

North Carolina Department of Labor
Occupational Safety and Health Division

Agricultural Safety and Health Bureau

Field Operations Manual
Chapter XI – Agricultural Safety and Health Inspections



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Chapter XI

Agricultural Safety and Health Inspections

This chapter sets forth guidelines for conducting migrant housing preoccupancy inspections, migrant housing OSH compliance inspections, field sanitation compliance inspections, and agricultural field inspections. The North Carolina Department of Labor (NCDOL), Occupational Safety and Health (OSH) Division, Agricultural Safety and Health (ASH) Bureau is the agency that conducts preoccupancy inspections under the Migrant Housing Act (MHA) of North Carolina and OSH compliance inspections utilizing OSH division standards when there is employee exposure, an accident or a fatality.

Note: Compliance inspections of the Field Sanitation Standard (29 CFR 1928.110), the Occupational Safety and Health Standards for Agriculture (29 CFR Part 1928), and the Hazard Communication Standard (29 CFR 1910.1200) are conducted under the Occupational Safety and Health Act of North Carolina (OSH Act). These inspections are also subject to the same policies and procedures as detailed in other compliance-related portions of this manual, such as the chapters on Inspection Procedures, Violations, Penalties, etc. (N.C. Gen. Stat. § 95-227(a)).

The Field Sanitation Standard (29 CFR 1928.110) requires drinking water, toilets, and hand washing facilities for employees engaged in manual labor operations in the field. The inspection scope will not be limited to any specific number of employees, pursuant to 13 NCAC 07F .0302. Hazard communication inspections are conducted using 29 CFR 1910.1200, including Appendices A through E, pursuant to 13 NCAC 07F .0301. Inspections resulting from farm worker complaints regarding pesticide exposure will be conducted pursuant to the most current revision of Operation Procedure Notice 116. Certain agricultural inspections may be affected by exemptions included in CPL 02-00-051 - Enforcement Exemptions and Limitations under the Appropriations Act and described in Paragraph (C)(2), below.

A. Agricultural Safety and Health Inspections.

1. **Definitions.** As defined in the Migrant Housing Act of North Carolina (N.C. Gen. Stat. §§ 95-222 through 95-299.1), the Temporary Labor Camp Standard (29 CFR 1910.142), the Field Sanitation Standard (29 CFR 1928.110), and the Hazard Communication Standard (29 CFR 1910.1200):
 - a. “Agricultural employment” means employment in any service or activity included within the provisions of Section 3(f) of the Fair Labor Standards Act of 1938, or section 3121(g) of the Internal Revenue Code of 1986; and the handling, planting, drying, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state and including the harvesting of Christmas trees, and the harvesting of saltwater crabs. (N.C. Gen. Stat. § 95-223(1)).
 - b. “Agricultural Employer” means 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. (29 CFR 1928.110(b)).

- c. “Agricultural Establishment” is a business operation that uses paid employees in the production of food, fiber, or the materials such as seed, seedlings, plants or parts of plants. (29 CFR 1928.110).
- d. “Hand-Labor Operations” means agricultural activities or agricultural operations performed by hand or with hand tools. “Hand-Labor Operations” also include other activities or operations performed in conjunction with hand-labor in the field. (29 CFR 1928.110).
- e. “Migrant” means an individual, and his dependents, who are employed in agricultural employment of a seasonal or other temporary nature, and who is required to be absent overnight from his permanent place of residence. (N.C. Gen. Stat. § 95-223(5)).
- f. “Migrant housing” means any facility, structure, real property, or other unit that is established, operated, or used as living quarters for migrants. (N.C. Gen. Stat. § 95-223(6)).
- g. “Operator” means any person who owns or controls migrant housing. (N.C. Gen. Stat. § 95-223(7)).
- h. “Person” means an individual, partnership, association, joint stock company, corporation, trust, or legal representative. (N.C. Gen. Stat. § 95-223(8)).
- i. “Substantive violation” means a violation of a safety and health standard, including those that provide fire prevention, an adequate and sanitary supply of water, plumbing maintenance, structurally sound construction of buildings, effective maintenance of those buildings, provision of adequate heat as weather conditions require, and reasonable protection for inhabitants from insects and rodents. A substantive violation does not include technical or procedural violations of safety and health standards. (N.C. Gen. Stat. § 95-223(9)).
- j. “Temporary Labor Camp or Migrant Housing Facility” means structures directly related to the seasonal or temporary housing of migrant farm workers and their dependents. In this context, “housing” includes both permanent and temporary structures. (29 CFR 1910.142).
- k. “Hand washing Facility” means a facility providing a basin, container, or outlet with an adequate supply of potable water, soap and single-use towels. (29 CFR 1928.110).
- l. “Potable Water” means water that meets the standards of drinking purposes of the state or local authority having jurisdiction, or water that meets the quality standards prescribed by the U.S. Environmental Protection Agency’s National Interim Drinking Water Regulations, published in 40 CFR Part 141. (29 CFR 1928.110).
- m. “Toilet facility” means a fixed or portable facility designed for the purpose of adequate collection and containment of the products of both defecation and urination, which is supplied with toilet paper adequate to employee needs. Toilet facility includes biological, chemical, flush and combustion toilets and sanitary privies. (29 CFR 1928.110).

2. **Scope.** The provisions of the MHA will apply to all operators and migrants except:
 - a. Any person who:
 - i. in the ordinary course of that person's business, regularly provides housing on a commercial basis to the general public; and,
 - ii. provides housing to migrants of the same character and on the same or comparable terms and conditions as those provided to the general public.
 - b. A housing unit owned by one or more of the occupants and occupied solely by a family unit. (N.C. Gen. Stat. § 95-224).
 - c. The housing of a farm labor contractor (FLC) is subject to a preoccupancy housing inspection if the following conditions are met:
 - i. The FLC is employed in "agricultural employment" as defined in N.C. General Statute §95-223(1) of a seasonal or other temporary nature; and
 - ii. The FLC is required to be absent overnight from his permanent place of residence; and
 - iii. The FLC is living in "migrant housing" as defined in N.C. General Statute §95-223(6).

