

## Chapter 36

### FIELD SANITATION AND TEMPORARY LABOR CAMP STANDARDS IN AGRICULTURE UNDER THE OCCUPATIONAL SAFETY AND HEALTH ACT

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#### Table of Contents

#### 36a OVERVIEW

- 36a00 History.
- 36a01 Purpose.
- 36a02 Jurisdiction.

#### 36b COVERAGE

- 36b00 Foreword.
- 36b01 Agricultural employer.
- 36b02 Statutory coverage.
- 36b03 Regulatory coverage.
- 36b04 Joint employment / joint responsibility.
- 36b05 Reforestation.
- 36b06 Christmas trees.
- 36b07 Pine straw.

#### 36c EXEMPTIONS

- 36c00 Scope.
- 36c01 Terrain exception.
- 36c02 3-hour exception.

#### 36d FIELD SANITATION STANDARDS

- 36d00 Summary.
- 36d01 No charge to employees allowed.
- 36d02 Potable drinking water.
- 36d03 Toilets and handwashing facilities.
- 36d04 Maintenance.
- 36d05 Disclosure and reasonable use.

#### 36e TEMPORARY LABOR CAMPS IN AGRICULTURE

- 36e00 Introduction.
- 36e01 OSH Act temporary labor camp provisions.
- 36e02 Housing must be related to employment.
- 36e03 No minimum number of employees required under OSH Act temporary housing standard.

36e04 Rent charged for housing.  
36e05 Substantive housing standards.

**36f GLOSSARY**

36f00 Glossary.

**36a OVERVIEW**

**36a00 History.**

- (a) The Occupational Safety and Health Act of 1970 (OSH Act) was enacted to ensure safe and healthful working conditions for working men and women. The OSH Act is a law with broad applicability, and is generally interpreted and enforced either directly by the Department of Labor (DOL)'s Occupational Safety and Health Administration (OSHA), or by an OSHA approved *state plan* state agency (*see* FOH 36a02).

29 USC 651, et seq.; 29 USC 655; 29 USC 657; and 29 CFR 1903.03(a)

- (b) Pursuant to section 6 of the OSH Act, OSHA issued regulations (*see* 29 CFR 1928.110 and 29 CFR 1910.142) establishing minimum standards for field sanitation and temporary labor camps in covered agricultural settings. A detailed discussion of the field sanitation requirements appears in FOH 36d, and the temporary labor camp requirements appear in FOH 36e.

*National Congress of Hispanic American Citizens v. Dunlop*, 425 F. Supp. 900 (1975);  
*National Congress of Hispanic American Citizens v. Marshall*, 626 F. 2d 882, 200 U.S. App. D.C. 18; *Farmworker Justice Fund, Inc. v. Brock*, 811 F. 2d 613, 258 U.S. App. D.C. 271

- (c) Following a pilot project involving the exchange of certain enforcement responsibilities between the Wage and Hour Division (WHD) and OSHA, and pursuant to Secretary's Order 5-96 (*see* 62 FR 107), the authority to conduct inspections, issue citations and propose penalties and to develop and issue compliance interpretations regarding field sanitation and temporary labor camp requirements to enforce compliance by agricultural employers under sections 8, 9, and 10 of the OSH Act was transferred from OSHA to WHD. However, OSHA retained rulemaking authority for field sanitation and temporary labor camp under section 6 of the OSH Act. The effective date of this transfer was 02/03/1997.

Secretary's Order 5-96; 29 USC 655; and 29 USC 657 -659

**36a01 Purpose.**

OSH Act was enacted "to ensure so far as possible every working man and woman in the nation safe and healthful working conditions...." Absent or inadequate sanitation and hygiene has long been recognized by medical science as a principal factor in the transmission of bacterial, viral and parasitic diseases. Inadequate water supply and human waste removal have been shown to produce critical health problems. Provision of potable drinking water, the proper disposal of human waste, and the use of personal and public hygienic practices are known to prevent heat related illnesses and the transmission of many communicable diseases. Thus, the provision of sanitation facilities is necessary to ensure safe and healthy working conditions.

