

Appendix M
ETA Housing Regulations
20 CFR Part 654, Subpart E

DEPARTMENT OF LABOR

**Employment and Training
Administration**

**20 CFR Parts 620, 651, 653, 654, and
655**

Housing for Agricultural Workers

AGENCY: Employment and Training
Administration, Labor.

ACTION: Final rule.

SUMMARY: This document renumbers and transfers the Employment and Training Administration (ETA) housing standards from 20 CFR Part 620 to Subpart E of Part 654. In addition, the Department of Labor is amending its rules to allow for the continued application of the ETA standards with respect to housing which was built in reliance on these standards. Such housing will continue to be accepted by ETA, and will also be accepted by the Occupational Safety and Health Administration (OSHA) as in compliance with their temporary labor camp standards. Thus, any discrepancies which exist between the ETA and OSHA standards will be considered de minimis under § 9(a) of the OSH Act. Both ETA and OSHA will require employers who undertake housing construction on or after April 3, 1980 to follow the OSHA standards.

EFFECTIVE DATE: April 3, 1980.

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SUPPLEMENTARY INFORMATION: On September 1, 1978, the Department of Labor published in the Federal Register proposed amendments to the Employment and Training Administration (ETA) housing standards in 20 CFR Part 620. (See, 43 FR 39124). The proposed modifications would provide for the continued application of the ETA standards to housing built prior to January 1, 1979 in reliance on the ETA standards. Comments on the proposed modifications were invited until October 31, 1978. Following is a discussion of the background of the proposed rulemaking and the most significant issues raised by the commenters.

Background

Since 1971, the Department of Labor has had in effect two sets of housing regulations which apply to housing for agricultural workers: the Employment and Training Administration (ETA) regulations in 20 CFR Part 620 and the

Occupational Safety and Health Administration (OSHA) regulations in 29 CFR 1910.142. The overlap in these regulations resulted in confusion and duplication with respect to their applicability and enforcement. In view of these problems, the Department held hearings and developed several proposals to arrive at a single set of housing standards. See, e.g., 37 FR 743 (January 18, 1972), 37 FR 2884 (February 4, 1972), 39 FR 34057 (September 23, 1974) and 41 FR 18430 (May 4, 1976).

On December 9, 1977, the Department rescinded the ETA housing regulations in 20 CFR Part 620 (42 FR 62133). The rescission was effective immediately. Employers whose housing met the ETA standards on the date of their rescission however, were given until January 1, 1979 to bring their housing into compliance with the OSHA housing regulations in 29 CFR 1910.142. For the convenience of employers who could still elect to follow the ETA standards, ETA subsequently republished its standards in 20 CFR 620.3-620.17 (43 FR 36058, August 15, 1978).

The Department received numerous complaints objecting to the rescission of the ETA housing regulations. Employers who had constructed housing to conform to the ETA standards complained that the shift from ETA to OSHA standards would require costly modifications to housing which the Department had previously approved as safe and healthful. Worker groups and representatives, unaware of the controlling enforcement provisions in 20 CFR 653.108, objected to the deletion of 20 CFR 620.1 which had stated ETA's policy of denying its interstate recruitment services to employers until the State agency had ascertained that the housing met applicable standards.

In response to these comments, the Department proposed on September 1, 1978 to revise the December 9, 1977 rescission action. The proposal restated ETA's policy of denying its interstate recruitment services until the State agency ascertains that the housing meets applicable standards, and set forth a transitional provision for housing built in reliance on the ETA regulations. Pending the conclusion of this rulemaking procedure, the Department also extended indefinitely the deadline for employers following the ETA standards to bring their housing into compliance with the OSHA regulations. See 44 FR 4686 (January 23, 1979). Following careful consideration of the comments received, the Department is adopting the proposed modifications substantially without change.

Transitional Provision

Commenters remarking on the application of the ETA standards were unanimous in their support of the proposed transitional provision. They agreed with the Department that the continued application of the ETA standards to housing constructed in reliance on these standards would be fair to affected employers and would not impair the overall safety and health protection of affected workers. The final regulation therefore establishes a transitional provision.

In view of the delay in publishing these final regulations, the Department has extended the proposed cutoff dates for the application of the transitional provision to coincide with the effective date of these regulations (April 3, 1980). Employers whose housing was completed or under construction prior to the effective date of these regulations, or who entered a contract for the construction of specific housing prior to the date of publication, may continue to follow the ETA standards in 20 CFR 654.404-654.417. Both ETA and OSHA will require employers who undertake housing construction on or after April 3, 1980 to follow the OSHA standards in 29 CFR 1910.142. However, the ETA guidelines for mobile range housing will continue to apply to this type of agricultural housing.

Structural Variances From the ETA Standards

In the past, it was ETA's practice, under certain circumstances, to accept applications for and grant structural variances from specific requirements of the ETA standards on a seasonal basis only. In contrast, the final regulations adopt the proposed one-time request for a permanent structural variance from specified ETA standards. Such a permanent, structural variance will operate in the nature of a contract for the life of the housing.

Under the final regulations, written applications for a structural variance from specific ETA standards must be submitted on or before June 2, 1980. After that date, ETA will no longer accept applications for variances from its standards. Thereafter, any employer whose housing varies structurally from the ETA standards and who has not timely applied for a structural variance from the ETA standards will be subject to the full set of OSHA standards in 29 CFR 1910.142.