If these conditions are met, **the operator** will need to ensure FLC housing is registered and inspected.

3. **Preoccupancy Inspections.**
 - a. **Registration.** Every operator will request a preoccupancy inspection at least 45 days prior to the anticipated date of occupancy, by submitting a Migrant Housing Notification to the NCDOL ASH Bureau or to the local health department. (N.C. Gen. Stat. § 95-226 (a)).
 - b. **Purpose.** This inspection is conducted to identify potential safety and/or health hazards prior to occupancy. The inspection is based on the OSH standards for Temporary Labor Camps (29 CFR 1910.142) and the Migrant Housing Act (N.C. Gen. Stat. §§ 95-222 through 95-229.1).
 - c. **Occupation of Migrant Housing.** Migrant housing may not be occupied until the operator has received a Migrant Housing Certificate (the certificate), except in the following instances:
 - i. **Provisional Occupancy.** Migrant housing may be occupied on a provisional basis if the operator applied for a preoccupancy inspection at least 45 days prior to occupancy and the preoccupancy inspection was not conducted at least 4 days prior to the anticipated occupancy. Upon subsequent inspection by the NCDOL, the provisional occupancy shall be revoked if any deficiencies have not been corrected within the period of time specified by the NCDOL, or within two days after receipt of written notice provided on-site to the operator. No penalties may be

assessed for any violation of this article which is found during the preoccupancy inspection, unless substantive violations exist during provisional occupancy. (N.C. Gen. Stat. § 95-226 (d)).

ii. **Arrival in Advance.** If an operator has applied for an inspection and one or more migrants arrive in advance of the arrival date stated in the application, the operator will notify ASH within two working days of the migrant housing occupancy. (N.C. Gen. Stat. § 95-226 (d)).

iii. **Inspection by Operator.** An operator may be able to conduct his/her own preoccupancy inspection if certain criteria are met. (N.C. Gen. Stat. § 95-226 (f)). This is part of the Gold Star Grower recognition program for operators who maintain proper migrant housing. (N.C. Gen. Stat. § 95-226 (f)). This is covered more fully in Paragraph (B), below.

d. **Coordination with the local Public Health Departments (Environmental Health Specialists – EHS).** Under the MHA (N.C. Gen. Stat. § 95-226 (a)), operators may request preoccupancy inspections from the department or the local health departments. The local health departments are responsible for inspecting migrant housing to determine compliance with water and sewage system requirements (N.C. Gen. Stat. § 95-225(c) and (d)) while ASH is responsible for determining compliance with requirements dealing with the living quarters of migrant housing.

i. **EHS Notification to ASH Bureau.** If the notification arrives at the local public health department, the health department will immediately notify ASH. (N.C. Gen. Stat. § 95-226(a)).

ii. **ASH Notification to EHS.** If the notification is submitted to ASH, then ASH will immediately notify the local public health department in writing. (N.C. Gen. Stat. § 95-226(a)).

iii. **EHS Forwarding Inspection Results to ASH.** The local public health departments will forward the results of water and sewage inspections to ASH and the operator. (N.C. Gen. Stat. § 95-226(a)).

iv. **ASH Forwarding Inspection Results to EHS.** On a monthly basis, ASH will forward a listing of operators who have registered and operators who have received housing certification to the local public health departments. (N.C. Gen. Stat. § 95-226(a)).

e. **Assignments of Preoccupancy Inspections.** Preoccupancy inspections will be directed and conducted as follows:

i. **Accessing Assignments.** Agricultural safety and health officers (herein referred to as compliance safety and health officers or CSHOs) will access inspection assignments from the ASH Bureau computer program. All assignments will be made within a geographic district near their home county, when possible. Assignments from the ASH Bureau may be given by telephone or in writing, in addition to the computer listing. Each assignment will include the grower's name, address, telephone number, and home county, and location of the migrant housing.

Assignments may be given differing levels of priority, depending, for example, upon the expected occupancy date or inspection history.

- A. Assignments will not be added, deleted, or traded without approval of the ASH bureau chief.
 - B. The CSHO's work load per week will be determined by the ASH bureau chief.
 - ii. Unscheduled Inspections. If a grower has not registered for a preoccupancy inspection, but contacts the CSHO who is working on location and asks for an inspection, the CSHO may complete the inspection if time permits. Prior to doing the inspection, the CSHO will phone the ASH Bureau and determine that the grower is not registered and that the inspection has not already been scheduled. If necessary, a Migrant Housing Notification Card will be obtained from the operator while the CSHO is on-site and forwarded to the ASH Bureau.
- f. Contacting the Grower. The grower should be contacted in advance to schedule a time for the preoccupancy inspection. In most cases growers are more easily contacted in the morning (6:00 - 7:00 a.m.) or evening before 9:00 p.m.
- i. Water and Septic Systems (EHS Reports). The CSHO will determine if the water and sewage systems have been inspected and approved by an Environmental Health Specialist (EHS) at the local health department. If the systems have been approved, the CSHO should advise the grower to have the EHS's report available for review at the preoccupancy inspection. (DENR 3765).
 - ii. Electrical Power Activated. The CSHO will ask the operator to have the power on for checking all electrical outlets, lamps, ceiling lights, refrigerators, and hot water availability. The CSHO will inform the operator of the need for access to hot water tank(s) to obtain capacity and recovery rate information. (Introduction to Migrant Housing Inspections in North Carolina, Appendix I).
 - iii. Exact Housing Location. The CSHO will confirm the physical address or Global Positioning Point Coordinates (GPPC) for the housing to be inspected.
 - iv. Responding to Additional Questions. The CSHO should also be prepared to answer any questions that the operator may have during this contact regarding compliance standards.
- g. Conducting the Preoccupancy Inspection.
- i. Checklist. The purpose of this inspection is to identify potential safety and/or health hazards prior to occupancy. The CSHO will inspect the housing based on the OSHA Standards for Temporary Labor Camps (29 CFR 1910.142) and the Migrant Housing Act standards (N.C. Gen. Stat. §§ 95-222 through 95-299.1) listed in the Migrant Housing Inspection Checklist (the Checklist).