**36a02**     **Jurisdiction.**

- (a)     Effective 02/03/1997, the WHD acquired the authority to *interpret and enforce* the OSH Act field sanitation and temporary labor standards requirements in the following states or territories:

Northeast Region

Connecticut	Massachusetts	Pennsylvania
Delaware	New Hampshire	Rhode Island
District of Columbia	New Jersey	Virgin Islands
Maine	New York	West Virginia

Southeast Region

Alabama	Georgia	Mississippi
Florida	Kentucky	South Carolina

Midwest Region

Illinois	Kansas	Nebraska
Indiana	Minnesota	Ohio
Iowa	Missouri	Wisconsin

Southwest Region

Arkansas	North Dakota	Texas
Colorado	Oklahoma	Utah
Louisiana	South Dakota	Wyoming
Montana		

Western Region

Alaska	Commonwealth of the	Guam
American Samoa	Northern Mariana Islands	Idaho

Secretary's Order 5-96; 29 USC 657 -659; 52 FR 16094

- (b)     With respect to the following *state plan* states or territories, authority to enforce the field sanitation and temporary labor camp standards is currently *retained* by the state or territory:

Northeast Region

Maryland                      Puerto Rico                      Vermont  
Virginia

Southeast Region

North Carolina                      Tennessee

Midwest Region

Michigan

Southwest Region

New Mexico

Western Region

Arizona                      California                      Hawaii  
Nevada                      Oregon                      Washington

The WHD *does not* have the authority to enforce the field sanitation and temporary labor camps requirements under the OSH Act in the *state plan* states that have retained jurisdiction. However, WHD will continue to enforce the temporary labor camp standards (*see* 29 CFR 1910.142) where applicable under Migrant and Seasonal Agricultural Worker Protection Act (MSPA) and H-2A visa program (*see* FOH 36 and FOH 38).

Secretary’s Order 5-9; 29 USC 657 -659; and 52 FR 16094

**36b                      COVERAGE**

**36b00                      Foreword.**

Generally, agricultural employees of an agricultural employer are covered by the OSH Act, and OSHA has promulgated several standards for the protection of the safety and health of agricultural workers (*see* 29 CFR 1928). These standards include rules for sanitation facilities in the field (*see* 29 CFR 1928.110). A separate OSHA standard requires sanitation facilities in temporary labor camps (*see* 29 CFR 1910.142).

When conducting an OSHA field sanitation inspection/investigation *statutory* coverage must first be established followed by *regulatory* coverage under 29 CFR 1910.142 and 29 CFR 1928.110.

52 FR 16050

**36b01                      Agricultural employer.**

An agricultural employer is defined as “any person, corporation, association, or other legal entity that: (i) owns or operates an agricultural establishment; (ii) contracts with the owner or

operator of an agricultural establishment in advance of production for the purchase of a crop and exercises substantial control over production; or (iii) recruits and supervises employees or is responsible for the management and condition of an agricultural establishment.”

An agricultural establishment is defined as “a business operation that uses paid employees in the production of food, fiber, or other materials such as seed, seedlings, plants or parts of plants.”

Specified as employers are those who both recruit and supervise employees (*e.g.*, many crew leaders and harvest companies), as well as those who are responsible for the management and condition of an agricultural establishment. Additionally, an advance purchaser of a crop or a substantial part of a crop who exercises substantial control over production is specified to be an employer. OSHA sought to hold jointly and severally responsible for compliance those who are best able to assure that adequate sanitation facilities and potable water are provided to farm workers in the fields.

52 FR 16050

### **36b02**     **Statutory coverage.**

Statutory coverage under the OSH Act exists where there is a *person* who meets the definition of an *employer* who employs at least one *employee*. Under section 3 of the OSH Act, a person is defined as “...one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.” An employer “means a person engaged in a business affecting commerce who has employees,” and an employee “means an employee of an employer who is employed in a business of his employer which affects commerce.”

Commerce means trade, traffic, commerce, transportation, or communication among the several states, or between a state and any place outside thereof, or within the District of Columbia, or a possession of the United States (U.S.), or between points in the same state but through a point outside thereof. As used in the OSH Act, the terms *affects commerce* and *affecting commerce* are, for all intents and purposes, synonymous. (Note: *affects commerce* appears in the statutory definition of *employee*, and *affecting commerce* is in the definition of *employer*.) Although not defined in the statute, both *affects commerce* and *affecting commerce* describe the breadth of activities relative to commerce which govern whether the act applies.

Conceptually, the terms *affects* and *affecting* commerce include, but are more expansive than, the Fair Labor Standards Act (FLSA) term *engaged in commerce or the production of goods for commerce*. OSHA, the Occupational Safety and Health Review Commission (OSHRC) (*see* FOH 36f), and the courts have consistently construed *affects* and *affecting* commerce so as to have the broadest possible application.

