

CHAPTER XI

TEMPORARY LABOR CAMP INSPECTIONS

A. General

1. Background. The Employment and Training Administration (ETA) migrant housing standard was revised and published in the Federal Register on March 4, 1980. The standard was renumbered from 20 CFR 620 to Part 654, Subpart E, and became effective April 3, 1980. Migrant housing facilities existing on April 3, 1980, will be governed in all respects by either Subpart E of Part 654 or by the OHSB migrant housing standard 1910.142 (or variances granted thereto). The choice of governing standard will be left to the discretion of the individual employer providing the housing. All new migrant housing built on or after April 3, 1980, will be subject exclusively to the requirements of 29 CFR 1910.142.
2. Definitions. For purposes of this chapter, the following definitions apply:
 - a. Temporary Labor Camp or Migrant Housing Facility. Farm housing directly related to the seasonal or temporary employment of migrant farm workers. In this context, "housing" includes both permanent and temporary structures located on or off the property of the employer, provided they meet the foregoing definition.
 - b. New Construction. All migrant housing construction started on or after April 3, 1980, including totally new structures and additions to existing structures. Cosmetic remodeling work on pre-1980 structures will not apply and such structure should be treated as existing housing.

B. Enforcement of Temporary Labor Camp Standards

1. Choice of Standards. Prior to walk-around inspections of temporary labor camps built before April 3, 1980, employers providing the housing will be asked to specify their preference of applicable departmental standards. Choices shall be limited to Subpart E of Part 654, 29 CFR 1910.142, or guidelines contained in variances from these standards. In the latter instance, employers shall have available and be able to produce copies of variances and whatever guidelines that might apply.
 - a. In instances where subpart E of Part 654 is specified as the governing standard for existing

housing, hazardous conditions violating both the ETA and OHSB requirements shall be cited under the OHSB standard. Hazardous conditions found in violation of the ETA standards, but in compliance with 29 CFR 1910.142 shall not be cited.

- b. In instances where conditions are deemed in violation of the ETA standard and not covered by the OSHA standard, either 50-9-5A shall be cited (serious violations) or such deficiencies shall be brought to the employer's attention and correction shall be encouraged.
 - c. In instances where 29 CFR 1910.142 is selected by the employer as the governing standard for an existing facility or is applicable in the case of "new construction", all requirements of that standard apply and shall be cited when violations are found.
 - d. Under no circumstances shall Subpart E of Part 654 be cited by the inspecting CO as no authority exists within the Occupational Health and Safety Act to cite a standard not adopted under the Act.
2. Informing Employers. Employers shall be made aware of foregoing policy and procedures during the opening conference, prior to the inspection of a migrant housing facility. This policy applies to all employment-related migrant housing covered by OHSB.

C. Migrant Camp Inspection Procedures.

1. Targeted Inspections. Migrant housing camp inspections will include fatality/catastrophe and complaint investigations, programmed inspections, referrals and followups. Camp inspections shall be scheduled during regular working hours in accordance with procedures in Chapter II.
2. Liaison with Other Agencies. Liaison shall be established between the Bureau and representatives of the Employment Standards Administration (ESA) for the purpose of periodically exchanging information on the location and entry dates of camps investigated by each agency.
 - a. Every effort shall be made to avoid duplication of effort.
 - b. Based on reports received, inspection of camps investigated by other agencies during the same annual occupancy period shall be avoided. While

there will be instances where OHSB will be required to enter camps recently inspected by ESA and/or ETA (e.g., accidents, complaints, referrals), efforts shall be made to keep unnecessary overlap to a minimum.

