

Memorandums of Understanding (/laws-regs/mou/publicationdate) / MOU between OSHA, ESA and ETA

- **Information Date:** 01/19/1981
 - **Agreement Agency:** Employment Standards Administration (ESA);
Employment and Training Administration (ETA)
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Agreement between The Occupational Safety and Health Administration (OSHA), The Employment Standards Administration (ESA), and The Employment and Training Administration (ETA) for Inspections of Migrant Agricultural Worker Housing

It is recognized that ESA, OSHA and ETA each has statutory responsibilities with respect to housing safety and health for migrant agricultural workers. Under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), which replaced the Farm Labor Contractor Registration Act (FLCRA) effective April 14, 1983, ESA's role in the enforcement of standards for migrant housing has been expanded. It is expected, however, that each of the concerned Agencies, within its statutory jurisdiction, will work to avoid duplication and to provide the greatest degree of communication and coordination with the other Agencies. In line with this objective, and to address issues raised by the new legislation, this Agreement supercedes the Agreement of 1979 and establishes the following priorities:

ETA's scheduling system will remain unchanged. The State Employment Service(s) will continue to conduct pre-occupancy inspections of migrant housing facilities on all agricultural orders extended into the Intra and Interstate Clearance System.

ESA through the Wage-Hour Division is responsible for enforcing the Migrant and Seasonal Agricultural Worker Protection Act which contains safety and health standards which apply to facilities used as housing for migrant workers. The Wage-Hour Division will target for investigation a selected group of housing facilities determined to have the greatest potential for non-compliance with Departmental housing standards. In cases where such housing has already been inspected prior to occupancy by the local State Employment Security Administration (SESA) personnel, Wage and Hour Division Compliance Officers shall avoid conducting a safety and health inspection during the subsequent occupancy period unless evidence indicates that substantive housing standards are being violated.

Under this system, OSHA will schedule migrant housing inspections only in those camps not previously inspected by SESA personnel and not programmed as likely candidates for ESA (Wage-Hour) inspections.

To facilitate OSHA and ESA inspection scheduling, ETA will provide OSHA and ESA/RA's in all Regions with current information on crop seasons in each State, including anticipated annual start up and shut down dates.

These priorities have been established with the intent of maximizing resources, avoiding unnecessary duplication and expanding Departmental coverage of migrant housing facilities.

Coordination and implementation within the Regions will be the responsibility of the Regional Farm Labor Coordinated Enforcement Committees.

Regional Responsibilities

The Regional Committees have responsibility for ensuring the effective application of these coordinated enforcement efforts. Under this policy, ESA, OSHA and ETA Regional Administrators shall adhere to the following directives:

ETA

ETA/RA's in each Region will provide on a continuing basis to the ESA/RA in their Region a listing of all migrant camps inspected prior to occupancy by the State Employment Service Agencies (SESA's) within the Region. Camps shall be identified by employer name and location. Listings shall be made available promptly to ESA/RA's prior to occupancy for each camp certified on a continuing basis as part of the regular monthly meeting of the Regional Farm Labor Coordinated Working Group.

ESA

Upon receipt of the listed housing information, ESA shall review and disseminate to the appropriate Wage-Hour Division Area Office a list of camps within the office's geographical jurisdiction. This shall be accomplished within 15 days of receipt of the ETA list.

It will then be the responsibility of the Wage-Hour Area Director (WH/AD) to compile a list of housing to be scheduled for inspection (by location, identity of the owner/provider and identity of the farm labor contractor, if known and if applicable) by the Area Office for the upcoming season. This list should emphasize any migrant housing believed to present a potential for unsafe living conditions, as well as labor camps which will be checked as a result of directed MSPA investigations. The list should not include camps inspected by SESA's, although such camps may be inspected as provided below.

WH/AD's will prepare a list which contains the identity of camps in their geographical jurisdiction which (1) do not appear on the ETA listing and (2) do not appear on the MSPA scheduled investigation listing. This third list will be provided to OSHA for use in scheduling during the current season and should contain the location of the camp, the owner/provider's identity and any available information on occupancy periods.

The three lists shall be completed by the WH/AD and forwarded to the Wage-Hour Regional Office (RO). Each crop season, the above-described selection process will be completed in a timely manner so as to provide OSHA with the information necessary for its program.

The RO will, upon receipt, provide the lists to the OSHA/RO for distribution to their local offices. The entire process should be completed promptly for each crop season.

