

**SUBJECT:** Enforcement Responsibility over Temporary Labor Camps (1910.142) and the Field Sanitation Standard (1928.110).

**Purpose:** This instruction describes the enforcement responsibility for the Field Sanitation and Temporary Labor Camp Standards.

**Scope:** This instruction applies MNOSHA-wide.

**References:**

- 1) Notice of Delegation of Authorities and Assignment of Responsibilities to the Assistant Secretary for Employment Standards (and Assistant Secretary for Occupational Safety and Health), published in the *Federal Register* on January 2, 1997.
- 2) Notice of transfer of authority and amendments to 29 CFR Part 1952 for nine state programs published in the *Federal Register* on January 17, 1997.
- 3) 29 CFR 1928.110, Field Sanitation.
- 4) 29 CFR 1910.142, Temporary Labor Camps
- 5) 29 CFR 1952.204(b), Approved State Plans for Enforcement of State Standards
- 6) 29 CFR 1952.205(b), Approved State Plans for Enforcement of State Standards
- 7) CPL 02-00-051, Enforcement Exemptions and Limitations under the Appropriations Act

**Cancellation:** This instruction replaces MNOSHA instruction CPL 2-2.42, issued December 2, 2008.

**Background:** On February 3, 1997, an exchange of specific authority and responsibilities went into effect between the Assistant Secretary for Occupational Safety and Health (OSHA) and the Assistant Secretary for Employment Standards (ESA). This exchange of responsibilities followed a two-year pilot project which resulted in a determination that the respective agencies' program expertise would be better utilized and resources more effectively and efficiently used by a permanent transfer of certain enforcement activities between OSHA and ESA.

Under this exchange, ESA is given the responsibility to conduct inspections, issue administrative subpoenas, issue citations, assess and collect penalties, and enforce any other remedies available under the Act with respect to OSHA standards governing Field Sanitation (1928.110) and Temporary Labor Camps (1910.142). ESA has enforcement authority over any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 USC 1802(3), regardless of the number of employees. This coverage includes employees engaged in hand-packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed. ESA already enforces the Migrant and Seasonal Agricultural Worker Protection Act, which establishes labor standards (wages, hours, etc.) for migrant and seasonal farm labor, plus agricultural standards under the Fair Labor Standards Act.

OSHA retains enforcement responsibility over temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of

agricultural or horticultural commodities. OSHA also retains the authority and responsibility for rulemaking with respect to field sanitation and temporary labor camps. In addition, Federal OSHA is given the authority for investigating and resolving allegations of discriminatory actions taken by employers against employees in violation of the requirements of seven environmental and public health statutes (i.e., "whistleblower" protection) previously enforced by ESA. Federal OSHA already has staff specifically assigned to investigate whistleblower violations. Whistleblower protection responsibilities are transferred to Federal OSHA and cannot be delegated or transferred to state plans.

State Plan states had the option of either retaining or transferring authority for field sanitation and temporary labor camp enforcement in agriculture. MNOSHA decided to transfer authority for these standards. Eight other State Plan states also transferred responsibility. On January 17, 1997, Federal OSHA published a notice in the *Federal Register* amending sections of Part 1952 that address "Final Approval Determination," "Level of Federal Enforcement," and "Changes to Approved Plans," for the nine states which transferred authority for these standards.

Temporary labor camps, as related to the Federal Appropriations Rider (see CPL 02-00-051), are defined as farm housing directly related to the seasonal or temporary employment of farm workers. Therefore, 29 CFR 1910.142 does not apply to other employee camps or housing, such as scouting, or recreational outfitters.

Action:

- 1) The Field Sanitation standard (1928.110) and Temporary Labor Camp standard (1910.142) are no longer enforced by MNOSHA in any agricultural establishment where employees are engaged in "agricultural employment" as defined in the Migrant and Seasonal Agricultural Worker Protection Act, 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.
  - a. "Agricultural employment" as defined in the Migrant & Seasonal Agricultural Worker Protection Act includes employment in a farming operation in all its branches and among other things includes the cultivation and tillage of the soil; dairying; the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities; the raising of livestock, bees, fur-bearing animals, or poultry; and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.
  - b. If apparent violations of 1928.110 or 1910.142 are observed in an agricultural establishment, (i.e., inadequate drinking water, no hand washing or toilet facilities, unsanitary housing, etc.) a referral will be made to the Minneapolis District Office, US Department of Labor, ESA Wage and Hour Division. (Tri-Tech Center, Suite 920, 331 Second Avenue South, Minneapolis, MN 55401-1321, phone: 612-370-3371.)
- 2) MNOSHA retains enforcement authority over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities (i.e., housing provided to seasonal workers by meatpacking employers, canning factories, etc.).

- a. Refer to the Field Compliance Manual, Appendix E for Farming Operation Exemptions and Limitations.

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