Conditional Access to the Intrastate or Interstate Clearance System

Under previous regulations in 20 CFR 620.3, ETA permitted limited,

conditional access to the interstate clearance system for employers whose housing had fallen temporarily out of compliance during a period of nonuse. Such conditional access was limited to situations in which the housing had been in compliance with the ETA standards during a period of use in the previous year, and where the employer had not had an opportunity to bring the housing back into compliance. This provision was inadvertently omitted when the ETA regulations were republished on August 15, 1978. A number of commenters responding to the instant rulemaking pointed out this omission and suggested that ETA continue to provide conditional access to its interstate clearance system.

The Department agrees that there is a need for a conditional access provision to effectively service employers requesting recruitment of workers from outside the area of intended employment. For example, frequently it is necessary to begin recruiting workers during winter months, when climate precludes making repairs, for employment the following spring. The need for such conditional access may arise irrespective of whether the employer is following ETA or OSHA standards. The final regulations therefore provide for limited, conditional access to the intrastate and interstate recruitment system for an employer who has not had a reasonable opportunity to bring its housing back into compliance with the applicable standards.

Policy on Enforcement of Housing Standards

Some commenters urged the Department to require by regulation that State agencies conduct preoccupancy housing inspections before providing employers with intrastate and interstate recruitment services. Others recommended that employers be required to certify in writing that the housing offered meets applicable standards. The Department has taken the position in the final regulations that State agencies must ascertain compliance with the applicable regulations through a combination of employer assurances and preoccupancy inspections.

Under 20 CFR 653.108, employers who wish to utilize the intrastate and interstate clearance system under the Wagner-Peyser Act must sign an assurance, a preoccupancy inspection must be conducted and the ES staff must ascertain that the housing meets the applicable standards. In addition, pursuant to 20 CFR 653.110, the State agencies conduct random, unannounced post-occupancy field checks to

determine and document whether housing conditions are as specified in job orders.

OSHA will also continue to inspect and otherwise exercise its jurisdiction over temporary labor camps. Where the ETA standards apply, OSHA citations will issue under OSHA standards for conditions which are violative of the ETA standards at 20 CFR 654.404-654.417 to the extent that such conditions are also violative of the OSH Act and regulations. In addition, OSHA citations will issue under OSHA standards for conditions other than housing which are violative of the OSH Act but which are not covered by the ETA standards at 20 CFR 654.404-654.417. Where the OSHA standards apply, citations will issue under OSHA standards for all conditions which are violative of the OSH Act.

Renumbering of ETA Housing Standards

In order to further consolidate the various regulations governing the employment service system, this document renumbers and transfers the ETA housing standards from 20 CFR Part 620 to Subpart E of Part 654.

Regulatory Analysis

Although the proposed regulations were developed prior to the issuance of the Department's Guidelines on Improving Government Regulations, these regulations have been duly considered and approved as meeting the Department's criteria for significant regulations. Since the financial and other impact is less than specified in the Department's criteria for identifying major regulations, however, the preparation of a regulatory analysis is not required. (See, 44 FR 5576-5577, January 26, 1979).

Accordingly, Title 20, Chapter V of the Code of Federal Regulations is amended as follows:

PART 620—HOUSING FOR AGRICULTURAL WORKERS

§ 620.3 [Revoked]

1. § 620.3, *Variations*, is revoked.

§§ 620.4-620.17 [Redesignated]

2. In 20 CFR Chapter V, the Housing Standards set forth at §§ 620.4-620.17 of Part 620 are consecutively redesignated as §§ 654.404-654.417 of Part 654.

PART 651—GENERAL PROVISIONS GOVERNING THE EMPLOYMENT SERVICE SYSTEM

§ 651.6 [Amended]

3. § 651.6, *Consolidated table of contents for Parts 651-658*, is amended by vacating and reserving a table of

contents for Subpart C of Part 654, reserving a table of contents for Subpart D of Part 654, and inserting a table of contents for Subpart E of Part 654 as follows:

§ 651.6 Consolidated table of contents for Parts 651-658.

PART 654—SPECIAL RESPONSIBILITIES OF THE EMPLOYMENT SERVICE SYSTEM

Subpart C—[Reserved]

Subpart D—[Reserved]

Subpart E—Housing for Agricultural Workers
Purpose and Applicability

Sec.

654.400 Scope and purpose.

654.401 Applicability; transitional provisions.

654.402 Variances.

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Housing Standards

654.404 Housing site.

654.405 Water supply.

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654.407 Housing.

654.408 Screening.

654.409 Heating.

654.410 Electricity and lighting.

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654.413 Cooking and eating facilities.

654.414 Garbage and other refuse.

654.415 Insect and rodent control.

654.416 Sleeping facilities.

654.417 Fire, safety, and first aid.

PART 653—SERVICES OF THE EMPLOYMENT SERVICE SYSTEM

4. Paragraph (c)(6) of § 653.108, *Requirements for intrastate and interstate job orders seeking agricultural workers*, is revised to read as follows:

§ 653.108 [Amended]

(c) . . .

(6) If the workers are to be housed, the employer has signed an assurance, a preoccupancy inspection has been conducted and the ES staff has ascertained that the employer's housing meets either the full set of standards set forth at 29 CFR 1910.142 or the full set of standards set forth at Part 654, Subpart E of this Chapter, whichever is applicable under the criteria of 20 CFR 654.401; except that, for mobile range housing for sheepherders, the housing shall meet existing Departmental guidelines.

5. Paragraph (d)(2) of § 653.108 is revised to read as follows:

(d) . . .