In summary, in order to determine whether the OSH Act applies to a given agricultural employer, the employer needs to be engaging in commerce or affecting commerce. This is somewhat broader than the FLSA language “engaged in commerce.” An employer not engaging in commerce could be considered to affect commerce. Secondly, the agricultural establishment must be an employer, and lastly, the employer must have employees who affect commerce. Note that the concept of employee is controlled by what the employer does, not by what the employee does.

Nothing in the OSH Act's coverage is conceptually parallel to individual coverage under the FLSA. Also, no dollar volume test exists under OSH Act. It applies to employers regardless of their annual dollar volume of business. It also applies to employers who would be otherwise exempt from the provisions of MSPA (*i.e.* the family farm exemption). No comparable exemptions exist under the OSH Act.

*Statutory coverage cannot be presumed, it must be affirmatively established and documented for every case.* Once statutory coverage is established, it must be determined whether the employer is subject to either (or both) the field sanitation and temporary labor camp regulations.

29 USC 651, *et. seq.*

### **36b03** Regulatory coverage.

- (a) After establishing statutory coverage, coverage under 29 CFR 1928.110 needs to be established. Agricultural employers that have employed 11 or more workers “on any given day in hand-labor operations in the field” during the preceding 12 months must provide field sanitation facilities.

29 CFR 1928.110(a).

- (b) The time span used to determine the number of employees controlled by the employer shall be the single highest number employed at any one time over the past 12 months. Only those employees who fall within the definition of “hand-labor operations” are to be counted. Particular attention should be given to the excluded field or field-related activities when counting covered employees, as defined at 29 CFR 1928.110(a)(iii). At least 11 or more employees have to be working in the field on any single day within the past 12 months. Family members of the employer are not counted for the purpose of determining whether there are 11 hand laborers in the field. Finally, the 11 or more workers may have worked in separate fields, and the number of employees is day specific (*i.e.*, not a collective or cumulative count). The number of employees employed on the date that the investigation does not determine coverage unless that number equals 11 or more workers.

52 FR 16084; OSHA Memorandum “Interpretation of 29 CFR 1928.110(a)” (February 6, 1989)

- (c)

- (1) *Hand-labor operations*

Only employees engaged in hand-labor agricultural activities or agricultural operations, and only those employees engaged in hand-labor operations are to be counted towards the 11 or more workers. Hand-labor operations refer to agricultural activities or agricultural operations performed by hand or with hand tools. Except for purposes of 29 CFR 1928.110(c)(2)(iii), the term also includes other activities or operations performed in conjunction with hand labor in the field. Activities such as hand-cultivation, hand-weeding, hand-planting, and hand-harvesting of vegetables, nuts, fruits, seedlings, or other crops, and the hand-packing of produce into containers, whether done on the ground, on a moving machine or in a temporary packing shed located in the field, are all examples of *hand-labor operations*. Hand-

labor is defined as activities “on the ground, on a moving machine or in a temporary packing shed located in the field.”

(2) *Machine operators*

Those operating machines in conjunction with hand-laborers, such as tractor drivers pulling the platform from which the hand-labor occurs, are also covered. For example, if an employer has a tractor effectively working as part of a crew in a field, the tractor operator is to be treated as a hand laborer for the purpose of calculating the number of hand laborers working in the field.

29 CFR 1928.110(b) and 52 FR 16086 -16087

(d) **Mushroom farms**

Hand-labor operations in growing mushrooms, whether inside permanent structures or not, are expressly covered under the field sanitation standard.

52 FR 16087

(e) Workers in permanent greenhouse structures, packing, or canning workers in permanent structures, workers engaged in logging or livestock operations, or those working on agricultural machinery *not* in conjunction with hand-laborers are not covered by the field sanitation standard.

29 CFR 1928.110(b) and 52 FR 16087

**36b04 Joint employment / joint responsibility.**

The OSH Act defines an *employer* as a person engaged in a business affecting commerce who has employees (see 29 USC 652(5)). Congress intended the act to reach as far as its commerce power constitutionally permits and thus intended *employer* to be defined as broadly as possible to protect every working man and woman.

