State pursuant to section 40.4.

(b) An application for a Farm Labor Contractor Employee Identification Card shall be acknowledged by the Regional Administrator. Until a determination is made upon the application, such acknowledgment shall authorize the applicant to engage in any of the covered activities of a farm labor contractor, as defined in the Act, in behalf of any holder of a valid Certificate of Registration. While engaging in such activities, the employee must have in his possession either the letter of acknowledgment, which shall not be effective for more than 30 days, or a Farm Labor Contractor

Employee Identification Card where such has been issued. Such employee shall not be engaged as a driver of a bus or truck for transportation of migrant workers in connection with the business, activities, or operations of a farm labor contractor subject to the Act, unless he shall comply with rules and regulations promulgated by the Interstate Commerce Commission that are applicable to his activities and operations in interstate commerce.

(c) If a Farm Labor Contractor Employee Identification Card is lost or destroyed, a duplicate Farm Labor Contractor Employee Identification Card may be obtained by submitting to any Regional Office of the Bureau of Employment Security a written statement explaining its loss or destruction, indicating where the original application was filed, and requesting that a duplicate be issued.

(d) The Farm Labor Contractor Employee Identification Card authorizes the employee to engage in activities as a farm labor contractor within the meaning of the Act in behalf of any holder of a valid Certificate of Registration.

(e) A holder of a valid Farm Labor Contractor Employee Identification Card may request renewal of such card by executing and filing at a local office of the Employment Service of the various States or to any office designated by the Governor of a State pursuant to section 40.4 the following: (1) An application for renewal; (2) upon request, a Form FD-258, Fingerprint Card; and (3) upon request, a Form ES-415, Doctor's Certificate.

[31 F.R. 14774, Nov. 22, 1966]

§ 40.7 Office of filing, action.

Each application for a Certificate of Registration or a Farm Labor Contractor Identification Card filed at any of the offices designated in §§ 40.4 and 40.6 shall be transmitted promptly to the appropriate Regional Administrator.

§ 40.8 Regional Administrator; duties, action.

The Regional Administrator shall:

(a) Review each application transmitted to him by the offices of filing and determine whether such application is complete and properly executed.

(b) When appropriate, notify the applicant in writing of any incompleteness or error in execution and return the ap-

plication to him for correction and completion.

(c) Determine after appropriate investigation whether the applicant has complied with the requirements of the Act and this Part and do one of the following:

(1) Issue a Certificate of Registration or Farm Labor Contractor Identification Card.

(2) Recommend that the Administrator refuse to issue a Certificate of Registration or Farm Labor Contractor Identification Card.

(d) Transmit to the Administrator all recommendations that issuance or renewal of a Certificate of Registration or Farm Labor Contractor Identification Card be refused together with the reasons for his recommendation.

§ 40.9 The Administrator; duties, action.

The Administrator shall:

(a) Review all recommendations by Regional Administrators that issuance or renewal of Certificates of Registration or Farm Labor Contractor Identification Cards be refused.

(b) When appropriate, return to the Regional Administrator for such further investigation, consideration, and determination as he deems necessary any application with reference to which the Regional Administrator has recommended that he refuse to issue or renew a Certificate of Registration or Farm Labor Contractor Identification Card.

(c) When appropriate, concur in the recommendation to refuse issuance or renewal of a Certificate of Registration or Farm Labor Contractor Identification Card.

(d) When appropriate, notify the applicant in writing of his proposed action and the grounds and reasons therefor in accordance with § 40.16.

§ 40.10 Terms of Certificates of Registration, other conditions and obligations.

(a) Certificates of Registration and Farm Labor Contractor Employee Identification Cards shall expire on each December 31. In any case in which an application for renewal of a valid Certificate of Registration submitted in accordance with the requirements of § 40.4 or employee identification card submitted in accordance with the requirements of § 40.6 has been made on or before November 30 of the year preceding the year

for which renewal is sought, the authority to operate as a farm labor contractor or employee of a certificate holder shall not expire until the application shall have been finally determined by the Administrator.

(b) [Reserved]

(c) Certificates of Registration and Farm Labor Contractor Employee Identification Cards may be revoked or suspended, or issuance or renewal thereof refused, if the applicant or registrant:

(1) Fails to carry his Certificate of Registration or identification card with him at all times while engaging in activities as a farm labor contractor or fails to exhibit the same when requested to do so, to any person with whom he undertakes to deal in his capacity as a farm labor contractor.