(2) The employer has signed an assurance, a preoccupancy inspection has been conducted and the ES staff has ascertained that the employer will provide housing for the workers which meets either the full set of standards set forth at 29 CFR 1910.142 or the full set of standards set forth at Part 654, Subpart E of this Chapter, whichever is applicable under the criteria of 20 CFR 654.401; except that, for mobile range housing for sheepherders, the housing shall meet existing Departmental guidelines.

PART 654—SPECIAL RESPONSIBILITIES OF THE EMPLOYMENT SERVICE SYSTEM

6. The table of contents for Part 654 is amended by vacating and reserving a table of contents for Subpart C of Part 654, reserving a table of contents for Subpart D of Part 654, and inserting a table of contents for Subpart E of Part 654 as follows:

Subpart C—[Reserved]

Subpart D—[Reserved]

Subpart E—Housing for Agricultural Workers

Purpose and Applicability

Sec.

654.400 Scope and purpose.

654.401 Applicability; transitional provisions.

654.402 Variances.

654.403 Conditional access to the intrastate or interstate clearance system.

Housing Standards

654.404 Housing site.

654.405 Water supply.

654.406 Excreta and liquid waste disposal.

654.407 Housing.

654.408 Screening.

654.409 Heating.

654.410 Electricity and lighting.

654.411 Toilets.

654.412 Bathing, laundry, and handwashing.

654.413 Cooking and eating facilities.

654.414 Garbage and other refuse.

654.415 Insect and rodent control.

654.416 Sleeping facilities.

654.417 Fire, safety, and first aid.

Authority: Section 12 of the Wagner-Peyser Act, (29 U.S.C. 49k); 41 Op. A.G. 406 (1859).

7. In Part 654, Subpart C—Transition Provisions is vacated and reserved and a Subpart D is reserved as follows:

Subpart C [Reserved]

Subpart D [Reserved]

8. A new Subpart E of Part 654, consisting of new Purpose and Applicability provisions in §§ 654.400–654.403 and redesignated Housing Standards in §§ 654.404–654.417, is added to read as follows:

Subpart E—Housing for Agricultural Workers

Purpose and Applicability

§ 654.400 Scope and purpose.

(a) This subpart sets forth the Employment and Training Administration standards for agricultural housing. Local Job Service offices, as part of the State employment service agencies and in cooperation with the United States Employment Service, assist employers in recruiting agricultural workers from places outside the area of intended employment. The experiences of the employment service indicate that employees so referred have on many occasions been provided with inadequate, unsafe, and unsanitary housing conditions. To discourage this practice, it is the policy of the Federal-State employment service system, as set forth in § 653.108 of this Chapter, to deny its intrastate and interstate recruitment services to employers until the State employment service agency has ascertained that the employer's housing meets certain standards.

(b) To implement this policy, § 653.108 of this Chapter provides that recruitment services shall be denied unless the employer has signed an assurance, a preoccupancy inspection has been conducted and the ES staff has ascertained that, with respect to intrastate clearance, if the workers are to be housed, the employer's housing meets or, with respect to interstate clearance, that the employer will provide housing for the workers which meets either the full set of standards set forth at 29 CFR 1910.142 or the full set of standards set forth in this Subpart, whichever is applicable under the criteria set forth in § 654.401; except that for mobile range housing for sheepherders, the housing shall meet existing Departmental guidelines.

§ 654.401 Applicability; transitional provisions.

(a) Employers whose housing was constructed in accordance with the ETA housing standards may continue to follow the full set of ETA standards set forth in this Subpart only where prior to April 3, 1980 the housing was completed or under construction, or where prior to

March 4, 1980 a contract for the construction of the specific housing was signed.

(b) To effectuate these transitional provisions, agricultural housing to which this Subpart applies and which complies with the full set of standards set forth in this Subpart shall be considered to be in compliance with the Occupational Safety and Health Administration temporary labor camp standards at 29 CFR 1910.142.

§ 654.402 Variances.

(a) An employer may apply for a permanent, structural variance from a specific standard(s) in this Subpart by filing a written application for such a variance with the local Job Service office serving the area in which the housing is located. This application must be filed by June 2, 1980 and must:

- (1) Clearly specify the standard(s) from which the variance is desired;
- (2) Provide adequate justification that the variance is necessary to obtain a beneficial use of an existing facility, and to prevent a practical difficulty or unnecessary hardship; and
- (3) Clearly set forth the specific alternative measures which the employer has taken to protect the health and safety of workers and adequately show that such alternative measures have achieved the same result as the standard(s) from which the employer desires the variance.

(b) Upon receipt of a written request for a variance under paragraph (a) of this section, the local Job Service office shall send the request to the State office which, in turn, shall forward it to the Regional Administrator, Employment and Training Administration (RA). The RA shall review the matter and, after consultation with OSHA, shall either grant or deny the request for a variance.

(c) The variance granted by the RA shall be in writing, shall state the particular standard(s) involved, and shall state as conditions of the variance the specific alternative measures which have been taken to protect the health and safety of the workers. The RA shall send the approved variance to the employer and shall send copies to the Regional Administrator of the Occupational Safety and Health Administration, the Regional Administrator of the Employment Standards Administration, and the appropriate State agency and the local Job Service office. The employer shall submit and the local Job Service office shall attach copies of the approved variance to each of the employer's job orders which is placed into intrastate or interstate clearance.

(d) If the RA denies the request for a variance, the RA shall provide written notice stating the reasons for the denial to the employer, the appropriate State agency and the local Job Service office. The notice shall also offer the employer an opportunity to request a hearing before a DOL Hearing Officer, provided the employer requests such a hearing from the RA within 30 calendar days of the date of the notice. The request for a hearing shall be handled in accordance with the employment service complaint procedures set forth at §§ 658.421 (i) and (j), 658.422 and 658.423 of this Chapter.