- ii. Operator's Input. The migrant housing operator or representative will be afforded an opportunity to provide pertinent information regarding conditions in the housing. If the housing operator is not able to be present for the inspection a representative should be available. If neither the operator nor representative is able to participate, a closing should be conducted by telephone so that the inspector can explain the existing violations and the abatements required.
- iii. Instructional Materials Provided by CSHO. CSHOs may provide instructional materials such as the Introduction to Migrant Housing Inspections in North Carolina booklet, a copy of the checklist, applicable OSH standards such as the Guide for Occupational Safety and Health Standards for Agriculture, and informational posters in Spanish and English, and a guide for employers regarding compliance with the Immigration and Nationality Act. (N.C. Gen. Stat. § 95-226(a)).
- iv. Diagrams, Photographs of Housing. The CSHO will ensure that updated diagrams and photographs of the housing site are on file.
- v. Discussion of Field Sanitation, Pesticide Hazards. The CSHO will discuss field sanitation, pesticide hazards and the most current revision of OPN 116 on pesticides with the operator and/or representative.
- vi. EHS Review. The CSHO will review the DENR 3765 form at the time of inspection. To be in compliance, the form must show the number of occupants for which the camp is approved, must indicate that there was not visual evidence of water system or septic system non-compliance, and must be signed by the EHS. If there are any questions concerning the acceptability of the water or septic systems, the CSHO will call the local health department for verification. If the housing site is on municipal water or municipal sewage, proof of this must be provided. Receipts, such as water bills, from the local agency are required.
- vii. Hot Water Test. In the mountain regions, hot water must be operational after March 31 each year for preoccupancy purposes. Adequacy will be determined by using the Procedure to Determine Adequate Hot Water for Showers in Temporary Labor Camps report. (Introduction to Migrant Housing Inspections in North Carolina, Appendix I).
- viii. Laundry Facility. Laundry facilities must be provided, with an adequate supply of hot and cold running water. (29 CFR 1910.142(f)(3)).
- ix. Fire Protection. Fire protection must be provided according to the MHA (N.C. Gen. Stat. § 95-225(f)) and Appendix F of the Introduction to Migrant Housing Inspections in North Carolina booklet.
- x. Mattress and Mattress Cover. The CSHO will inspect the mattresses and mattress covers to ensure that they conform to N.C. Gen. Stat. § 95-225(h).
 - A. A mattress must have a "core" of springs, foam or air and be covered by "ticking," which is a layer of fabric or related

material that encloses the core. (NCDOL memo of January 22, 2008).

- B. "Cover" means a protective covering made of a washable material that completely covers the sleeping surface or encases the mattress in order to prevent the mattress from being soiled. (NCDOL memo of January 22, 2008).
- h. Closing Conference with Operator. At the conclusion of the preoccupancy inspection, the CSHO will review the inspection results with the operator and answer any questions the operator may have. The CSHO will furnish the operator with a copy of Notification of Selected Field Sanitation and Hazard Communication Requirements.
 - i. No Violations. If no violations are observed, the CSHO will:
 - A. Issue a field prepared certificate (see copy in Introduction to Migrant Housing Inspections in North Carolina, Appendix J).
 - B. Inform the operator that copies of certificates must be posted in a location accessible to all migrants.
 - ii. Violations. If violations are observed, the CSHO will:
 - A. Describe the violations to the operator and discuss possible methods for correction and control. If the operator or a representative is not present, this process will be conducted by phone.
 - B. Provide the operator with a copy of the Agricultural Housing Inspection Sheet. The CSHO will instruct the operator to record the date each violation is corrected, and verify the specific measures taken to correct the violation by including photos, invoices, and/or receipts for work done to complete abatements, and sign and return the notice to the ASH office. After the properly completed notice is received, ASH will issue a certificate to the operator.
 - C. Advise an operator who is not 100% in compliance at the time of the preoccupancy inspection that a post occupancy visit may be conducted to verify abatement. The CSHO will explain that if, during the post occupancy visit, the CSHO finds that the violations are uncorrected and the housing is occupied, citations and civil penalties may be assessed against the operator. (N.C. Gen. Stat. § 95-226(g)).
 - i. Preoccupancy Inspection Reporting. The CSHO will submit a copy of the Migrant Housing Preoccupancy Inspection Cover Sheet, the Agricultural Housing Inspection Sheet, and, if a certificate is issued, a copy of the certificate to the ASH office. Certification information will be sent to the ASH office on the date the certificate is issued. This can be done by phone, e-mail, or in person. Information submitted must include grower's name, camp location and number of occupants.

- j. Appeal by Operator. An operator who is denied a certificate may appeal such denial to the commissioner. The commissioner's decision will be considered a final agency decision but may be appealed in accordance with Chapter 150B of the N.C. General Statutes, the Administrative Procedures Act. (13 NCAC 16 .0501).
4. Abatement Verification. Upon receipt of the Agricultural Housing Inspection Sheet that was filled in, signed and submitted by the operator, ASH will mail a Certificate to the operators who have completed the abatement properly. ASH will schedule an abatement verification visit for the following situations:
 - a. Assignments. Abatement verifications will be assigned to the inspector who conducted the preoccupancy inspection due to the following conditions:
 - i. The housing operator returned the abatement, but substantive violations were not listed as corrected;
 - ii. The abatement items were incomplete or inconclusive (such as listed as "fixed everything");
 - iii. Receipts of repairs or photos of necessary repairs were not included with the abatement; or
 - iv. The abatement was not returned to the ASH office prior to date of occupancy.
- b. Abatement Verification Visits.
 - i. Advance notice to the operator will not be given for an abatement visit.
 - ii. The CSHO will determine whether violations listed on the Agricultural Housing Inspection Sheet that was signed and mailed in by the operators have been abated.
 - iii. The CSHO will also document any new violations.
- c. Closing Conference. At the conclusion of the abatement verification visit, the CSHO will conduct a closing conference with the operator.
 - i. If the noted violations have been abated and no additional violations are observed:
 - A. The CSHO will present the certificate to the operator.
 - B. The CSHO will inform the operator that a copy of the certificate must be posted in a location accessible to all migrants.

