

MEMORANDUM OF UNDERSTANDING

Between

The North Carolina Department of Labor

Occupational Safety and Health Division

And

**The North Carolina Department of
Agriculture and Consumer Services**

Meat and Poultry Inspection Division

I. PURPOSE

The purpose of this Memorandum of Understanding (“MOU”) is to delineate policies, procedures and responsibilities which will guide the working relationship between the North Carolina Department of Labor (“NCDOL”) Occupational Safety and Health Division (“OSHNC”) and the North Carolina Department of Agriculture and Consumer Services (“NCDA&CS”) Meat and Poultry Inspection Division (“MPID”).

Specifically, this MOU establishes a process and framework to: 1) train MPID personnel to improve their ability to recognize serious workplace hazards within the meat and poultry industry; 2) reinforce procedures for meat and poultry inspection personnel to report unsafe and unhealthy working conditions to which they are exposed to the appropriate authorities; and 3) institute new procedures for meat and poultry inspection personnel to refer to OSHNC serious workplace hazards affecting plant employees.

This agreement establishes a foundation for the training of MPID personnel in the recognition of serious workplace hazards and for a referral system.

It is neither the expectation nor the desire of OSHNC’s that the training for MPID inspectors would supersede or supplant OSHNC expertise. MPID inspectors will be trained in the manner and to the degree established under Section VI of this agreement. MPID inspectors will be trained to recognize, take local action when possible, and refer serious workplace hazards (see appendix for examples) when necessary. Such referrals shall be made for work sites where MPID inspectors are present and plant management is unwilling to properly correct identified hazards.

II. DEFINITION OF HAZARDS TO BE REFERRED

For purposes of this agreement, a serious workplace hazard is defined as a condition where there is a substantial probability that death or serious physical harm could result. Examples of these types of hazards appear in the attached appendix.

III. AUTHORIZATION

This MOU is authorized under general and specific OSHNC and NCDA&CS statutory authorities. General statutory authorities permit each agency to enter into agreements with other agencies in order to further the legislative objectives listed below. Specific statutory authorities for each agency are as follows:

A. OSHNC

1. The OSH Division was established under the authority of the Occupational Safety and Health Act of North Carolina (“OSH Act”), N.C. Gen. Stat. § 95-126 *et. seq.*) which authorizes the Commissioner of Labor to ensure safe and healthful working conditions for every working man and woman by “develop[ing] occupational safety and health standards . . . providing for training programs . . . providing an effective enforcement program . . . (and) providing for appropriate reporting procedures.”
2. N.C. Gen. Stat. § 95-149 authorizes the Commissioner “to enter into contracts with . . . any . . . State agency . . . for the enforcement, administration, and any other application of the provisions of this article.”
3. N.C. Gen. Stat. § 95-148 requires the head of each State agency to establish and maintain an effective and comprehensive occupational safety and health program and to provide safe and healthful places and conditions of employment for State employees, consistent with the standards promulgated under the OSH Act.

B. MPID

1. MPID is responsible for administering and enforcing the State Meat Inspection Act (N.C. Gen. Stat. § 106-549.15, *et seq.*) and the Poultry Products Inspection Act (N.C. Gen. Stat. § 106-549.49, *et seq.*) which authorize the Commissioner of Agriculture to promulgate such rules and regulations as are necessary for the efficient execution of the provisions of these acts. These rules and regulations prescribe requirements designed to assure that meat, meat food products, poultry and poultry products capable of use as human food, will not be adulterated or misbranded when delivered to the consumer.
2. N.C. Gen. Stat. § 106-549.17 of the Meat Inspection Act and N.C. Gen. Stat. § 106-549.53 of the Poultry Products Inspection Act require the inspection of

meat and poultry products used in intrastate commerce.

3. Under the Talmadge-Aiken Act (7 U.S.C. 450) cooperative agreements permit State employees to carry out Federal inspections of plants and their products under the Federal Meat Inspection Act and the Federal Poultry Products Inspection Act.

IV. CLARIFICATION OF AUTHORITIES AND RESPONSIBILITIES

The content of this agreement is not intended to diminish or otherwise affect the authority or responsibilities of OSHNC or MPID to administer their respective statutory functions. MPID inspectors are not agents of OSHNC and their presence in no way relieves meat and poultry industry employers or employees of their responsibilities under the OSH Act. Specifically:

A. OSHNC

OSHNC remains the government agency charged with safety and health oversight responsibilities in the meat and poultry industries, e.g., encouraging and assisting employers and employees to reduce workplace hazards; researching occupational safety and health problems; and developing and enforcing standards to assure, as far as possible, a safe and healthful workplace for all employees.

B. MPID

MPID's primary responsibility continues to be administering a comprehensive system of inspection laws to ensure that meat and poultry products for use as human food are safe, wholesome, and accurately labeled.

This MOU in no way alters the normal procedure used by MPID inspectors to report a workplace safety and health hazard that affects them to their supervisor or to the MPID Management, nor does it in any way reduce MPID management's responsibility for assuring safe and health workplaces for MPID employees.

