

§ 500.131

all substantive Federal and State safety and health standards applicable to such housing. If more than one person is involved in providing the housing for any migrant agricultural worker (for example, when an agricultural employer owns it and a farm labor contractor or any other person operates it), both persons are responsible for ensuring that the facility or real property meets the applicable Federal and State housing standards.

(b) A farm labor contractor, agricultural employer, agricultural association or any other person is deemed an "owner" of a housing facility or real property if said person has a legal or equitable interest in such facility or real property.

(c) A farm labor contractor, agricultural employer, agricultural association or any other person is in "control" of a housing facility or real property, regardless of the location of such facility, if said person is in charge of or has the power or authority to oversee, manage, superintend or administer the housing facility or real property either personally or through an authorized agent or employee, irrespective of whether compensation is paid for engaging in any of the aforesaid capacities.

(d) The Occupational Safety and Health Administration (OSHA) is the agency of the U.S. Department of Labor which administers the Occupational Safety and Health Act (29 U.S.C. 651 *et seq.*) which provides for the establishment of safety and health standards generally.

(e) The Employment and Training Administration (ETA) is the agency of the U.S. Department of Labor which administers the U.S. Employment Service pursuant to the Wagner-Peyser Act (29 U.S.C. 49 *et seq.*) including the interstate clearance order system.

§ 500.131 Exclusion from housing safety and health requirement.

The housing safety and health requirements do not apply to any person who, in the ordinary course of that person's business, regularly provides housing on a commercial basis to the general public and who provides housing to any migrant agricultural worker of the same character and on the same or

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comparable terms and conditions as provided to the general public. Migrant labor housing shall not be brought within this exception simply by offering lodging to the general public.

§ 500.132 Applicable Federal standards: ETA and OSHA housing standards.

(a) The Secretary has determined that the applicable Federal housing standards are the standards promulgated by the Employment and Training Administration, at 20 CFR 654.404 *et seq.* and the standards promulgated by the Occupational Safety and Health Administration, at 29 CFR 1910.142. Except as provided in § 500.131, all migrant housing is subject to either the ETA standards or the OSHA standards, as follows:

(1) A person who owns or controls a facility or real property to be used for housing any migrant agricultural worker, the construction of which was begun on or after April 3, 1980, and which was not under a contract for construction as of March 4, 1980, shall comply with the substantive Federal safety and health standards promulgated by OSHA at 29 CFR 1910.142. These OSHA standards are enforceable under MSPA, irrespective of whether housing is, at any particular point in time, subject to inspection under the Occupational Safety and Health Act.

(2) A person who owns or controls a facility or real property to be used for housing any migrant agricultural worker which was completed or under construction prior to April 3, 1980, or which was under a contract for construction prior to March 4, 1980, may elect to comply with either the substantive Federal safety and health standards promulgated by OSHA at 29 CFR 1910.142 or the standards promulgated by ETA at 20 CFR 654.404 *et seq.* The ETA standards were established to provide housing requirements for migrant housing used by an employer obtaining migrant workers through the U.S. Employment Service. The owner or operator of such housing may continue to rely on those standards, rather than OSHA standards, even if the housing is not currently being provided pursuant to a USES job placement program.