- ii. If all noted violations have not been abated, but no migrants are residing at the housing:
 - A. The certificate will not be presented to the operator.
 - B. The CSHO will inform the operator of the violations not abated and provide the operator with another Agricultural Housing Inspection Sheet that lists the violations yet to be abated.
 - C. The CSHO will remind the operator that the housing should not be occupied until a certificate is issued, and that such occupancy may result in a citation including possible civil penalties against the operator. (N.C. Gen. Stat. § 95-226(d)).
 - iii. If additional violations are noted, but no migrants are residing at the housing, proceed as with paragraph (A)(4)(c)(ii) above.
 - iv. If violations are found, and the operator has allowed housing to be occupied without a certificate, provisional or otherwise, and has not notified NCDOL within two working days that migrants are residing at the housing, the inspection becomes a post occupancy inspection (N.C. Gen. Stat. § 95-226(e)):
 - A. The certificate will not be presented to the operator.
 - B. The CSHO will initiate a post occupancy inspection, and inform the operator that they must make the necessary repairs in a timely manner. (N.C. Gen. Stat. § 95-226(g)).
 - C. If the housing provided to migrants is determined to be capable of causing death or serious physical harm, alternative housing will be provided by the operator at the same rate or less than the rate paid by migrants for the uninhabitable housing. (N.C. Gen. Stat. § 95-229.1).
 - D. The CSHO will issue the appropriate citations to the operator for the housing violations observed, including a citation for providing migrant housing without a certificate. (N.C. Gen. Stat. § 95-226(d)).
- d. Certification.
- i. If a certificate is issued, the CSHO will submit a copy of the Abatement Check-Certificate Delivery and the certificate to the ASH office.
 - ii. If a certificate is not issued, the CSHO will submit the previous and the new Agricultural Housing Inspection Sheets, and a copy of the Abatement Checks. If a certificate was issued in anticipation of delivery, it will be marked "void" and returned to the ASH office.

- e. Appeal by Operator.
 - i. An operator who is denied a certificate may appeal such denial within 15 days of the denial to the commissioner. The commissioner's decision will be considered a final agency decision but may be appealed in accordance with Chapter 150B of the N.C. General Statutes, the Administrative Procedures Act. (13 NCAC 16 .0501).
 - ii. An operator may contest citations and penalties issued under the MHA in accordance with N.C. Gen. Stat. § 95-137. (13 NCAC 16 .0502).

B. **Recognition Programs.**

1. Gold Star Growers. If an operator receives a preoccupancy inspection rating from the NCDOL of 100% compliance for a particular migrant housing unit for two consecutive years, in the third year the operator shall have the right to conduct the preoccupancy inspection for that particular migrant housing unit himself or herself. (N.C. Gen. Stat. § 95-226(f)). The Gold Star Growers program recognizes operators for meeting or exceeding the following requirements in the following manner:
 - a. Registration. Submitted a Migrant Housing Notification at least 45 days prior to occupancy.
 - b. Water and Septic. The water and sewage systems were approved at least 45 days prior to occupancy.
 - c. Requirements. Housing was 100% in compliance with applicable safety and health standards at the time of the preoccupancy inspection. Attendance at a Gold Star safety training meeting is required annually.
 - d. Improvements. The operator demonstrates a willingness to continually improve workplace safety and health conditions. Improvements may include: telephone, central heat/air conditioning, additional bathroom fixtures/facilities, better quality furnishings.

2. Self-Inspection Procedures.

- a. An operator may be authorized to conduct his/her own preoccupancy inspection if the operator:
 - i. Was designated a Gold Star Grower for two consecutive years and housing improvements are documented in the file.
 - ii. Notifies the department of the intention to self-inspect at least 45 days prior to occupancy.
 - iii. Attends a Gold Star safety training meeting annually.
 - iv. Submits a completed and notarized checklist and Procedure to Determine Adequate Hot Water for Showers in Temporary Labor Camps forms to the department 30 days prior to occupancy.

- v. Submits an approved DENR 3765, or documentation of municipal water and sewer utilization, to the ASH office at least 30 days prior to occupancy.
 - vi. Posts a copy of the certificate issued by the department in a place accessible to all migrants.
- b. A self-inspection authorization is effective for the third year, after two consecutive years of 100% compliance in preoccupancy inspection, and is only valid for that one growing season.
 - c. A certificate issued subsequent to a self-inspection will indicate “Gold Star Grower and Self-Inspection Certificate” on the form.
 - d. The operator will request a preoccupancy inspection in the year following the self-inspection. (N.C. Gen. Stat. § 95-226(a)).

C. OSH Migrant Labor Agricultural Post Occupancy Compliance Inspections

- 1. Scope.
 - a. Housing Inspections. OSH compliance inspections of occupied migrant labor housing (post occupancy inspections) are conducted under both the MHA and the OSH Act. These inspections are subject to the same policies and procedures covered in this manual, such as the chapters on inspection procedures, violations, penalties, etc. (N.C. Gen. Stat. § 95-227(a)). An assignment for a programmed OSH inspection of an agricultural employer reflects authority for both a migrant housing and the agricultural workplace, such as field inspection, or a fatality due to agricultural machinery. The MHA also includes provisions for post occupancy inspections including specific housing standard requirements, such as failed septic systems, contaminated water supplies, overcrowding of available housing.
 - b. Agricultural-Related Compliance Inspections. As with OSH compliance inspections, these inspections may come from several sources. Programmed agricultural compliance inspections are included on a randomly selected assignment list generated by the Planning Statistics and Information Management Bureau (PSIM). Unprogrammed inspections result from referrals, complaints, fatalities and accidents. Inspections related to farm worker work sites could include enforcement of OSH standards such as field sanitation and hazard communication standards. Such inspections may be the result of scouting efforts. Compliance inspections of unregistered, uninspected housing may also result from scouting efforts. Field sanitation and hazard communication inspection may be scheduled alone or in conjunction with migrant housing inspections.
 - c. Citations regarding housing will be issued to farm labor contractors (FLCs) if the FLC owns or controls the housing (directs workers where to live). Housing citations may not be issued to FLCs who do not meet these conditions.
- 2. Exemptions. A rider to the annual Appropriations Act (CPL 02-00-051) enacted by the U.S. Congress exempts small farming operations from enforcement of all rules, regulations, standards or orders under the Occupational Safety and Health Act.