MPID personnel, pursuant to N.C. Gen. Stat. §§ 95-136 and 95-148, have a right to report to OSHNC unsafe and unhealthful working conditions within their workplaces and to which they are exposed. MPID personnel also have the right to deny use by establishment employees of any equipment or area of an inspected establishment in which unsafe and/or unhealthful working conditions exist until proper corrections are made restoring the working conditions to a healthy and safe status.

C. Employers

Employers in the meat and poultry industries continue to have responsibilities as specified in the OSH Act, e.g., the responsibility to provide a workplace free from recognized hazards; the responsibility to examine workplace conditions to ensure they conform to applicable standards; the responsibility to inform their employees about OSHNC rights and protections; and the responsibility to inform contractor

personnel or other people on site about safety and health hazards and requirements at that site.

D. Employees

Employees in the meat and poultry industries continue to have responsibilities and rights as outlined in the OSH Act.

V. BACKGROUND

The OSH Act requires employers to furnish a place of employment free from recognized hazards that cause or are likely to cause death or serious physical harm and to comply with occupational safety and health standards. In order to determine employer compliance with safety and health standards and regulations, OSHNC compliance safety and health officers (“CSHOs”) conduct investigations and inspections of worksites.

MPID inspectors also conduct inspections of employer work-sites, but the purpose of these inspections is to protect consumers by ensuring that meat and poultry products for use as human food are safe, wholesome and accurately labeled. In the course of these inspections, however, MPID inspectors are also in a position to observe safety and health concerns and be presented with information concerning the safety or health of plant employees, and also to be exposed themselves to hazards in the plant.

MPID currently trains its inspectors in occupational safety and health matters. Under the terms of this MOU, OSHNC will assist MPID in providing training for MPID inspectors in recognizing and reporting serious workplace hazards, thereby reinforcing and supplementing their in-house training.

VI. SUBSTANCE OF THE AGREEMENT

A. Training

1. Objective

The primary objective of the training conducted under the terms of this MOU is to heighten the awareness of meat and poultry inspectors in the recognition of serious workplace hazards. After receiving instruction, MPID inspectors will be better able:

- (a) to recognize and report to MPID management unsafe or unhealthful working conditions within their own workplace to which they are exposed; and
- (b) to recognize and refer to plant management and to MPID

management those instances where plant employees are exposed to workplace hazards.

2. Development

MPID and OSHNC have developed and will revise as needed the training program designed to support the MOU. OSHNC representatives will assist and participate with an MPID team to address evolving issues, including:

- (a) evaluating current safety modules in MPID courses and making recommendations, as appropriate;
- (b) determining the target population for field training;
- (c) developing training topics pertinent to MPID workplace conditions.

The training will focus on : (1) OSHNC's statutory authority and Enforcement program as it applies to the meat and poultry industry; (2) serious workplace hazards frequently cited by OSHNC in meat and poultry facilities, e.g. machine guarding and personal protective equipment (PPE); (3) OSHNC workplace fire safety standards which require employers to provide proper exits, fire fighting equipment, emergency plans and employee training to prevent fire deaths and injuries in the workplace; (4) procedures for notifying MPID management officials of serious workplace hazards to which plant or MPID employees may be exposed.

- (d) obtaining slides, photographs and other visual aids illustrating occupational safety hazards present in meat and poultry plants; and

3. Training Delivery and Evaluation

- (a) The OSH Division, Education, Training and Technical Assistance Bureau (ETTA) will support MPID in the design, development, delivery and review of training materials for MPID inspectors as requested. This includes both initial training and refresher training.
- (b) Training effectiveness will be evaluated by the use of attendee course evaluation forms and field observation of new inspectors by experienced MPID inspectors.

B. Referrals

1. In the course of an MPID inspection, MPID inspectors might either recognize a serious workplace hazard or receive complaints about unsafe or unhealthful

working conditions from plant employees.

2. Though MPID inspectors are not to perform the role of OSHNC inspectors, they will be trained to recognize serious workplace hazards. MPID inspectors will report those serious workplace hazards affecting plant employees to the plant management and to their MPID supervisors. MPID will set a reasonable period of time for the plant to correct the hazard. The period of time will be consistent with abatement periods set by OSHNC for similar violations of OSHA standards. After a hazard has been observed and prior to its being fixed, MPID inspectors will document the deficiency on MPID Form 7B, "Potential Accident Hazard Form", and provide a copy of the document to plant management for correction. If the deficiency presents an imminent hazard to MPID employees, use of the area will be denied in State Plants by the application of a "NCDA&CS REJECT TAG" or in T/A plants by the application of a "USDA, FSIS REJECT TAG".
3. MPID inspection personnel will follow the policy outlined in the most current version of MPID Notice 9-02. If the plant fails or refuses to correct a hazard within the period of time set, MPID will refer the hazard to OSHNC for investigation and possible regulatory action. If the hazard or hazards identified by MPID Personnel pose a serious or imminent threat to establishment employees and MPID personnel, the State Director will immediately remove the inspector from exposure to the hazard. OSHNC will schedule an investigation according to existing procedures for such referrals.
4. The CSHO will attempt to communicate with the MPID inspector during the course of any OSH investigation. Information from the MPID inspector can enhance the efficiency of the inspection process.
5. A letter communicating the OSH investigation results will be sent to MPID.

