

## CHAPTER XI

### TEMPORARY LABOR CAMP INSPECTIONS

#### A. General

1. Background. The U.S. Department of Labor has developed a coordinated Migrant Housing Enforcement Program, which requires DOSH participation in concert with the Employment Service Division. When employers ask the Employment Service Division for assistance in hiring workers who will be housed in employer-furnished housing, an inspection by DOSH will be requested. Otherwise, temporary labor camps will be included when encountered on a scheduled inspection, or complaint and accident investigations.
2. Definition. Temporary Labor Camps or Migrant Housing Facility means employer furnished housing for seasonal or temporary workers who cannot return to their permanent residence the same day. In this context, housing includes both permanent or temporary structures located on or off the property of the employer, provided they meet the foregoing definition.

#### B. Enforcement of Temporary Labor Camp Standards. The Occupational Safety and Health standards in chapter 68 shall apply to employer-furnished housing.

#### C. Inspection Procedures.

1. Targeted Inspections. Camp inspections will include fatality/catastrophe and complaint investigations, programmed inspections, referrals, and followups.
2. Liaison with Other Agencies. The division will work closely with the Employment Service Division in the coordination of housing inspections.
  - a. Inspections will normally be requested by the Employment Service Division before worker occupancy.
  - b. The Employment Service Division requires form ES-338 to be completed by the inspector when services are requested.
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.
  - 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 compliance officer 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 compliance officer shall not insist on entry and shall continue the inspection unless, in the judgment of the compliance officer, 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 or to the entire farm.

- c. During inspections, compliance officers 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 compliance officer shall be primarily concerned with those facilities or conditions, which most directly relate to employee safety and health. Accordingly, all migrant housing inspections shall address at least the following.
    - a. Site. See ' 12-68-2.
    - b. Shelter. See ' 12-68-3.
    - c. Water Supply. See ' 12-68-4.
    - d. Toilet Facilities. See ' 12-68-5.
    - e. Laundry, Handwashing, and Bathing Facilities. See ' 12-68-7.
    - f. First Aid Facilities. See ' 12-68-12.
  6. Dimensions. The relevant dimensions and ratios specified in ' 12-68-3 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 make reference to specific dimensions or ratios but instead uses adequacy as the test for the cited conditions and facilities, the branch manager shall make the determination as to whether or not 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 built 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. Usually the grower rather than the crew leader will be the employer of migrant workers. In many situations both may be the employer for DOSH citation purposes, but citations shall normally be issued to the grower since that employer is best positioned to correct any DOSH 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; 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 housing to the employee--is it provided free or 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 residences--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 the 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?