- a. A farming operation is exempt from all OSHA activities if it:
 - i. Employs 10 or fewer employees currently and at all times during the last 12 months; and
 - ii. Has not had an active temporary labor camp during the preceding 12 months.

Note: Family members of farm employers are not counted when determining the number of employees.

- b. A farming operation with 10 or fewer employees that maintains a temporary labor camp or has maintained a temporary labor camp within the last twelve months is not exempt from inspection. For OSH, the inspection may include all working conditions covered by the Migrant Housing Act and OSH standards.

3. Reporting Agricultural Workplace Violations.

- a. Referrals may be provided by any department representative or other agency member who suspects or believes that a dwelling is used for migrant housing and is not registered, or that unsafe agricultural practices exist including the absence of field sanitation or exposure to agricultural chemicals.
- b. The identity of the source of referrals or complaints will not be revealed to the operator. These sources will receive a letter with inspection findings.
- c. ASH employees may be assigned to review geographic areas where migrant housing is suspected and to identify unregistered migrant housing operations or agricultural worksites where appropriate field sanitation is not provided or workers are exposed to pesticides.
- d. After investigating, the CSHO will refer non-OSH complaints to the appropriate agencies if NCDOL does not have oversight.

4. General. Inspections will be conducted when occupancy can be established and documented. Inspections will be scheduled as soon as feasible after workers occupy housing, so that workplace hazards may be corrected early in the work season.

- a. The CSHO should conduct inspections in such a manner as to minimize disruptions to the personal lives of those living in the housing facilities. If the owner/operator refuses entry for inspection purposes, the CSHO will not insist on entry. The procedures for refusal of entry will be followed. Refer to the warrant application, N. C. FOM Chapter III, "Refusal to Permit Inspection" and N.C. Gen. Stat. § 95-136, and Paragraph (C)(6)(d), below.
- b. If the CSHO determines that housing provided to migrants under this article is uninhabitable, but is not reasonably expected to cause death or serious physical harm, the migrants shall be allowed to remain in the housing for a reasonable period, not to exceed 14 days, while the operator locates alternative housing or makes necessary repairs to make the housing habitable. No additional penalties shall be levied. (N.C. Gen. Stat. § 95-229.1).

- c. If the ASH bureau chief determines, after recommendation of the CSHO, that the housing could reasonably be expected to cause death or serious physical harm, alternative housing shall be provided by the operator to the migrant at the same rate or less than was paid for the uninhabitable housing. (N.C. Gen. Stat. § 95-229.1).
- d. Farm workers will be interviewed at their worksite. If the worksite is the field, a field inspection will be conducted. Field Inspections will include field sanitation, N.C.G.S. 1928.110. Employee interviews will include questions regarding chemical exposure. Determination will be made regarding compliance with the Hazard Communication Standard, 29 CFR 1910.1200. If there have been incidents of pesticide exposure, the N.C. Department of Agriculture & Consumer Services, Structural Pest Control & Pesticide Division will be contacted.

All farm worker housing, as defined in N.C.G.S. §95-223, will be inspected. If the housing has been inspected and certified during the same calendar year, a walk-through inspection will be conducted. If the housing is unregistered, a complete housing inspection will be conducted. Occupational Safety and Health Division requirements associated with pesticide exposure may be handled by ASH, or East or West Compliance in accordance with procedures (reference most current revision of OPN 116). All other inspection policies and procedures described in other chapters of the N.C. FOM also apply to agricultural related OSH inspections.

- 5. **Inspection Categories.** Like other compliance activity, migrant housing inspections will include fatality, catastrophe, complaint, referral, programmed, unprogrammed, and follow-up inspections. Fatality investigations may be the result of a fatal incident involving agricultural machinery, such as a tobacco harvester, corn harvester, or fork lift; heat stress, heat stroke while hand-harvesting crops; fatal exposure to pesticides. A complaint may be from a farm worker advocate representing the farm worker's workplace safety interest, or from the farm worker union or the farm worker with a workplace safety and health concern. A referral may come from a state employee, such as a sanitarian at a local Public Health Department, or from an ASH employee concerned about the status of the housing (registered or unregistered). Programmed inspections are run for ASH by the PSIM Bureau on an annual basis. Unprogrammed inspections are those that are not assigned through PSIM, but are scheduled in response to a hazardous workplace condition, as discussed above and in Chapter II of the N.C. FOM.

An unprogrammed inspection of migrant housing may result from a complaint, referral, accident or fatality. For example: a referral may be made from the preoccupancy inspector who has reason to doubt that required abatements will be made because of statements by the housing operator; or from local health department officials who are aware of water or septic problems. It may be the result of a complaint from a worker who lives in the housing as a condition of employment a calls in regard to violations such as inadequate hot water, refrigeration, heat.

- a. **Occupied Migrant Housing Compliance.**
 - i. **Substantive Violations at Preoccupancy.** Inspections may include visits to housing sites that were inspected during the preoccupancy season and were not in 100% compliance due to the existence of three (3) or more substantive violations, such as inadequate general maintenance, lack of structurally sound construction, plumbing problems, and/or inadequate

fire prevention among other problems. (N.C. Gen. Stat. § 95-223(9)). This inspection will be considered a referral for OSH inspection purposes.

- ii. Identifying Unregistered Housing. Inspections may include visits to housing sites that were unregistered and uninspected. All CSHOs conduct scouting in their counties and may discover unregistered housing sites.

b. Field Sanitation Compliance. Field sanitation inspections, or inspections relating to the use of hazardous chemicals, may be scheduled alone or in conjunction with a migrant housing inspection. Reasons for conducting field sanitation inspections include the following: high heat and humidity on harvest days, leading to the hazard of heat stress, heat stroke; complaints or referrals listing the absence of field sanitation facilities or exposure to pesticides through failure to post restricted entry interval signs in fields recently sprayed or provide protective equipment. Referrals may be made by local officials, local residents, or ASH inspectors. Complaints are from workers or from those representing workers. Each field sanitation inspection will address all of the requirements of 29 CFR 1928.110, as well as 13 NCAC 07F.0302, which indicates that the scope of 1928 shall not be limited to any specific number of employees. If there were 11 employees in the field at any time during the past 6 months, they are covered by 1928.110 (a) Scope. If the number never reaches 11 or more than any citation issued needs to reference 13 NCAC 07F .0302.