(e) The procedures of paragraphs (a) through (d) of this section shall only apply to an employer who has chosen, as evidenced by its written request for a variance, to comply with the ETA housing standards at §§ 654.404—654.417 of this Subpart.

§ 654.403 Conditional access to the intrastate or interstate clearance system.

(a) An employer whose housing during a period of nonuse has fallen out of compliance and who has not had a reasonable opportunity to bring its housing into compliance with the applicable standards may file, but only with the local Job Service office serving the area in which its housing is located, a written request that its job orders be conditionally allowed into the intrastate or interstate clearance system, provided:

(1) The employer's request includes a written statement, verified by the local Job Service office serving the area in which the housing is located, that the employer's housing was in compliance with the applicable housing standards during the period of its use in the previous year, and that, if the employer was granted such a request in the previous year, the employer complied with the conditions of that authorization; and

(2) The employer's request assures that its housing will be in full compliance with the requirements of the applicable housing standards at least 45 days (giving the specific date) before the housing is to be occupied.

(b) Upon receipt of a written request for conditional access to the intrastate or interstate clearance system under paragraph (a) of this section, the local Job Service office shall send the request to the State office which, in turn, shall forward it to the Regional Administrator, Employment and Training Administration (RA). The RA shall review the matter and, as appropriate, shall either grant or deny the request.

(c) The authorization for conditional access to the intrastate or interstate clearance system shall be in writing.

and shall state that although the housing does not comply with the applicable standards, the employer's job orders may be placed into intrastate or interstate clearance until a specified date. The RA shall send the authorization to the employer and shall send copies to the appropriate State agency and local Job Service office. The employer shall submit and the local Job Service office shall attach copies of the authorization to each of the employer's job orders which is placed into intrastate or interstate clearance.

(d) If the RA denies the request for conditional access to the intrastate or interstate clearance system, the RA shall provide written notice stating the reasons for the denial to the employer, the appropriate State agency and the local Job Service office.

(e) The local Job Service office serving the area containing the housing of any employer granted conditional access to the intrastate or interstate clearance system shall assure that the housing is inspected prior to three working days after the date by which the employer has promised to have its housing in compliance with the requirements of this Subpart. An employer, however, may request an earlier preliminary inspection. If upon inspection, or if on the date set forth in the authorization, whichever is later, the housing does not meet the standards set forth in this Subpart, the local Job Service office shall immediately remove the employer's job orders from intrastate or interstate clearance, and, if workers have been recruited against these orders, shall, in cooperation with the employment service agencies in other States, make every reasonable attempt to locate and notify the appropriate crew leaders or workers, and to find alternative and comparable employment for the workers.

Housing Standards

§ 654.404 Housing site.

(a) Housing sites shall be well drained and free from depressions in which water may stagnate. They shall be located where the disposal of sewage is provided in a manner which neither creates nor is likely to create a nuisance, or a hazard to health.

(b) Housing shall not be subject to, or in proximity to conditions that create or are likely to create offensive odors, flies, noise, traffic, or any similar hazards.

(c) Grounds within the housing site shall be free from debris, noxious plants (poison ivy, etc.) and uncontrolled weeds or brush.

(d) The housing site shall provide a space for recreation reasonably related

to the size of the facility and the type of occupancy.

§ 654.405 Water supply.

(a) An adequate and convenient supply of water that meets the standards of the State health authority shall be provided.

(b) A cold water tap shall be available within 100 feet of each individual living unit when water is not provided in the unit. Adequate drainage facilities shall be provided for overflow and spillage.

(c) Common drinking cups shall not be permitted.

§ 654.406 Excreta and liquid waste disposal.

(a) Facilities shall be provided and maintained for effective disposal of excreta and liquid waste. Raw or treated liquid waste shall not be discharged or allowed to accumulate on the ground surface.

(b) Where public sewer systems are available, all facilities for disposal of excreta and liquid wastes shall be connected thereto.

(c) Where public sewers are not available, a subsurface septic tank-seepage system or other type of liquid waste treatment and disposal system, privies or portable toilets shall be provided. Any requirements of the State health authority shall be complied with.

§ 654.407 Housing.

(a) Housing shall be structurally sound, in good repair, in a sanitary condition and shall provide protection to the occupants against the elements.

(b) Housing shall have flooring constructed of rigid materials, smooth finished, readily cleanable, and so located as to prevent the entrance of ground and surface water.

(c) The following space requirements shall be provided:

(1) For sleeping purposes only in family units and in dormitory accommodations using single beds, not less than 50 square feet of floor space per occupant:

(2) For sleeping purposes in dormitory accommodations using double bunk beds only, not less than 40 square feet per occupant:

(3) For combined cooking, eating, and sleeping purposes not less than 60 square feet of floor space per occupant.

(d) Housing used for families with one or more children over 6 years of age shall have a room or partitioned sleeping area for the husband and wife. The partition shall be of rigid materials and installed so as to provide reasonable privacy.

(e) Separate sleeping accommodations shall be provided for each sex or each family.

(f) Adequate and separate arrangements for hanging clothing and storing personal effects for each person or family shall be provided.

(g) At least one-half of the floor area in each living unit shall have a minimum ceiling height of 7 feet. No floor space shall be counted toward minimum requirements where the ceiling height is less than 5 feet.