3. Referrals and Complaints. Investigations conducted in response to complaints shall be conducted in accordance with Chapter IX. Both complaint investigations and inspections in response to referrals shall be acted on as promptly as possible, resources permitting.
4. Worker Occupied Housing. Generally, inspections shall be conducted when migrant housing facilities are occupied. Inspections shall be scheduled as soon as feasible after workers occupy housing so that, when possible, hazards may be corrected early in the work season. Preoccupancy inspections shall be conducted only in order to accommodate scheduling difficulties, provided that, at the time of the inspection, it is reasonably predictable that workers will imminently occupy the facilities.
 - a. Since employees may not speak English or may only speak English as a second language, every effort shall be made, before the inspection begins, to find a person to translate conversations with employees.
 - b. The CO shall conduct inspections in such a manner as to minimize disruptions to the personal lives of those living in the housing facilities. If an occupant of a dwelling unit refuses entry for inspection purposes, the CO shall not insist on entry and shall continue the inspection unless, in the judgement of the CO, the lack of access to the dwelling unit involved would substantially reduce the effectiveness of the inspection. In that case, the procedures for refusal of entry shall be followed. The same shall apply in cases where employers refuse entry to the housing facility and/or to the entire farm.
 - c. During inspections, COs shall encourage employers to correct hazards as quickly as possible. Particular attention shall be paid to identifying instances of failure to correct and violations repeated from season to season. These violations shall be cited in accordance with normal procedures.
5. Primary Concern. In conducting a temporary labor camp inspection, the CO shall be primarily concerned with

those or conditions which most directly relate to employee safety and health. Accordingly, all migrant housing inspections shall address at least the following:

- a. Site. The location of the site in relation to swamps, pools, sinkholes and other surfaces where water may collect and remain for extended periods. The site shall be in clean and sanitary condition; i.e., free from rubbish, debris, waste paper, garbage and other refuse.
 - b. Shelter. Whether the shelter provides protection against the elements and whether the rooms are used for combined purposes of sleeping, cooking and eating. For rooms used for sleeping purposes, determine the number of occupants and size of the rooms. Determine for all rooms whether there is proper ventilation and screening.
 - c. Water Supply. Whether the water supply has been approved by the appropriate local health authority; determine the location of hydrants.
 - d. Toilet Facilities. The type, number, location and sanitary conditions of toilet facilities.
 - e. Laundry, Handwashing and Bathing Facilities. The number, locations and conditions of these facilities.
 - f. First Aid Facilities. First aid facilities shall be readily available.
6. Dimensions. The relevant dimensions and ratios specified in 29 CFR 1910.142 are mandatory; however, it is inappropriate to cite minor variations from specific dimensions and ratios when a violation does not have an immediate or direct effect on safety and health. In those cases in which the standard itself does not made reference to specific dimensions or ratios but instead uses adequacy as the test for the cited conditions and facilities, the Compliance Manager shall make the determination as to whether a violation exists on a case-by-case basis considering all relevant factors.
- D. Documentation for Migrant Housing Inspections. The following facts shall be carefully documented:
1. The age of dwelling unit, including additions. For recently build housing, date construction started.
 2. Number of dwelling units, number of occupants in each

unit.

3. Approximate size of area in which the housing is located and the distance between dwelling units and water supply, toilets, livestock and service building.
4. Employer identity. Usually the grower rather than the crew leader will be the employer of migrant workers. In many situations both may be the employer for OHSB citation purposes, but citations shall normally be issued to the grower since that employer is best positioned to correct any OHSB violations. The identity of the employer, nevertheless, is often a complex matter involving numerous criteria, the most important of which is who determines the manner in which workers are to perform their tasks. Other criteria are who pays their wages, who employees consider to be their employer, who has the power to hire and fire, and who establishes wage rates.
5. The housing provided or made available by the employer shall be related to the employment of the worker. Housing shall be treated as employment-related if:
 - a. Employers require employees to live in the housing, or
 - b. Isolated location or the lack of economically comparable alternative housing makes it a practical necessity to do so, and/or
 - c. The housing is provided or made available as a benefit to the employer. Applicable migrant housing standards shall be enforced if any of the following factors in any given case indicate that operation of the camp is directly related to the employment of its occupants:
 - (1) Cost of the housing to the employee--is it provided free of at a low rent?
 - (2) Ownership or control of the housing--is the housing owned or controlled or provided by the employer?
 - (3) Distance to the worksite from the camp, distance to the worksite from other noncamp residence--is alternative housing accessible (distance, travel, cost, etc.) to the worksite?
 - (4) The camp's benefit to the employer--does the

employer make the camp available in order to ensure that his business is provided with an adequate supply of labor?

- (5) Relationship of the camp occupants to the employer--are those living in the camp required to work for the employer upon demand?