

## MSPA-2

January 3, 1984

This is in further response to your November 10 letter addressed to Mr. James E. Patching, Atlanta Regional Administrator. Your letter raised two questions.

You asked for clarification as to what "substantive" housing safety and health standards must be met for the issuance of a preoccupancy inspection certificate under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA).

Sections 203(b)(1) of MSPA and 500.135 of 29 CFR Part 500 provide that a facility or real property to be used for housing a migrant agricultural worker shall not be occupied by any migrant agricultural worker unless either a State or local health authority or other appropriate agency has certified that the facility or real property meets applicable safety and health standards. The applicable Federal housing safety and health standards are the standards promulgated at 20 CFR 654.404 et. seq. and at 29 CFR 1910.142.

However, a State or local government health authority making a housing inspection prior to occupancy of the housing by a migrant agricultural worker may utilize the applicable State or local housing safety and health standards. Of course, a State or local government agency may apply either of the Federal housing safety and health standards in determining whether housing qualifies to receive a certificate of housing inspection. Where the housing qualifies for occupancy under either the State or Federal housing safety and health standards, such housing may be granted a certificate of occupancy.

Where the State or local government agency has made a safety and health inspection which has not covered all the safety and health issues required under the appropriate Federal safety and health standard, the Wage and Hour Division may be called upon as the "other appropriate agency" to make an inspection in which case, inspection will be made using the appropriate Federal standard. The Wage and Hour Division may also be called upon to make an inspection where no inspection can be made by the State or local health authority. The required preoccupancy housing inspection will insure that basic safety and health requirements are met before migrant workers inhabit the housing.

If a request for an inspection of a facility or real property is made to the appropriate State, local or Federal agency at least forty-five (45) days prior to the date on which it is to be occupied by a migrant agricultural worker but the agency has not conducted an inspection by such date, the facility or property may be occupied by migrant agricultural workers unless prohibited by State law.

Receipt and posting of a certificate of occupancy, or occupancy after the forty-five (45) day period has passed, however, shall not relieve the person who owns or controls a facility or property from the responsibility of ensuring that such facility or property meets all substantive State and Federal safety and health standards applicable to such housing during the period it is

occupied by migrant agricultural workers. Migrant workers are protected by the housing safety and health provisions of MSPA during the period the housing is occupied since any violation of a substantive (as this term is defined in 29 CFR 500.133) Federal or State housing safety and health standard constitutes a violation of the Act and is subject to the full range of civil and criminal penalties provided therein.

You requested a definition of joint employer relationship under MSPA. Since you appear to be raising a general question for information rather than citing a particular problem, your attention is directed to section 500.20(h) of the regulations which gives a comprehensive discussion of this subject in a general light. For your assistance and information, I am enclosing copies of both MSPA and the regulations, 29 CFR Part 500.

Your interest and concern with the protection of migrant and seasonal agricultural workers is appreciated.

Sincerely,

William M. Otter  
Administrator