(h) Each habitable room (not including partitioned areas) shall have at least one window or skylight opening directly to the out-of-doors. The minimum total window or skylight area, including windows in doors, shall equal at least 10 percent of the usable floor area. The total openable area shall equal at least 45 percent of the minimum window or skylight area required, except where comparably adequate ventilation is supplied by mechanical or some other method.

§ 654.408 Screening.

(a) All outside openings shall be protected with screening of not less than 16 mesh.

(b) All screen doors shall be tight fitting, in good repair, and equipped with self-closing devices.

§ 654.409 Heating.

(a) All living quarters and service rooms shall be provided with properly installed, operable heating equipment capable of maintaining a temperature of at least 68° F. if during the period of normal occupancy the temperature in such quarters falls below 68°.

(b) Any stoves or other sources of heat utilizing combustible fuel shall be installed and vented in such a manner as to prevent fire hazards and a dangerous concentration of gases. No portable heaters other than those operated by electricity shall be provided. If a solid or liquid fuel stove is used in a room with wooden or other combustible flooring, there shall be a concrete slab, insulated metal sheet, or other fireproof material on the floor under each stove, extending at least 18 inches beyond the perimeter of the base of the stove.

(c) Any wall or ceiling within 19 inches of a solid or liquid fuel stove or a stovepipe shall be of fireproof material. A vented metal collar shall be installed around a stovepipe, or vent passing through a wall, ceiling, floor or roof.

(d) When a heating system has automatic controls, the controls shall be of the type which cut off the fuel supply upon the failure or interruption of the flame or ignition, or whenever a predetermined safe temperature or pressure is exceeded.

§ 654.410 Electricity and lighting.

(a) All housing sites shall be provided with electric service.

(b) Each habitable room and all common use rooms, and areas such as: Laundry rooms, toilets, privies, hallways, stairways, etc., shall contain adequate ceiling or wall-type light fixtures. At least one wall-type electrical convenience outlet shall be provided in each individual living room.

(c) Adequate lighting shall be provided for the yard area, and pathways to common use facilities.

(d) All wiring and lighting fixtures shall be installed and maintained in a safe condition.

§ 654.411 Toilets.

(a) Toilets shall be constructed, located and maintained so as to prevent any nuisance or public health hazard.

(b) Water closets or privy seats for each sex shall be in the ratio of not less than one such unit for each 15 occupants, with a minimum of one unit for each sex in common use facilities.

(c) Urinals, constructed of nonabsorbent materials, may be substituted for men's toilet seats on the basis of one urinal or 24 inches of trough-type urinal for one toilet seat up to a maximum of one-third of the required toilet seats.

(d) Except in individual family units, separate toilet accommodations for men and women shall be provided. If toilet facilities for men and women are in the same building, they shall be separated by a solid wall from floor to roof or ceiling. Toilets shall be distinctly marked "men" and "women" in English and in the native language of the persons expected to occupy the housing.

(e) Where common use toilet facilities are provided, an adequate and accessible supply of toilet tissue, with holders, shall be furnished.

(f) Common use toilets and privies shall be well lighted and ventilated and shall be clean and sanitary.

(g) Toilet facilities shall be located within 200 feet of each living unit.

(h) Privies shall not be located closer than 50 feet from any living unit or any facility where food is prepared or served.

(i) Privy structures and pits shall be fly tight. Privy pits shall have adequate capacity for the required seats.

§ 654.412 Bathing, laundry, and handwashing.

(a) Bathing and handwashing facilities, supplied with hot and cold water under pressure, shall be provided for the use of all occupants. These facilities shall be clean and sanitary and

located within 200 feet of each living unit.

(b) There shall be a minimum of 1 showerhead per 15 persons. Showerheads shall be spaced at least 3 feet apart, with a minimum of 9 square feet of floor space per unit. Adequate, dry dressing space shall be provided in common use facilities. Shower floors shall be constructed of nonabsorbent nonskid materials and sloped to properly constructed floor drains. Except in individual family units, separate shower facilities shall be provided each sex. When common use shower facilities for both sexes are in the same building they shall be separated by a solid nonabsorbent wall extending from the floor to ceiling, or roof, and shall be plainly designated "men" or "women" in English and in the native language of the persons expected to occupy the housing.

(c) Lavatories or equivalent units shall be provided in a ratio of 1 per 15 persons.

(d) Laundry facilities, supplied with hot and cold water under pressure, shall be provided for the use of all occupants. Laundry trays or tubs shall be provided in the ratio of 1 per 25 persons. Mechanical washers may be provided in the ratio of 1 per 50 persons in lieu of laundry trays, although a minimum of 1 laundry tray per 100 persons shall be provided in addition to the mechanical washers.

§ 654.413 Cooking and eating facilities.

(a) When workers or their families are permitted or required to cook in their individual unit, a space shall be provided and equipped for cooking and eating. Such space shall be provided with: (1) A cookstove or hot plate with a minimum of two burners; and (2) adequate food storage shelves and a counter for food preparation; and (3) provisions for mechanical refrigeration of food at a temperature of not more than 45° F.; and (4) a table and chairs or equivalent seating and eating arrangements, all commensurate with the capacity of the unit; and (5) adequate lighting and ventilation.

(b) When workers or their families are permitted or required to cook and eat in a common facility, a room or building separate from the sleeping facilities shall be provided for cooking and eating. Such room or building shall be provided with: (1) Stoves or hot plates, with a minimum equivalent of two burners, in a ratio of 1 stove or hot plate to 10 persons, or 1 stove or hot plate to 2 families; and (2) adequate food storage shelves and a counter for food preparation; and (3) mechanical refrigeration for food at a temperature of

not more than 45° F.; and (4) tables and chairs or equivalent seating adequate for the intended use of the facility; and (5) adequate sinks with hot and cold water under pressure; and (6) adequate lighting and ventilation; and (7) floors shall be of nonabsorbent, easily cleaned materials.