29 USC 651(b); *Usery v. Lacy*, 628 F.2d 1226 (9th Cir. 1980); and 29 CFR 1975.3(a)

The preamble to OSHA’s field sanitation standard makes it clear that the agency *intended to include as employers all persons who could be considered employers under the OSH Act. In broadly defining agricultural employer, the agency sought to hold jointly and severally responsible for compliance those who are best able to assure that adequate sanitation facilities and potable water are provided to farmworkers in the fields. See 52 FR 16050 and 52 FR 16086.*

OSHA Memorandum (June 6, 1994) and OSHA Opinion Letter (April 25, 1994)

**36b05 Reforestation.**

The provisions of the field sanitation standards are applicable to reforestation activities. It is similar to other agricultural field operations. Several courts have held that employees engaged in reforestation are covered by legislation for the protection of agricultural workers,

and finally, the most common method of performing reforestation activities is by hand-labor operations.

*Bresgal v. Brock*, 833 F.2d 763 (9th Cir. 1987); *Davis Forestry Corp. v. Smith*, 707 F. 2d 1325, 1328 (11th Cir. 1983); and OSHA Memorandum (July 30, 1990)

**36b06**      **Christmas trees.**

Because it meets the definitions of agricultural employer, agricultural establishment and hand-labor, the OSHA field sanitation standards are applicable to Christmas tree farms.

**36b07**      **Pine straw.**

Pine straw is the fresh, undecomposed pine needles that have fallen from pine trees. It is produced commercially and collected for use as a mulch and groundcover. The raking, gathering, baling, and loading of pine straw for commercial purposes is usually performed in pine stands or plantations, from pine trees being grown for forestry and lumbering operations.

Pine stand owners qualify as agricultural employers because they own or operate pine stands or pine plantations, which qualify as agricultural establishments. Pine straw workers generally qualify for the protections of the OSH Act field sanitation standards when the agricultural establishment employs 11 or more workers on any 1 day during the previous 12 months to perform hand labor field work. Workers performing such work in different fields at the same establishment should be included in the employee count for determining coverage.

DOL has determined that the OSH Act field sanitation standards apply to employer operations who employ employees in hand-labor operations necessary to the gathering pine straw for sale as a commodity.

**36c**            **EXEMPTIONS**

**36c00**        **Scope.**

Fewer than 11 employees engaged in hand-labor operations: a small employer who employs fewer than 11 employees engaged in hand-labor operations over the past 12 months is not subject to the field sanitation standards.

29 CFR 1928.110(a) and 52 FR 16087

**36c01**        **Terrain exception.**

Toilet and hand-washing facilities would not need to be provided as required by 29 CFR 1928.110(c)(2)(i) if, due to terrain, it would not be feasible to locate them within one quarter mile walk of where the employees are working. Instead, the facilities must be located at the point of closest vehicular access. OSHA intends the term *accessibly located* to mean easily reached without crossing an unbridged stream, a super highway, or any natural or man-made barrier to reach the toilet and handwashing facility.

Some fields for example may be located on steep mountain sides, river deltas or wetlands and the like, into or on which portable facilities cannot be located. Where the one-quarter-mile



walk requirement cannot be met due to terrain, the facilities should be placed as near as physically possible to the workers which under such circumstances would be at the point of closest vehicular access. However, the size of a field, in and of itself, is not a factor in determining whether due to terrain, it is not possible to place the facilities within a one-quarter mile walking distance.

29 CFR 1928.110; 52 FR 16090; *Advanta v. Chao*, 350 F.3d 726 (8th Cir. 2003); and Wage and Hour Internal Memorandum April 12, 2002

**36c02**     **3-hour exception.**

Under 29 CFR 1928.110(c)(2)(v), the toilet and hand-washing facilities need not be provided for employees who perform field work for a period of 3 hours or less, including transportation to and from fields. This exception is limited to the provision of toilets and handwashing facilities and does not extend to drinking water or the reasonable use requirement.

29 CFR 1928.110 and 52 FR 16090

**36d**       **FIELD SANITATION STANDARDS**

**36d00**     **Summary.**

The OSHA standard at 29 CFR 1928.110 requires that covered employees engaged in hand-labor operations be provided at no cost and with reasonable use of with drinking water, toilet facilities, and hand-washing facilities by their agricultural employer.

29 CFR 1928.110

**36d01**     **No charge to employees allowed.**

The field sanitation facilities must be provided at no cost to the employee (*see* 29 CFR 1928.110(c)).