(2) Knowingly has made any misrepresentation or false statements in his application for a Certificate of Registration or identification card, or any renewal thereof.

(3) Knowingly has given false or misleading information to migrant workers concerning the terms, conditions, or existence of agricultural employment.

(4) Has failed, without justification, to perform agreements entered into or arrangements made with farm operators.

(5) Has failed, without justification, to comply with the terms of any working arrangements he has made with migrant workers.

(6) Has recruited, employed, or utilized the services of a person with knowledge that such person is violating the provisions of the immigration and nationality laws of the United States.

(7) Has been convicted of any crime under State or Federal law relating to gambling or to the sale, distribution, or possession of alcoholic liquors in connection with or incident to his activities as a farm labor contractor; or has been convicted of any crime under State or Federal law involving robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury, or crimes involving prostitution.

(8) Has failed to comply with rules and regulations promulgated by the Interstate Commerce Commission that are applicable to his activities and operations in interstate commerce.

(9) Knowingly employs or continues to employ any person, to whom subsec-

tion (b) of section 4 of the Act applies, who has taken any action, except for that listed in subparagraph (15) of this paragraph, which could be used by the Administrator to refuse to issue a Certificate of Registration or a Farm Labor Contractor Employee Identification Card.

(10) Has failed to comply with any of the provisions of the Act or any regulations issued thereunder.

(11) Has failed to ascertain and disclose to each worker at the time the worker is recruited the following information to the best of his knowledge and belief: (i) The area of employment, (ii) the crops and operations on which he may be employed, (iii) the transportation, housing, and insurance to be provided him, (iv) the wage rates to be paid him, and (v) the charges to be made by the contractor for his services.

(12) Has failed or refused, upon arrival at a given place of employment, to post in a conspicuous place a written statement of the terms and conditions of that employment.

(13) Has failed or refused to post in a conspicuous place the terms and conditions of occupancy, in the event he manages, supervises, or otherwise controls the housing facilities.

(14) Has failed or refused to comply with or perform any of the following, in the event he pays migrant workers engaged in interstate agricultural employment, either on his own behalf or on behalf of another person:

(i) To keep payroll records which shall show for each worker total earnings in each payroll period, all withholdings from wages, net earnings, the hours worked each day and the total hours worked during each payroll period.

(ii) For any worker employed on a time basis, to record on the payroll records the time period constituting the basis for payment of each worker and if the unit is other than an hour the number of hours of work comprising such unit.

(iii) For workers employed on a piece rate basis, to record on the payroll records the number of units of work performed and the rate per unit.

(iv) To provide to each migrant worker engaged in interstate agricultural employment with whom he deals in a capacity as a farm labor contractor, a statement of all sums paid to him (including sums received on behalf of such

migrant worker) on account of the labor of such migrant worker.

(v) To provide each migrant worker, engaged in interstate agricultural employment with whom he deals in a capacity as a farm labor contractor, an itemized statement showing all sums withheld by him from the amount he received on account of the labor of such worker, and the purpose for which withheld.

(15) Has failed to obtain or maintain in effect, or, has had canceled or terminated, any insurance policy or liability bond required by the Act and this part and cannot demonstrate financial responsibility acceptable to the Secretary or his representative.

(16) Has failed to furnish, or refused to allow a designated representative of the Secretary to obtain appropriate information necessary to make a determination of eligibility for a Certificate of Registration or a Farm Labor Contractor Identification Card as provided by section 5(b) of the Farm Labor Contractor Registration Act of 1963.

[29 F.R. 18156, Dec. 22, 1964, as amended at 31 F.R. 14775, Nov. 22, 1966]

§ 40.11 Cancellation of insurance, review of financial responsibility, change of ownership.

(a) Any insurance policy or liability bond required by the Act or this part shall provide that it shall not be canceled, rescinded, or suspended, nor become void for any reason whatsoever during such period in which the insurance or liability bond is required by the Act to be effective, except by the expiration of the term for which it is written, or until the company or the named insured, in the case of an insurance policy, or the "surety" or the "principal," in the case of a liability bond, shall have first given thirty (30) days' notice in writing by registered mail to the Director of the Office of Farm Labor Service, Bureau of Employment Security, U.S. Department of Labor, Washington, D.C., said thirty (30) days' notice to commence to run from the date notice is actually received.