(c) When central mess facilities are provided, the kitchen and mess hall shall be in proper proportion to the capacity of the housing and shall be separate from the sleeping quarters. The physical facilities, equipment and operation shall be in accordance with provisions of applicable State codes.

(d) Wall surface adjacent to all food preparation and cooking areas shall be of nonabsorbent, easily cleaned material. In addition, the wall surface adjacent to cooking areas shall be of fire-resistant material.

§ 654.414 Garbage and other refuse.

(a) Durable, fly-tight, clean containers in good condition of a minimum capacity of 20 gallons, shall be provided adjacent to each housing unit for the storage of garbage and other refuse. Such containers shall be provided in a minimum ratio of 1 per 15 persons.

(b) Provisions shall be made for collection of refuse at least twice a week, or more often if necessary. The disposal of refuse, which includes garbage, shall be in accordance with State and local law.

§ 654.415 Insect and rodent control.

Housing and facilities shall be free of insects, rodents, and other vermin.

§ 654.416 Sleeping facilities.

(a) Sleeping facilities shall be provided for each person. Such facilities shall consist of comfortable beds, cots, or bunks, provided with clean mattresses.

(b) Any bedding provided by the housing operator shall be clean and sanitary.

(c) Triple deck bunks shall not be provided.

(d) The clear space above the top of the lower mattress of a double deck bunk and the bottom of the upper bunk shall be a minimum of 27 inches. The distance from the top of the upper mattress to the ceiling shall be a minimum of 36 inches.

(e) Beds used for double occupancy may be provided only in family accommodations.

§ 654.417 Fire, safety, and first aid.

(a) All buildings in which people sleep or eat shall be constructed and maintained in accordance with applicable State or local fire and safety laws.

(b) In family housing and housing units for less than 10 persons, of one story construction, two means of escape shall be provided. One of the two required means of escape may be a readily accessible window with an openable space of not less than 24 x 24 inches.

(c) All sleeping quarters intended for use by 10 or more persons, central dining facilities, and common assembly rooms shall have at least two doors remotely separated so as to provide alternate means of escape to the outside or to an interior hall.

(d) Sleeping quarters and common assembly rooms on the second story shall have a stairway, and a permanent, affixed exterior ladder or a second stairway.

(e) Sleeping and common assembly rooms located above the second story shall comply with the State and local fire and building codes relative to multiple story dwellings.

(f) Fire extinguishing equipment shall be provided in a readily accessible place located not more than 100 feet from each housing unit. Such equipment shall provide protection equal to a 2½ gallon stored pressure or 5-gallon pump-type water extinguisher.

(g) First aid facilities shall be provided and readily accessible for use at all time. Such facilities shall be equivalent to the 16 unit first aid kit recommended by the American Red Cross, and provided in a ratio of 1 per 50 persons.

(h) No flammable or volatile liquids or materials shall be stored in or adjacent to rooms used for living purposes, except for those needed for current household use.

(i) Agricultural pesticides and toxic chemicals shall not be stored in the housing area.

PART 655—LABOR CERTIFICATION PROCESS FOR THE TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES

§ 655.202 (Amended)

9. Paragraph (b)(1) of § 655.202, *Contents of job offers* is revised to read as follows:

(1) The employer will provide the worker with housing without charge to the worker. The housing will meet the full set of standards set forth at 29 CFR 1910.142 or the full set of standards set forth at Part 654, Subpart E of this chapter, whichever is applicable under the criteria of 20 CFR 654.401; except that, for mobile range housing for shepherders, the housing shall meet existing Departmental guidelines. When it is the prevailing practice in the area of

intended employment to provide family housing, the employer will provide such housing to such workers.

Signed at Washington, D.C. this 28th day of February, 1980.

Ray Marshall,

Secretary of Labor.

[FR Doc. 80-8779 Filed 3-3-80; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration

29 CFR Part 40

Farm Labor Contractor Registration, Housing for Agricultural Workers; Cross-Reference Updated

AGENCY: Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This document updates the cross-reference in the Farm Labor Contractor Registration regulations to the Employment and Training Administration (ETA) housing standards. This change is necessary to reflect the amendment and renumbering of the ETA standards published on this date.

EFFECTIVE DATE: April 3, 1980.

FOR FURTHER INFORMATION CONTACT: Paul E. Myerson, Counsel for Employment Standards, Division of General Legal Services, Office of the Solicitor of Labor, 200 Constitution Avenue NW., Room N-2458, Washington, D.C. 20210, Telephone: (202) 523-8244.

SUPPLEMENTARY INFORMATION: The Employment and Training Administration (ETA) of the Department of Labor published in today's issue of the Federal Register a document to amend and transfer the ETA housing regulations from 20 CFR Part 620 to Subpart E of Part 654. The Department hereby amends the cross-reference to the ETA regulations contained in the Farm Labor Contractor Registration regulations to reflect the renumbering of the ETA regulations.

Since this technical revision to the Department's regulations is purely procedural and involves no change in the substance of the rule, the Department finds that notice and public procedure under the Administrative Procedure Act are unnecessary. This finding also constitutes a waiver of the Department's regulation at 29 CFR 2.7.