The provisions include the following:

- i. Potable drinking water will be provided and placed in locations readily accessible to all employees. Suitable cool water must be provided by single service cups or dispensed by a fountain. (Refer to 29 CFR 1928.110(c)(1)).
 - ii. Toilet facilities must be adequate, sanitary, private and accessible. Facilities are not required for employees who perform fieldwork for a period of three hours or less during the day. (Refer to 29 CFR 1928.110(c)(2)).
 - iii. Hand washing facilities must be located in close proximity to toilet facilities and within a one-quarter mile walk of the employees' place of work in the field. Where, due to terrain, it is not feasible to locate facilities as indicated above, facilities will be located at the point of closest vehicular access. (Refer to 29 CFR 1928.110(c)(3)).
 - iv. Potable drinking water, toilet and hand washing facilities will be maintained in accordance with appropriate public health sanitation practices.
 - v. The employer will notify each employee of the location of the sanitation facilities and water and will allow each employee reasonable opportunities during the workday to use them.
- c. Hazard Communication Compliance. Inspections involving hazard communication will address all of the requirements of 29 CFR 1910.1200, including the following:

- i. A written hazard communication program shall be developed and implemented and maintained at each workplace discussing material safety data sheets and labeling. (Refer to 29 CFR 1910.1200(e)(1)).
 - ii. Employers shall have a material safety data sheet in the workplace for each hazardous chemical which they use. (Refer to 29 CFR 1910.1200(g)(1)).
 - iii. Employee training shall include measures employees can use to protect themselves from these hazards, including emergency procedures, and personal protective equipment to be used. (Refer to 29 CFR 1910.1200(h)(3)(iii)).
 - d. Agricultural Accidents and Fatalities. Incidents that occur as a result of agricultural machinery, such as fatalities due to tobacco harvesters, balers, forklifts, heat stress, or pesticide exposure, will be addressed by the ASH Bureau following OSH Division procedures.
 - e. Follow-Up Inspections. Failure-to-abate procedures will follow Chapter III of the N.C. FOM.
6. Inspection Procedures. (See also FOM Chapters III, IV, VII and VIII).
- a. No Advance Notice. N.C. Gen. Stat. § 95-136(f) prohibits giving advance notice of an inspection to an employer.
 - b. Purpose. The purpose of the inspection is to identify potential safety and/or health hazards in the workplace. The CSHO will inspect the housing and the field for compliance, as well as interview the operator and workers, and note any violations observed.
 - c. Operator/Employer Information. The operator/employer will be afforded an opportunity to provide pertinent information regarding conditions in the housing. (13 NCAC 16 .0201).
 - i. At the beginning of the inspection, the CSHO will locate the operator or a representative and present credentials.
 - ii. The CSHO will inform the operator of the purpose of the inspection and obtain the operator's consent to enter the housing or the agricultural operation.
 - iii. The operator will be informed of the opportunity to accompany the CSHO during the inspection.
 - d. Denial of Entry. If a denial of entry occurs, a warrant will be sought. Factors considered in processing a warrant application include:
 - i. Warrant processing time;
 - ii. Anticipated duration of the hand-labor field operation;
 - iii. Impact on compliance; and

iv. Violations already documented.

Note: In instances where denial of entry is the known policy of an operator/employer, an anticipatory/pre-inspection warrant may be sought.

- e. **Hazard Abatement**. During the inspection, the CSHO will encourage operators to correct hazards immediately. Particular attention will be paid to potential repeated or failure-to-abate violations
- f. **Worker Interviews**. The CSHO will interview workers. Bilingual assistance will be provided by the ASH Bureau. Information sought during the interview will include whether other safety or health standards have been violated.
- g. **Interagency Referrals**. The CSHO will refer non-OSH complaints to the appropriate agency.
- h. **ASH Regulations**. The CSHO will leave the workers copies (in their native language, if possible) of all ASH regulations and the phone number of the ASH office.

7. **Violations of Agricultural Safety and Health Standards**.

- a. **Migrant Housing**.
 - i. If the dwelling is not used for migrant housing, then the CSHO should take no further action.
 - ii. If the dwelling is used for migrant housing, then the CSHO will proceed with a compliance inspection of the housing.
 - iii. The CSHO (with the assistance of an interpreter, as necessary) will interview workers. Information sought during the interview will include:
 - A. The length of occupancy;
 - B. Who owns or operates the housing;
 - C. Whether other safety or health standards have been violated, and
 - D. Whether the housing is a condition of employment.
 1. Cost of the housing to the employee. Is the housing provided for free or a low rental fee?
 2. Distance to the worksite from camp, distance to the worksite from other non-camp residences. Is alternative housing reasonably accessible (distance, travel, cost, etc.) to the worksite?
 3. Benefit to employer. Does the employer make the camp available in order to ensure that the business is provided with an adequate supply of labor?

4. Relationship of the camp occupants to the employer.
Are those living in the camp required to work for the employer upon demand?
- b. Violations of the Migrant Housing Act.

NCGS § 95-225(c) and NCGS § 95-225(d) will not be cited by NCDOL. These statutes are enforced by the local public health departments. They are listed here for reference purposes only. Note that application to the county health department for an inspection qualifies as an application for registration of the housing, pursuant to NCGS § 95-226(a).