(b) Any change in the membership or officers of a holder of a valid Certificate of Registration from that most recently reported shall within twenty (20) days of the change be reported in writing by registered mail to the Regional Admin-

istrator who issued the Certificate of Registration.

[31 F.R. 14775, Nov. 22, 1966]

§ 40.12 Report of violation, investigation.

(a) Any person may report a violation of the Act or this part to any local office of the Employment Services of the various States or any office designated by the Governor of a State pursuant to § 40.4 or any Regional Administrator or any of his representatives. The office receiving such a report shall refer it to the Regional Administrator of the Region in which the reported violation is alleged to have occurred. The Regional Administrator shall make or cause to be made an appropriate investigation of any alleged violation.

(b) The Regional Administrator shall also make or cause to be made an appropriate investigation when he has reasonable grounds to believe that a farm labor contractor has violated any provisions of the Act or this part.

§ 40.13 Action following investigation, Regional Administrator.

The Regional Administrator who makes or causes to be made an investigation in accordance with § 40.12 shall as appropriate:

(a) If the investigation relates to a Certificate of Registration or a Farm Labor Contractor Identification Card issued by him and he finds no or insufficient grounds to recommend suspension or revocation thereof, close the investigation without further action.

(b) If he finds grounds for suspension or revocation of the Certificate of Registration or the Farm Labor Contractor Identification Card to which the investigation relates, recommend suspension or revocation thereof by reporting the investigation and his recommendation to the Administrator with the reasons and basis for his recommendation.

(c) Report all other investigations to the Administrator.

§ 40.14 Action following investigation, Administrator.

The Administrator in cases in which revocation or suspension of a Certificate of Registration or Farm Labor Contractor Identification Card is recommended shall, utilizing the same procedures set forth in § 40.9 relating to issuance or renewal, make an appropriate determination. When he determines that

the recommendation of the Regional Administrator should be followed, he shall give notice thereof as provided in § 40.16.

§ 40.15 Voluntary compliance.

Except in cases of willfulness, prior to making any recommendation to revoke or suspend a Certificate of Registration or Farm Labor Contractor Identification Card in cases in which compliance can be achieved, the Regional Administrator shall call to the attention of the holder of or applicant for a Certificate of Registration or Farm Labor Contractor Identification Card, the facts and conduct upon which he intends to base his recommendation. He shall afford such holder or applicant a reasonable opportunity to demonstrate or achieve voluntary compliance.

§ 40.16 Notice of proposed denial of an application for or renewal of a Certificate of Registration or a Farm Labor Contractor Identification Card or suspension or revocation thereof.

Upon a determination by the Administrator that a Certificate of Registration or a Farm Labor Contractor Identification Card should be suspended or revoked or that issuance or renewal thereof should be refused, the Administrator shall notify the applicant therefor or holder thereof of his proposed action. In cases involving a determination relating to a Farm Labor Contractor Identification Card notice shall also be given to the holder of the Certificate of Registration under which the card is applied for. The notice shall be in writing, set forth the proposed action and the reasons therefor, and inform the applicant or holder of his right to a hearing. The notice shall:

(a) Set forth the proposed determination of the Administrator and the reasons therefor;

(b) Apprise the applicant or holder of his right to a hearing on the proposed action and that such a hearing will be held upon his request, provided that his request is made in writing not later than twenty (20) days after the service of the notice, and mailed to the Manpower Administrator, United States Department of Labor, Washington, D.C., 20210; and

(c) Inform the applicant or holder that in the absence of a request for a hearing the proposed determination shall become the order of the Secretary.

§ 40.17 Notice and hearing.

Upon receipt of a request, pursuant to § 40.16, the Administrator shall refer the matter to the Chief Hearing Examiner, United States Department of Labor, Washington, D.C., 20210. Such request shall provide the basis for initiation of a hearing on the issues raised in the notice given pursuant to § 40.16. Within a reasonable time following the aforesaid reference, the Examiner to whom the matter is referred shall issue and serve upon the person requesting a hearing and the Administrator, a Notice of Hearing prescribing the day and time, the place, and the purpose of the hearing to determine whether a Certificate of Registration or Farm Labor Contractor Identification Card or renewal thereof should be issued, suspended or revoked. The hearing contemplated by the notice shall not be held prior to 14 days after the date of notice.