Employers who charge for field sanitation facilities are subject to citation and penalties under the OSH Act. Where the evidence supports a finding that an employer charged the cost for providing required facilities to the employees, the Wage and Hour Investigator (WHI) should inform the employer that such charges are unlawful and seek restitution for the affected workers.

In addition, charging for field sanitation facilities violates the FLSA obligation to pay the minimum wage if it takes the employee's wages below FLSA minimum wage in a non-overtime workweek; such deductions cannot be made in overtime workweeks to an employee who is entitled to FLSA overtime compensation (*e.g.*, potentially reforestation workers) (*see* FOH32j08). The same principle applies to H-2A covered workers; such deductions cannot take H-2A covered workers below the H-2A required wage; in addition to a potential wage violation, it may also be failure to comply with other laws. If the cost is passed on to the workers via deduction from pay, it may be a violation of MSPA's obligation to pay wages owed when due since illegal deductions cannot be taken. A MSPA violation for failing to disclose all terms and conditions of employment may also exist if the workers were not properly notified of the cost to the workers (albeit illegal) for the facilities. Whether such a

charge constitutes an impermissible deduction under other laws and regulations enforced by the WHD shall be determined based upon the requirements of the law and regulation.

29 CFR 1928.110(c)

**36d02**      **Potable drinking water.**

- (a) Employers must provide suitably cool, potable drinking water in sufficient amounts to meet the needs of all employees, to be dispensed by single-use drinking cups or drinking fountains, and to be placed in locations readily accessible to all employees. Common or shared drinking vessels are not permitted (*see* 29 CFR 1928.110(c)(1)(i) -(iii). The amount and temperature of the water is not defined by the standard but is determined by the particular conditions of the actual work. The water must be available in amounts needed for satisfying thirst, cooling, waste elimination and metabolism. The temperature must be low enough to encourage employees to drink and to cool the core body temperature. At least two to three gallons of drinking water are to be provided per worker on a hot day. The water temperature is to be between 55-60 degrees Fahrenheit to facilitate absorption into the blood and encourage use.

29 CFR 1928.110 and 52 FR 16087 -16088

- (b) “Potable drinking water” means water that meets the water quality standards for drinking purposes of either the state or local authority having jurisdiction over supplies of drinking water or the U.S. Environmental Protection Agency’s National Primary Drinking Water Regulations, published in 40 CFR 141.

52 FR 16087

- (c) Drinking water must be provided to all covered workers regardless of time in the field whereas toilets and handwashing facilities must be provided to workers who are in the field 3 hours or more per day, including travel time to and from the field. If drinking water is not available for all hours of hand-labor operations, it is not provided and readily accessible as required. 29 CFR 1928.110(c)(2)(v).

*Richard Kendra Farms v. Chao*, OSHRC 03-1756

**36d03**      **Toilets and handwashing facilities.**

- (a) The employer must provide toilets and handwashing facilities (filled with *potable* water) in the ratio of 1 for every 20 workers or a fraction thereof to be located within ¼ mile of the work site, or if not feasible, at the point of closest vehicular access. Toilet and handwashing facilities shall be accessibly located and in close proximity to each other. No requirement exists to provide separate toilet facilities for male and female workers under the field sanitation standard.

29 CFR 1928.110(c)(2)(i), (iii), and (iv)

- (b) Toilets must be ventilated to reduce heat and noxious odors inside the facility, be adequately screened, and have self-closing doors that can be latched from the inside so as to deter the entry of pests and to afford privacy to the user.

29 CFR 1928.110(c)(ii)

- (c) The handwashing facilities must include soap, potable water and single-use towels in amounts to satisfy needs. Pre-moistened towelettes, hand-sanitizers, nor any waterless handcleaning system are not acceptable.

29 CFR 1928.110(b); 52 FR 16091 -16092; WHD Opinion Letter (April 17, 2001); and WHD Opinion Letter (June 5, 1998).

**36d04**      **Maintenance.**

Facilities must be maintained in a clean and sanitary condition and the drinking water containers must be refilled daily or more often as necessary.

29 CFR 1928.110(c)(3)

**36d05**      **Disclosure and reasonable use.**

Employers must inform the workers of the location of the facilities, provide reasonable opportunities during the workday to use them, and inform them of the importance of good hygienic practices to reduce harmful exposure to heat, communicable diseases, retention of urine, and pesticides. These hygiene practices are listed in 29 CFR 1928.110(c)(4).

OSHA Standards Interpretation, Standard 1928.110, January 24, 1990: The issuance of citation by OSHA to A. Gustaf Bryngelson of Rupert, Idaho.