In cases where the housing has already been inspected prior to occupancy by the local SESA pursuant to an interstate clearance order, Wage-Hour Compliance Officers will conduct a limited visual walk-through safety and health inspection and determine if a certificate of occupancy has been issued and is posted at the site. If the walk-through inspection does not disclose any substantive violation of State or Federal standards, no further action is necessary with regard to housing safety and health. Where substantive violations are observed, the Wage-Hour Compliance Officer will immediately make a full housing safety and health inspection.

OSHA

OSHA/RA's will be responsible for expeditiously forwarding the ESA lists to affected AD's and State designees. The AD's will be instructed to schedule programmed housing inspections in those camps not previously inspected by SESA and not earmarked for MSPA priority attention. This system will only apply to scheduled inspections. OSHA will continue to conduct mandated complaint and accident investigations in migrant camps in accordance with established agency procedures.

Referrals

During the course of a crop season, Wage-Hour CO's may become aware of migrant camps outside ESA jurisdiction containing hazardous or unsanitary conditions. These facilities should be referred immediately to the appropriate OSHA/AD or OSHA State designees for inspection, regardless of whether the facility has been inspected by SESA staff prior to occupancy. Resources permitting, such referrals will be handled as expeditiously as possible.

Results of housing inspections conducted during ETA post- occupancy field checks shall be forwarded immediately to the local ESA/RA through the ETA/RA. If ETA findings indicate non- compliance with DOL housing standards, the camp shall be referred to ESA for a compliance inspection.

Dual Citations and Reporting

In instances where Wage-Hour CO's determine during the course of MSPA investigations that housing not included on the ESA priority list is substantially out of compliance with DOL housing standards, a safety and health inspection will be conducted in conjunction with the MSPA investigation. This will be done regardless of whether the camp has been previously inspected by SESA or OSHA. In such cases, ESA will comply with the following procedures in order to avoid duplication with OSHA:

Should camp operators indicate that there has been an OSHA inspection within the 30 days preceding the MSPA investigation, the OSHA/AD (for the area in which the camp exists) shall be contacted for information on violations cited and abatement dates.

In determining sanctions under MSPA, civil money penalties will only be imposed for, (1) violations not cited by OSHA within the past 60 days, and/or (2) violations cited under OSHA for which abatement periods have expired. When MSPA actions are undertaken the Solicitor shall utilize all safety and health violations found by all DOL agencies as supportive evidence.

Immediately following safety and health inspections conducted under the circumstances described above, the local OSHA/AD will be notified and given the results of the investigation.

ESA Reporting Instructions

When a migrant labor housing inspection is made by a Wage-Hour CO, a copy of the housing inspection report shall be forwarded to the OSHA/AD. If civil money penalties are assessed for housing violations, the ESA/RO will send a copy of the assessment notice and a copy of the housing inspection report to the OSHA/RO. ESA/RO's will identify to ETA/RO's all camps inspected pursuant to MSPA which were found in violation of safety and health standards. Housing inspection reports will be provided to ETA/RO's by the ESA/RO's following closure of the case.

OSHA Reporting Instructions

- A. The OSHA/AD shall forward a copy of the OSHA 1 and any OSHA citation issued, to the WH/AD and the Manager of the SESA, for the area in which the migrant housing is located.
- B. The OSHA/AD shall report any other apparent violation of the MSPA, by appropriate means to the WH/AD for the area involved. (For example, noting that a farm labor contractor is not registered under MSPA.)

C. OSHA/AD's shall provide State designees with pertinent information on camp inspections conducted by ESA (MSPA) and SESA. State designees will in turn be encouraged to keep local WH/AD's and SESA Managers apprised of the results of migrant housing inspections conducted by State occupational safety and health compliance personnel.

Note: Internal memoranda between USDOL agencies should not be sent to OSHA 18(b) designees. Information of this nature should be communicated verbally by the Area Director.

Assistant Secretary for
Occupational Safety and
Health Administration
January 25, 1984

Deputy Under Secretary for
Employment Standards
January 13, 1984

Assistant Secretary for
Employment and Training
Administration
January 31, 1984

UNITED STATES DEPARTMENT OF LABOR

(<https://www.dol.gov>)

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TTY (<https://www.dol.gov/general/contact/contact-phone-call-center#tty>)

www.OSHA.gov (<https://www.osha.gov/>)

FEDERAL GOVERNMENT

White House

(<https://www.whitehouse.gov>)

Severe Storm and Flood Recovery

Assistance

(<https://www.dol.gov/general/stormrecovery>)

Disaster Recovery Assistance

(<https://www.dol.gov/general/disasterrecovery>)

DisasterAssistance.gov

(<https://www.disasterassistance.gov/>)

USA.gov (<https://www.usa.gov/>)

No Fear Act Data

(<https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center/resports/notification-and-federal-employee-antidiscrimination-retaliation-act-of-2002>)

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