 - i. NCGS § 95-225(c). This statute will not be cited by the NCDOL and refers to the authority of the local public health departments to certify that the water quality complies with the regulations promulgated by the N.C. Department of Environment and Natural Resources, Water Quality Division, Environmental Health Services Section. These regulations can be found in 15A NCAC 18A.1700.
 - ii. For a lack of an adequate and convenient water supply, the CSHO will use 29 CFR 1910.142(c)(1) which refers to water supply approved by the appropriate health authority, 29 CFR 1910.142(c) (2) through 1910.142(c) (4) refer to water supplies required in temporary labor camps.
 - A. Classification. Citation will be issued as a substantive violation, and be categorized depending on the degree of health hazard posed in accordance with FOM Chapter VI, B.
 - B. Adjustment Factors. Adjustment factors will be for size, good faith and history and applied in accordance with FOM Chapter VI, B.9.
 - iii. NCGS § 95-225(d). This statute will not be cited by the NCDOL and refers to the authority of the local health department to inspect and certify that sewage collection, treatment and disposal standards comply with the regulations promulgated by the N.C. Department of Environment and Natural Resources, Division of Environmental Health, On-Site Water Protection Section. These regulations can be found in 15A NCAC 18A.1900.
 - iv. For lack of sanitary toilet facilities the Agricultural Safety and Health inspectors will cite 29 CFR 1910.142 (d) (1) through 1910.142 (d) (10). 29 CFR 1910.142(e) will be used when sewer lines and floor drains are not found to be properly connected if the system is in fact connected to a public wastewater system.
 - A. Classification. Citation will be issued as a substantive violation, and be categorized depending on the degree of health hazard posed in accordance with FOM Chapter VI, B.
 - B. Adjustment Factors. Adjustment factors will be given in

accordance with FOM Chapter VI, B.9, for size, good faith and history.

- v. NCGS § 95-225(e). This statute will be cited when an inspector discovers that the owner/operator has allowed the housing to be occupied without providing heating equipment that was operable whenever the outside temperature was below 50 degrees Fahrenheit, or without providing heating equipment that was capable of maintaining living areas at 65 degrees Fahrenheit at all times. This standard will be cited in place of 29 CFR 1910.142(b) (11) which requires that adequate heating equipment be provided, but does not specify dates needed, nor the temperature required in the main dwelling(s).
 - A. Classification. Citation will be issued as a substantive violation, and be categorized depending on the degree of health hazard posed in accordance with FOM Chapter VI, B.
 - B. Adjustment Factors. Adjustment factors will be given in accordance with FOM Chapter VI, B.9, for size, good faith and history.
- vi. NCGS § 95-225(f). This statute will be cited when an inspector discovers that the owner/operator has allowed the housing to be occupied without complying with the standards regarding fire safety for migrant housing promulgated by the Commission for Health Services in effect on January 1, 1989.
 - A. Classification. Citation will be issued as a substantive violation, and be categorized depending on the degree of health hazard posed in accordance with FOM Chapter VI, B.
 - B. Adjustment Factors. Adjustment factors will be given in accordance with FOM Chapter VI, B.9., for size, good faith and history.
- vii. NCGS § 95-225(g). In this statute (g) (1) through (g) (5) will be cited when an inspector discovers that the owner/operator has allowed the housing to be occupied without complying with the standards regarding kitchen and dining facilities provided for in NCGS 95-225(g). This standard will be used in place of 29 CFR 1910.142(i) and (b) (10).
 - A. Classification. Citation will be issued as a substantive violation, and be categorized depending on the degree of health hazard posed in accordance with FOM Chapter VI, B.
 - B. Adjustment Factors. Refer to adjustment factors in FOM Chapter VI, B.9., for size, good faith and history.
- viii. NCGS § 95-225(h). This statute will be cited when an inspector discovers that the owner/operator has allowed the housing to be occupied without providing a mattress in good repair with a clean cover.
 - A. Classification. Citation will be issued as a substantive violation,

and be categorized depending on the degree of health hazard posed in accordance with FOM Chapter VI, B.

- B. Adjustment Factors. Adjustment factors will be given in accordance with FOM Chapter VI, B.9., for size, good faith and history.
- ix. NCGS § 95-226(a). This statute will be cited when housing has not been registered with the NCDOL or the appropriate health department at least 45 days prior to the anticipated date of occupancy. A full inspection of the migrant housing will be conducted to determine deficiencies of any and all violations of the MHA, including the appropriate 29 CFR 1910.142 standards.
 - A. Classification. Citation will be issued as non-serious, regulatory. Neither severity nor probability will be categorized.
 - B. Penalty. An unadjusted civil penalty of \$5,000 will be assessed if the employer did not register. An unadjusted penalty of \$1,000 will be assessed if the employer did not register at least 45 days prior to the anticipated date of occupancy. The bureau has determined these fixed penalty amounts are appropriate to achieve the necessary deterrent effect.
 - C. Adjustment Factors. Adjustment factors will be given in accordance with FOM Chapter VI, B.9., for size and good faith. No reduction will be given for history.
- x. NCGS § 95-226(d). This statute will be cited when the operator has allowed migrant housing to be occupied prior to receiving certification.
 - A. Classification. Citation will be issued as non-serious, regulatory. Neither severity nor probability will be categorized.
 - B. Penalty. An unadjusted civil penalty of \$3,000 will be assessed. The bureau has determined this fixed penalty amount is appropriate to achieve the necessary deterrent effect.
 - C. Adjustment Factors. Adjustment factors will be given in accordance with FOM Chapter VI, B.9., for size and good faith. No reduction will be given for history.
- xi. NCGS § 95-226(e). This statute will be cited when housing is registered, but migrants arrive prior to the date stated on the application, and the operator fails to notify the NCDOL of their arrival within working two days of the occupancy.