§ 40.18 Answer.

Any person served with a Notice of Hearing pursuant to § 40.17 may, at any time prior to the commencement of the hearing for which notice has been given, file with the Chief Hearing Examiner an answer denying, explaining, or otherwise responding to the proposed determination. No such answer or any response is required, but if filed, must be signed by the person answering or responding or his representative.

§ 40.19 Service by mail.

Any application, notice or other document required by this Part to be filed or served on any person may be filed or served personally or by mail. If done by mail, filing or service is complete upon mailing. Service of any such notice or other document by mail upon applicants for or holders of Certificates of Registration or Farm Labor Contractor Identification Cards shall be made at the address designated either on such applicant's or holder's most recent ES-410, Application for Certificate of Registration, or ES-412, Application for Farm Labor Contractor Identification Card, or by any subsequent written communication to the Regional Administrator who issued the Certificate of Registration or the Identification Card as the place to which service of all notices and documents may be made.

§ 40.20 The hearing—presiding officer.

(a) The Hearing contemplated by the Act and this Part shall be conducted by an Examiner.

(b) In any proceeding assigned to him, the Examiner shall have all powers necessary to conduct a fair and impartial hearing as enumerated in section 7(b) of the Administrative Procedure Act (5 U.S.C. 1006(b)).

§ 40.21 The hearing—appearances.

(a) Each party shall have the right to appear in person, through an authorized agent, or by or with counsel. The Solicitor of the United States Department of Labor or his designee shall represent the Administrator in each proceeding before the Examiner.

(b) For good cause shown, the Examiner may permit any interested person or party to intervene at a hearing. A petition to intervene shall be in writing and shall state briefly and with particularity the petitioner's relationship to the matters involved in the proceedings and the nature of the presentation he would make.

(c) If any party to the proceeding, after being properly served with notice of the hearing, should fail to appear at the hearing, the matter may be set for further hearing upon notice or the Examiner may make his decision without further hearing. Failure to appear at a hearing, however, shall not be deemed to be a waiver of the respondent's right to be served with a copy of the Examiner's decision and to file exceptions with respect thereto.

§ 40.22 The hearing—evidence.

(a) The testimony of witnesses shall be upon oath or affirmation administered by the Examiner and shall be subject to such cross-examination as may be required for a full and true disclosure of the facts. The Examiner shall exclude evidence which is immaterial, irrelevant, or unduly repetitious.

(b) If a party objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination or the failure to limit such scope, he shall state briefly the grounds for such objection. Rulings on all objections shall appear in the record. Only objections made before the Examiner may be relied upon subsequently in the proceeding. A formal exception to an adverse ruling is not required.

(c) Official notice may be taken of any material fact, not appearing in evidence in the record, which is among the traditional matters of judicial notice and also concerning which the Department by reason of its functions is presumed to be expert: *Provided*, That the parties shall be given adequate notice, at the hearing or by reference in the Examiner's decision of the matters so noticed, and shall be given adequate opportunity to show the contrary.

(d) At the end of the hearing, the Examiner shall afford any party a reasonable opportunity, upon request, to file with him proposed findings of fact, conclusions of law, and a proposed order, together with a supporting brief including the reasons for any proposals. Such proposals shall be accompanied by a certification that service of the proposals has been made upon all other parties.

(e) The hearing shall be open to the public, unless otherwise ordered by the Examiner.

§ 40.23 The hearing—witnesses.

The Examiner, either at the request of the parties or upon his own motion, may request persons to appear to testify as witnesses, where such action is deemed necessary to serve the purposes of the hearing.

§ 40.24 The hearing—Examiner's decision.

(a) Following the hearing the Examiner shall prepare a decision as promptly as practicable after the expiration of the time set for filing proposals provided for in § 40.22, if any. He shall include in the decision findings of fact and conclusions which set forth the reasons and basis for his decision with respect to all material issues of fact, law and discretion. If the respondent does not appear at the hearing, the Examiner shall, subject to the authority granted in § 40.21(c), prepare his decision on the record before him. He shall prepare an order affirming or rejecting the proposed action of the Administrator or providing such other relief or sanction as may be appropriate.