**36e**            **TEMPORARY LABOR CAMPS IN AGRICULTURE**

**36e00**      **Introduction.**

Migrant agricultural worker temporary housing inspections normally will be conducted under MSPA, (*see* FOH 36) or the H-2A program requirements pertaining to housing (*see* FOH 38). It is recommended that the WHI first determine whether or not temporary labor camp housing standards can be enforced under MSPA or H-2A. Generally, enforcement of the temporary labor camp standards (*i.e.*, 29 CFR 1910.142) should be carried out under the MSPA statutory authority or H-2A program of the Immigration and Nationality Act (INA) if the employer is subject to those requirements. However, if the employer housing is located within a state for which WHD has jurisdiction under the OSH Act and it is uncertain whether or not MSPA coverage applies or if the provider of the housing can claim a MSPA exemption, or if the violations involve risks to health and safety that warrant the application of the remedies available under OSH Act, the investigation shall be conducted under WHD's OSH Act authority. It is not appropriate to cite and sanction violations under different acts for the same violation(s).

Note: Secretary's Order 5-96 (12/27/1996) specifies that WHD temporary labor camp enforcement under the OSH Act is limited to those agricultural establishments where employees are engaged in "agricultural employment" as defined by MSPA at 29 USC 1802(3) (*see* 29 CFR 500.20(e)), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except OSHA retains jurisdiction over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or post-harvest processing of agricultural or horticultural commodities. Again, WHD authority under the OSH Act is not limited to whether the workers are migrant or

seasonal agricultural workers as those terms are defined under the MSPA, but whether the work being performed by the workers constitutes “agricultural employment” as that term is defined under MSPA.

29 CFR 500.132; 29 USC 1802; and 26 USC 3121(g)

**36e01 OSH Act temporary labor camp provisions.**

Employers providing temporary housing to workers must meet applicable OSHA standards for health and safety. The substantive housing requirements are found at 29 CFR 1910.142. These standards are enforced under OSH Act, MSPA, or the H-2A program for housing built or under construction after 04/03/1980 or contracted to be built after 03/04/1980. No change occurred in the substantive housing provisions with the assumption of OSHA enforcement authority.

29 CFR 1910.142

**36e02 Housing must be related to employment.**

Housing shall be treated as employment-related if:

- (a) the employer requires employees to live in the housing,
- (b) the isolated location of the work or the lack of economically comparable alternative housing makes it a practical necessity to use employer provided housing, or
- (c) the housing is provided or made available as a benefit to the employer.
- (d) OSH Act standards apply if any of the following factors indicate that the operation of the camp is directly related to the employment of those persons using the housing:
  - (1) The housing is provided free or at low cost
  - (2) The housing is owned, controlled or provided by the employer
  - (3) No other alternative housing is reasonably accessible to the employees considering the distance from the alternative housing to the worksite, the absence of transportation from the alternative housing to the worksite, or the cost of the alternative housing
  - (4) The housing is made available to ensure that the business is provided with an adequate supply of labor
  - (5) The employees living in the housing are required to work for the employer upon demand

OSHA Revised Field Operations Manual, Chapter XI, D, 5; OSHA Instruction CPL 2.45B CH-5 March 3, 1995 Office of General Industry Compliance Assistance

**36e03 No minimum number of employees required under OSH Act temporary housing standard.**

OSH Act housing standards apply for all covered agricultural employment without regard to the number of employees housed. The 11 or more employees requirement for field sanitation does not apply to temporary labor camp housing.

29 CFR 500.132(a)(1)

**36e04**     **Rent charged for housing.**

Any rent charged for housing, whether investigated under MSPA or OSH Act, must meet the requirements under MSPA for fully disclosed deductions, and must comport with FLSA 3(m) for reasonable costs for facilities provided, if those acts apply to the employment (*see* FOH 30c13). Housing for H-2A covered workers must be provided at no cost to the workers who are not reasonably able to return to their permanent residence.

**36e05**     **Substantive housing requirements.**

The substantive OSH Act housing requirements are found at 29 CFR 1910.142.

29 CFR 1910.142

**36f**         **GLOSSARY**

**36f00**     **Glossary.**

Familiarity with the following terms is essential to the proper interpretation and application of the field sanitation and temporary labor camp standards under the OSH Act:

- (a) “Commerce” means trade, traffic, commerce, transportation, or communication among the several states, or District of Columbia, or a possession of the U.S. other than the Trust Territory of the Pacific Islands, or between points in the same state but through a point outside thereof.