Accordingly, Title 29, Subtitle A of the Code of Federal Regulations is amended as follows:

**PART 40—FARM LABOR
CONTRACTOR REGISTRATION**

§ 40.20 [Amended]

§ 40.20, *Authorization to house migrant workers*, is amended in paragraph (a)(2) by changing the citation "820.4", to "854.404 *et seq.*"

Signed at Washington, D.C. this 28th day of February 1960.

Ray Marshall,

Secretary of Labor.

[FR Doc. 60-4787 Filed 3-3-60; 8:45 am]

BILLING CODE 4510-27-01

Appendix N
ETA Housing Checklist

**HOUSING INSPECTION CHECKLIST
(20 CFR 654)**

DATE _____ LOCAL OFFICE _____

_____ EMPLOYER _____

_____ ADDRESS _____ COUNTY _____

CURRENT OR ANTICIPATED NUMBER CAMP OCCUPANTS _____

KEY TO MAKING ENTRIES ON CHECKLIST

Check if housing meets prescribed standards

Enter X if housing does not meet prescribed standards

Enter 0 not applicable at time of inspection

NOTE: On all items to which the Secretary's Regulation or other State or Local regulation apply, the more stringent provision is to prevail.

Inspected by _____
(Signature of SESA Inspector) _____ Date _____

Inspected by _____
Signature of Inspector other Than SESA _____ Date _____

HOUSING INSPECTION CHECKLIST

654.402 Variances - In accord with regulations?

654.404 Housing Site

- _____ a. Located where sewage disposal neither creates nor is likely to create a nuisance or a hazard to health.
- _____ b. Well drained and free from depressions?
- _____ c. Offensive odors, flies, noise, traffic or similar hazards?
- _____ d. Debris, noxious plants, weeds, etc.?
- _____ e. Space for recreation?

654.405 Water Supply

- _____ a. Adequate and meets _____ approval?
- _____ b. Coldwater tap 100 feet from each individual living unit?
 - _____ 1. Adequate drainage facilities at water tap for overflow?
- _____ c. No common drinking cup?

654.406 Fecreta and Liquid Waste Disposal

- _____ a. Effective facilities provided?
- _____ b. Liquid waste not discharged or allowed to accumulate on ground surface?
- _____ c. Facilities connected to public sewers when available?
 - _____ 1. Other systems approved by appropriate agency.

654.407 Housing

- _____ a. Structurally sound? _____ In sanitary condition? _____ Provides protection against elements? _____ In good repair? _____
- _____ b. Floors of rigid materials, smooth finished, readily cleanable and located so as to prevent entrance of surface water?
- _____ c. Sufficient floor and air space for current or anticipated camp occupants?

NOTE: No floor space shall be counted toward minimum requirements where ceiling height is less than five (5) feet.

MINIMUM STANDARDS

1. Sleeping only, single beds (family, dormitory) - 50 sq. ft. per occupant.
 2. Sleeping only, double bunks (dormitory) - 40 sq. ft. per occupant.
 3. Cooking, eating, sleeping - 60 sq. ft. per occupant.
-
- _____ d. Room or rigid partitioned sleeping area for husband and wife with children over 6 years of age to provide reasonable privacy?
 - _____ e. Separate sleeping accommodations for each sex or family?
 - _____ f. Adequate and separate arrangements for hanging clothes and storing personal effects?
 - _____ g. Half floor area have minimum ceiling height of 7 feet?
 - _____ h. One window or skylight, each habitable room and opening directly to out of doors.
 - _____ 1. Minimum total window or skylight area, including windows in doors, equal to 10% of usable floor area?
 - _____ 2. 45% minimum window area operable or adequate skylight provided except where mechanical or other ventilating devices are provided which are comparably adequate?

654.408 Screening

- _____ a. All outside openings screened minimum 16 mesh?
- _____ b. Screen doors tight fitting? _____ and equipped with self-closing devices? _____

HOUSING INSPECTION CHECKLIST

654.409 Heating

- a. Living quarters and service rooms provided with adequate, properly installed, operable heating equipment, if needed?
- b. Stoves properly installed, vented and fireproof material under stoves on combustible flooring - no portable heaters other than electrical?
- c. Walls, ceiling within 18" of solid or liquid fuel stove or stove pipe constructed of fireproof material?
- d. Vented metal collar around stove pipe or vents?
- e. With automatic controls, proper type automatic fuel cutoff?
- f. Capable of providing 68° minimum?

654.410 Electricity and Lighting

- a. Electric service available?
- b. Adequate light fixtures each habitable room; common use of laundry; shower; privies; hallways; stairways?
- c. Wall outlet each living room?
- d. Adequate yard area lighting?
- e. Wiring and lighting in safe condition?

654.411 Toilets

- a. Constructed, located and maintained to prevent nuisance or health hazard?
- b. One water closet or privy seat for each 15 occupants of same sex?
- c. Urinals, if any, properly constructed?
- d. Separate toilet accommodations for men and women except in family units?

HOUSING INSPECTION CHECKLIST

- _____ 1. Solid wall, floor to roof or ceiling between men and women's toilets in same building?
- _____ 2. Properly marked (English and native language)?
 - _____ e. Toilet tissue furnished?
 - _____ f. Toilets and privies well lighted, ventilated, clean and sanitary?
 - _____ g. Within 200 feet of each living unit?
 - _____ h. Privies not closer than 50 feet from any living unit or food facilities?
 - _____ i. Privy structures and pits fly tight?
 - _____ j. Meets applicable provisions of pertinent State or local law?