- A. Classification. Citation will be issued as non-serious, regulatory. Neither severity nor probability will be categorized.
 - B. Penalty. An unadjusted civil penalty of \$500 will be assessed. The bureau has determined this fixed penalty amount is appropriate to achieve the necessary deterrent effect.
 - C. Adjustment Factors. Adjustment factors will be given in accordance with FOM Chapter VI, B.9., for size and good faith. No reduction will be given for history.
- c. Field Sanitation Standards.
- i. All assignments received concerning alleged violations of the field sanitation standard (29 CFR 1928.110) will be processed as quickly as priorities permit because of the short duration of these operations.
 - ii. Classification. In general, failure to comply with field sanitation standards, especially during peak planting or harvesting periods, will be classified as a serious violation. When it is clear that non-compliance consequences would probably not cause death or serious physical harm, violations may be classified as non-serious. For example, when an employer provides a single toilet (at an appropriate place in the field) for 21 employees, instead of 20 employees, a non-serious violation may be issued.
 - iii. Abatement of Violations. Due to the short duration of hand-labor field operations, the abatement period will be the shortest possible interval, with particular emphasis given to immediate abatement.
 - iv. Follow-Up Inspections. Failure-to-abate procedures will follow Chapter III of the N.C. FOM. Field sanitation inspections resulting in serious citations may receive follow-up inspections to verify that the employer has corrected the violation.
- d. Hazard Communication Standard.
- i. Classification. In general, failure to comply with the Hazard Communication Standard (29 CFR 1910.1200), especially during peak planting or harvesting periods, will be classified as serious violations. When it is clear that non-compliance consequences would probably not cause death or serious physical harm, violations may be classified as non-serious. For example, when an employer provides some but not all of the SDS's, and the employees are not directly involved in chemical application, a non-serious violation may be issued.
 - ii. Abatement of Violations. Due to the short duration of hand-labor field operations, the abatement period will be the shortest possible interval, with particular emphasis given to immediate abatement.
 - iii. Complaints received relating to chemical hazards should be inspected within 24 hours consistent with the most current revision of OPN 116.

- e. The CSHO will leave the workers copies (in their native language, if possible) of all ASH regulations and the phone number of the ASH office.
8. Closing Conference with Operator. At the conclusion of the inspection, the CSHO will conduct a closing conference with the operator:
 - a. If the dwelling is not used for migrant housing, then the CSHO should inform the operator that he/she is not under the scope of the MHA or the OSH Act.
 - b. If the dwelling is used for migrant housing:
 - i. The CSHO will inform the operator that failure to register constitutes a violation of the MHA.
 - ii. If other violations of the occupational safety and health standards are found during the compliance inspection, the CSHO will:
 - A. Describe the violation(s) to the operator and discuss possible correction and control options.
 - B. Inform the operator that citations and penalties may follow.
 - C. Inform the operator that the cited conditions must be abated by the dates set in the citation, or as noted in N.C. Gen. Stat. § 95-229.1.
 - D. The CSHO will furnish a copy of the Employer/Operator and Employee/Migrant Rights and Responsibilities (OSH 59), review each item with the operator and answer any questions they might have.
 - c. For all other agricultural inspections:
 - i. If no violations are found, the CSHO should inform the operator/employer that he/she was in compliance.
 - ii. If violations are found, the CSHO will:
 - A. Describe the violation(s) to the operator/employer and discuss possible correction and control options.
 - B. Inform the operator/employer that citations and penalties may follow.
 - C. Inform the operator/employer of the time established to correct the violations.
 - D. Furnish a copy of the Employer/Operator and Employee/Migrant Rights and Responsibilities to and review each item with the operator/employer and answer any questions they might have.

9. Post Inspection Report.

- a. If no violations are found, the CSHO will enter a note in the case file.

Note: If the dwelling is not used for migrant housing, the CSHO will enter a note in the case file and a letter will be sent to the owner/operator notifying them that no citations will be issued.

- b. If violations are found, the CSHO will input appropriate documentation into the appropriate computer system and:

- i. Mail a copy of the Citation and Notification of Penalty (OSHA-2) with a listing of violation(s) and penalty to the operator/employer.

- ii. Submit a copy of the Inspection Report (OSHA-1), a copy of the Worksheet (OSHA-IB), a copy of the Employees Contact Form, a copy of the Citation and Notification of Penalty (OSHA-2), and a copy of the Referral Report (OSHA-90) or Complaint (OSHA-7) to the ASH office.

- iii. Along with these forms, a copy of the Fatality/Catastrophe Report and Investigations Summary should be submitted for fatality investigations.

- iv. Case file documentation will include the following information:

- A. On every OSHA-1, write "migrant" in field 25e.

- B. The identity of the housing operator. The operator may be a grower, a cooperative made of multiple growers, a crew leader, a housing owner, or any combination of these. The operator is any person who controls the housing. (N.C. Gen. Stat. § 95-223(7)).

- C. Description and specific location of site with supporting photos.

- D. Number of dwelling units, number of occupants in each unit.

- E. Approximate size of area in which the housing is located, including the distance between dwelling units and water supply, toilets, livestock and service buildings.

Note: Citations will be written to include all parties responsible for the housing. Housing operators who are not employers of the migrant workers may only be cited under the MHA.

10. Appeal by Operators. An operator may contest citations and penalties issued under the OSH Act in accordance with N.C. Gen. Stat. § 95-137.

D. **Consultations.**

1. Request from Operators. Occasionally, an operator requests the assistance of ASH to plan construction, renovations, site selections, the hazard communication standard or field sanitation standards, or other matters relating to agricultural workplace safety issues. ASH usually honors such requests by sending a CSHO to consult with the operator.

- a. Priority. A request for consultation receives the same priority in scheduling as a preoccupancy inspection.
 - b. Educational Materials Provided. Diagrams and building plans are provided in the Introduction to Migrant Housing Inspections in North Carolina booklet.
2. Consultation Process.
 - a. As appropriate to the situation, the CSHO may:
 - i. Inspect the potential site.
 - ii. Discuss appropriate standards and requirements with the operator.
 - iii. Provide written information, such as standards, sample blue prints, a blank copy of the checklist, and/or a copy of the Introduction to Migrant Housing Inspections in North Carolina booklet.
 - iv. Conduct follow-up visits.
 - b. During a consultation visit, the CSHO will limit comments and recommendations to those issues for which the operator could be cited under the MHA or the OSH Act (such as electrical standards). For issues and questions concerning topics covered by other regulations or ordinances the CSHO should advise the operator to seek assistance from the appropriate enforcement agency.
 3. Post Consultation Follow-Up. The CSHO will submit a copy of the Agricultural Safety and Health Consultation to the ASH office.