29 USC 652(3)

- (b) As used in the OSH Act, the terms “affects commerce” and “affecting commerce” are, for all intents and purposes, synonymous. Note: “affects commerce” appears in the statutory definition of “employee,” and “affecting commerce” is in the definition of “employer.” Although not defined in the statute, both “affects commerce” and “affecting commerce” describe the breadth of activities relative to commerce which govern whether the act applies.

Conceptually, the terms “affects” and “affecting” commerce include, but are more expansive than, the FLSA term “engaged in commerce or the production of goods for commerce.” OSHA, the OSHRC, and the courts have consistently construed “affects” and “affecting” commerce so as to have the broadest possible application.

29 USC 652; 29 USC 651(b); *Usery v. Lacy*, 628 F.2d 1226 (9th Cir. 1980); and 29 CFR 1975.3(a)

- (c) A “citation” is the document used to notify an employer that WHD has determined that a violation of the field sanitation and/or temporary labor camp standard has occurred.

The citation must specify the violation(s), the abatement period(s) within which the violation(s) must be remedied, and the proposed civil money penalties (if any).

29 USC 658

- (d) “Person” means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.

29 USC 652

- (e) “Employer” means a person engaged in a business affecting commerce who has employees, but does not include the U.S. or any state or political subdivision of a state.

29 USC 652

- (f) “Employee” means an employee of an employer who is employed in a business of his/her employer which affects commerce.

29 USC 652

- (g) “Imminent danger” refers to “any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided.”

29 USC 662

- (h) “Serious” violation refers, for the purpose of determining the nature and gravity of a violation when considering the appropriateness of a civil money penalty under section 17 of the OSH Act, to a situation at a place of employment in which “there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.”

29 USC 666

- (i) “State plan state” refers to a state which has applied for and been granted the authority to develop and enforce occupational safety and health standards (which must provide a level of protection for workers that is at least as effective as the federal standards). *See* FOH 36a02(b) for a listing of those state plan states that have elected to *retain* OSH Act field sanitation and temporary labor camp enforcement.

29 USC 667

- (j) “Occupational Safety and Health Review Commission (OSHRC),” refers to the commission mandated by the OSH Act which is responsible for carrying out adjudicatory functions under the OSH Act. OSHRC appointed hearing examiners (performing in a capacity analogous to that of an administrative law judge) hear contested matters, and issue final orders on behalf of the OSHRC.

29 USC 661

**(k)** “Agricultural employer” refers to any person, corporation, association, or other legal entity that:

- (1) owns or operates an agricultural establishment;
- (2) contracts with the owner or operator of any agricultural establishment in advance of production for the purchase of a crop and exercises substantial control over production; or
- (3) recruits and supervises employees or is responsible for the management and condition of an agricultural establishment.

Note: the term “agricultural employer” is not synonymous with the term as defined in MSPA (*see* section 3(2) of MSPA, and 29 CFR 500.20(d)).

29 CFR 1928.110(b)

**(l)** “Agricultural establishment” refers to a business operation that uses paid employees in the production of food, fiber, or other materials such as seed, seedlings, plants, or parts of plants.

29 CFR 1928.110(b)

**(m)** “Hand-labor operations” refers to agricultural activities or agricultural operations performed by hand or with hand tools. Except for purposes of 29 CFR 1928.110(c)(2)(iii), the term also includes other activities or operations performed in conjunction with hand labor in the field. Activities such as hand-cultivation, hand-weeding, hand-planting, and hand-harvesting of vegetables, nuts, fruits, seedlings, or other crops, including mushrooms, and the hand-packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed located in the field, are all examples of hand-labor operations. The term does not however include such activities as logging operations, the care or feeding of livestock, or hand-labor operations in *permanent* structures such as canning facilities or packing houses.

29 CFR 1928.110(b)

**(n)** “Abatement verification” refers to regulatory standards enforced by OSHA which require a *cited* employer to provide certification (and in certain instances documentation) demonstrating that each cited violation has been abated. *See* 29 CFR 1903.19. WHD’s role in the abatement verification process consists of:

- (1) informing employers of the requirements and
- (2) referring allegations of non-compliance with the abatement verification requirements to OSHA for further action.

WHD does not enforce the abatement verification requirements.

29 CFR 1903.19