

MSPA-10

April 2, 1993

This is in further response to your request for guidance with respect to the application of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) regulations to forestry landowners who make raw land available to migrant agricultural workers for camping. Specifically, you question whether allowing workers to camp on forestry land creates obligations on the landowner, and whether the forestry landowner may claim the MSPA commercial housing exemption if the land is made available to members of the general public, as well as migrant workers, for camping in tents and other non-permanent shelters. We regret the delay in furnishing this information.

As you know, the MSPA does not require that migrant workers be provided with housing. However, under section 203 of MSPA, 29 U.S.C. 1823, each person who owns or controls a facility or real property which is used as housing for migrant agricultural workers shall be responsible for ensuring that the facility or real property complies with substantive Federal and State safety and health standards applicable to that housing. When migrant workers camp on a landowner's property using tents or any other type of shelter (whether supplied by the landowner, or the workers, or some third party such as the contractor), the landowner's property is being used in housing the workers and the MSPA requirements are applicable. Thus, it is the Department's position that such a landowner would be subject to the MSPA housing requirements.

A limited exemption from these requirements applies to persons who regularly provide housing on a commercial basis to the general public and also provide housing to migrant agricultural workers on the same terms and conditions. 29 U.S.C. 1823(c); 29 CFR 500.131. It is the Department's position that this so-called "innkeeper" exemption applies only to operators of commercial lodging facilities such as motels, and not to owners of unimproved property who permit campers to use their raw land. The statute expressly speaks of "housing," and the implementing regulation speaks of "housing and "lodging." The legislative history shows that Congress intended the exemption to be narrowly construed and to be available to businesses such as motels and hotels. H.R. Rep. No. 97-885 (Comm. on Education and Labor), 97th Cong., 2d Sess., reprinted in [1982] U.S. Code Cong. & Ad. News 4547, 4558, 4563-64, 4574; Hearings on H.R. 7102 Before the Subcommittee on Labor Standards of the House Committee on Education and Labor, 97th Cong., 2d Sess. (1982) (Sept. 14, 1982). Thus, forestry landowners, such as you describe, would not be eligible for this exemption.

Generally, facilities or real property used as housing for migrant agricultural workers must comply with all substantive Federal and State safety and health standards applicable to such housing, as prescribed in the MSPA regulations at 29 CFR 500.130-.135. Pursuant to 29 CFR 500.132, the applicable Federal standards for all migrant housing built after April 3, 1980, are those promulgated by the Occupational Safety and Health Administration (OSHA) for temporary labor camps, 29 CFR 1910.142.

OSHA's policy with respect to the enforcement of 29 CFR 1910.142 has been to permit little deviation from the terms of site-related requirements that directly affect the safety and health of workers, such as drainage, potable water, toilet, handwashing, bathing and first aid facilities, laundry, and refuse disposal. These requirements must be met regardless of the type of shelters used by the workers, and regardless of the length of stay of the workers at the camp site. Wage and Hour's MSPA enforcement will adhere to OSHA policy regarding the site-related standards specified above.

Wage and Hour will enforce the other housing standards that most reasonably apply to workers housed for brief periods in temporary shelters at camp sites. Where there is not strict compliance with the OSHA standards and the deviation from strict compliance does not affect the employees' safety and health, Wage and Hour will follow OSHA policy and consider the deviation to be a technical, de minimis violation. In such cases, no citation is issued, no penalty is proposed, and correction is not required. To determine whether a condition is a technical violation of the OSHA safety and health standards, Wage and Hour will evaluate such factors as the nature of any hazard created by deviation from the standard, the extent of such deviation, the extent to which the deviation was readily apparent, and the length of the occupancy period for the camp site.

We trust that this information will provide your members with guidance to assure compliance with the MSPA, where it is applicable. Since there has been limited experience with housing safety and health compliance for workers camping on the land, we would be pleased to respond to any further questions that you may have regarding the application of any of the specific housing safety and health standards. Again, we regret the delay in our response.

Sincerely,

Charles E. Pugh
Acting Administrator