C. OSHNC Citations of MPID

1. During the course of an OSHNC inspection of a plant where MPID employees conduct MPID inspections, OSHNC may observe hazards to which MPID employees are exposed. In such cases, MPID may be subject to citation under the OSH Act for serious hazards.
2. If the hazards observed by OSHNC have previously been observed by MPID personnel, documented on MPID Potential Accident Hazard Form (MPID Form 7b attached), referred in accordance with this agreement, and provided that MPID employee are not exposed to observed hazards, no citation will be issued by OSHNC to MPID.
3. Only those hazards which the NCDA&CS either had actual knowledge, or

could have, with the use of reasonable diligence, had knowledge, would subject the MPID to a citation. Further, only those hazards in which there was a substantial probability that death or serious physical injury would result, would subject the MPID to a citation.

VII. EVALUATION

OSHNC and MPID will work together to evaluate the effectiveness and impact of the agreement reached and actions taken under the terms of the MOU. Specifically, the OSH Director, MPID State Director and/or appropriate staff will meet periodically to review the MOU content, the number of referrals, the number of inspections made in response to the referrals, and the type of hazards cited on the OSH inspections. Upon mutual consent, any necessary changes will be made to the MOU after completion of the periodic review.

VIII. COORDINATION

A. Training Issues

Training issues regarding this agreement will be coordinated between OSHNC's Training Supervisor and MPID's Director.

B. Operational Issues

Issues regarding safety and health related referrals by MPID inspectors will be coordinated between OSHNC and the MPID Director. Referrals should be communicated to the OSH Complaint Desk by calling 1-800-NCLABOR (625-2267). Issues relating to compliance procedures and investigations should be referred to either the East Bureau Chief at (919) 779-8512 or the West Bureau Chief at (336) 776-4465. Training or Standards inquiries should be shared with the Education, Training, and Technical Assistance Bureau Chief at (919) 807-2890.

C. Interagency Policy and Standards Development Issues

Resolution of interagency policy issues concerning this agreement will be coordinated between the Deputy Commissioner for OSHNC and the Director of MPID of the NCDA&CS.

IX. CONDITIONS OF AGREEMENT

A. This MOU will become effective on the date of the last signature and shall continue in effect unless: 1) the agreement is modified in writing by mutual consent of both parties; or 2) the agreement is terminated by either party upon thirty (30) days advance written notice to the other.

B. Each inspector's responsibility to make referrals will take effect when that inspector

has completed the training provided for in this MOU. For inspectors hired after July 1, 1995, the training will be provided within 90 days of their employment.

- C. This MOU in no way restricts MPID from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.
- D. Specific work projects or activities involving the transfer of money, services, or property between the parties to this MOU shall require execution of separate agreements or contracts. Each subsequent agreement between the parties to this MOU shall comply with all applicable statutes and regulations, including those statutes and regulations application to procurement activities, and must be independently authorized by appropriate statutory authority.
- E. Nothing in this MOU shall obligate MPID or OSHNC to expend appropriations or to enter into any contract or other obligation.
- F. This MOU revises and supersedes OSHNC/MPID MOU dated 5/12/95.

X. SIGNATURES

**FOR THE NORTH CAROLINA
DEPARTMENT OF LABOR:**

**FOR THE NORTH CAROLINA
DEPARTMENT OF AGRICULTURE &
CONSUMER SERVICES:**

_____(SEAL)
Cherie Berry
Commissioner of Labor

_____(SEAL)
Steven W. Troxler
Commissioner of Agriculture &
Consumer Services

Date: _____

Date: _____

Developed: May 12, 1995
Revised: March 15, 2005
Revised: September 26, 2006
Revised May 10, 2010
Revised May 11, 2011

APPENDIX

SERIOUS WORKPLACE HAZARDS

A serious workplace hazard is a condition such that there is a substantial probability that death or serious physical harm could result. Hazards that MPID inspectors will be expected to identify and refer to OSHNC include the following:

1. No emergency evacuation plans;
2. Blocked means of egress or exits;
3. Unmarked exits;
4. Lack of machine guards;
5. No control of hazardous energy during planned maintenance of equipment;
6. Broken or missing guardrails;
7. Falling object hazards;
8. Lack of personal protective equipment;
9. Release or spill of a toxic chemical;
10. Irritation of the eyes, nose and throat due to exposure to an unknown substance;
11. Exposure to hazardous chemicals not included in the plant's hazard communication program;
12. Exposure to asbestos;
13. Entering confined space without the protection of a confined space entry program;
14. Exposure to carbon monoxide during warehousing operations;
15. Exposure to operations involving electrical hazards;
16. High noise levels;
17. Biological hazards.