(b) The Examiner shall transmit the entire record which includes the original of his decision to the Administrator and serve copies of the decision on each of the other parties.

§ 40.25 The hearing—exceptions to Examiner's decision.

Within 20 days of service of the Examiner's decision any party to the proceedings may file with the Chief Hearing Examiner a written statement setting forth exceptions to the decision or proceedings. Each exception shall set forth specifically the matters of law, fact or policy to which exceptions are taken, shall identify the portions of the record relied upon, and shall state the grounds for the exceptions. Exceptions may be accompanied by a separate brief or memoranda of law.

§ 40.26 Issuance of order.

If within the time provided no exceptions have been filed, the Examiner's order shall become the order of the Secretary. If exceptions are filed, the Administrator shall transmit the entire record to the Secretary. The Secretary shall as soon as practicable rule on each such exception and upon the basis of the entire record make the Examiner's order final or such other order as he may find appropriate. The Secretary's order will be served upon all parties forthwith.

§ 40.28 Compliance with other Federal and State statutes.

This part and the provisions contained herein are intended to supplement State action, and compliance herewith shall not excuse anyone from compliance with applicable State and Federal laws or regulations, including but not limited to such Federal laws as the Child Labor provisions of the Fair Labor Standards Act of 1938, as amended, the regulations governing the transportation of migrant workers under sections 203(a) and 204(a) of the Interstate Commerce Act, the provisions of Title 2 of the Social Security Act relating to Federal Old-Age, Survivors, and Disability Insurance Benefits, and the provisions of U.S.C. Title 18, section 1231, prohibiting the interstate transportation of strikebreakers.

§ 40.29 Amendment to the regulations in this part.

The Secretary may at any time upon his own motion or upon written petition of any person setting forth reasonable grounds therefor amend or revoke any of the terms of the regulations contained in this part. Such petitions should be filed by mail with the Secretary of Labor, United States Department of Labor, Washington, D.C., 20210.

PART 41—INTERPRETATIONS OF FARM LABOR CONTRACTOR REGISTRATION ACT OF 1963

INTRODUCTORY

- Sec.
41.1 General statement.
41.2 Relation to other laws.
41.3 "Farm labor contractor" defined.
41.4 "Person."
41.5 "Fee."
41.6 "For himself or on behalf of another person."
41.7 "Recruits, solicits, hires, furnishes, or transports."
41.8 "Ten or more."
41.9 "At any one time."
41.10 "Any calendar year."
41.11 "For interstate agricultural employment."

WHAT CONSTITUTES A MIGRANT WORKER

- 41.12 General.
41.13 "Primary employment."
41.14 "On a seasonal or other temporary basis."

EXEMPTIONS FROM COVERAGE

- 41.15 Introductory statement.
41.16 Nonprofit charitable organizations.
41.17 Farm labor contracting activities solely in connection with certain agricultural operations.
41.18 Full-time or regular employees of persons excluded by sections 8(b) (1) or 3(b) (2).
41.19 International agreements or arrangements.

REQUIREMENT OF A CERTIFICATE OF REGISTRATION OR FARM LABOR CONTRACTOR IDENTIFICATION CARD

- 41.20 Kept in person's "immediate possession."
41.21 Causes for refusal to issue or renew and causes for suspension or revocation of a Certificate of Registration or a Farm Labor Contractor Identification Card.
41.22 Responsibilities of the farm labor contractor and full-time or regular employee.

AUTHORITY: The provisions of this Part 41 issued under 78 Stat. 920; 7 U.S.C. 2042, Secretary of Labor's Orders, Nos. 36-64 and 37-64 (30 F.R. 1139).

SOURCE: The provisions of this Part 41 appear at 30 F.R. 2945, Mar. 6, 1965, unless otherwise noted.

INTRODUCTORY

§ 41.1 General statement.

Pursuant to its power to regulate interstate commerce, Congress has enacted the Farm Labor Contractor Registration Act (Public Law 88-582, 88th Congress, 78 Stat. 920, effective January 1,