654.412 Bathing, laundry, and handwashing

- _____ a. Supplied with hot and cold water under pressure?
 - _____ 1. Facilities clean and sanitary?
 - _____ 2. Facilities within 200' of each living unit?
- _____ b. One shower head per 15 persons?
 - _____ 1. Adequate dry dressing space in common use facilities?
 - _____ 2. Shower heads spaced 3' apart with minimum of 9 square feet floor space?
 - _____ 3. Shower floors and drains properly constructed?
 - _____ 4. Separate shower facilities for each sex (except in family units)?
 - _____ 5. Solid non-absorbant wall from floor to ceiling or roof between shower facilities for both sexes in same building?
 - _____ 6. Showers properly marked (English and native language)?

HOUSING INSPECTION CHECKLIST

- c. Lavatories or equivalent units in ratio of 1 to 15 provided?
- d. Laundry facilities supplied with hot and cold water under pressure?
 - 1. Sufficient laundry facilities provided?

NOTE: One tub or tray per 25 persons; or mechanical washers one per 50 persons (with minimum of one tub per 100 persons.)

654.413 Cooking and Eating Facilities

- a. Space provided and equipped for cooking and eating in individual units?
 - 1. Cook stove or hotplate with minimum of two burners provided?
 - 2. Adequate food storage shelves?
 - 3. Counter for food preparation?
 - 4. Technical refrigerator provided (maximum temperature 45°)?
 - 5. Table and chairs or equivalent seating and eating arrangement provided?
 - 6. Adequate light and ventilation?
- b. Space provided for cooking and eating in a common facility?
 - 1. Separate from sleeping facilities?
 - 2. Provided with one stove or 2 burner hotplate for each 10 persons or two families?
 - 3. Adequate food storage shelves?
 - 4. Counter for food preparation?
 - 5. Mechanical refrigerator (maximum temperature 45°)?
 - 6. Adequate tables and chairs?
 - 7. Adequate sinks with hot and cold water under pressure?
 - 8. Adequate light and ventilation?
 - 9. Floors of nonabsorbent and easily cleaned materials?

HOUSING INSPECTION CHECKLIST

- c. Central mess facilities in proper proportion to capacity of housing?
 - 1. Separate from sleeping quarters?
 - 2. Facilities equipped and operated in accordance with State codes?
- d. Wall surface adjacent to food preparation and cooking areas of nonabsorbent, easily cleaned, fire resistant material?

654.414 Garbage and other refuse

- a. Fly-tight 20 gallon containers provided adjacent to each housing unit.
 - 1. Containers provided in minimum ratio of 1 to 15 persons.
- b. Garbage collection at least twice a week?
- c. Disposal of refuse in accordance with State code?

654.415 Insect and rodent control

- Housing and facilities shall be free of insects, rodents and other vermin?

654.416 Sleeping Facilities

- a. Comfortable beds, cots or bunks with clean mattresses and mattress covers, when required, provided for each person. (Bunk, beds to be placed no closer together than 30" side to side or end to end.)?
- b. Bedding provided by camp operator is clean and sanitary?
- c. No triple deck bunks?
- d. Proper clearance above and below sleeping facilities?
- e. Double beds occupied by two people in family combinations only?

OCCUPATIONAL SAFETY AND HEALTH

1910.142—TEMPORARY LABOR CAMPS



UNITED STATES DEPARTMENT OF LABOR
Ray Marshall, Secretary
Occupational Safety and Health Administration

1910.142—TEMPORARY LABOR CAMPS

(a) Site.

(1) All sites used for camps shall be adequately drained. They shall not be subject to periodic flooding, nor located within 200 feet of swamps, pools, sink holes, or other surface collections of water unless such quiescent water surfaces can be subjected to mosquito control measures. The camp shall be located so the drainage from and through the camp will not endanger any domestic or public water supply. All sites shall be graded, ditched, and rendered free from depressions in which water may become a nuisance.

(2) All sites shall be adequate in size to prevent overcrowding of necessary structures. The principal camp area in which food is prepared and served and where sleeping quarters are located shall be at least 500 feet from any area in which livestock is kept.

(3) The grounds and open areas surrounding the shelters shall be maintained in a clean and sanitary condition free from rubbish, debris, waste paper, garbage, or other refuse.

(4) Whenever the camp is closed for the season or permanently, all garbage, manure, and other refuse shall be collected and so disposed of as to prevent nuisance. All abandoned privy pits shall be filled with earth and the grounds and buildings left in a clean and sanitary condition. If privy buildings remain, they shall be locked or otherwise secured to prevent entrance.

(b) Shelter.

(1) Every shelter in the camp shall be constructed in a manner which will provide protection against the elements.

(2) Each room used for sleeping purposes shall contain at least 50 square feet of floor space for each occupant. At least a 7-foot ceiling shall be provided.

(3) Beds, cots, or bunks, and suitable storage facilities such as wall lockers for clothing and personal articles shall be provided in every room used for sleeping purposes. Such beds or similar facilities shall be spaced not closer than 36 inches both laterally and end to end, and shall be elevated at least 12 inches from the floor. If double-deck bunks are used, they shall be spaced not less than 48 inches both laterally and end to end. The minimum clear space between the lower and upper bunk shall be not less than 27 inches. Triple-deck bunks are prohibited.

(4) The floors of each shelter shall be constructed of wood, asphalt, or concrete. Wooden floors shall be of smooth and tight construction. The floors shall be kept in good repair.

(5) All wooden floors shall be elevated not less than 1 foot above the ground level at all points to prevent dampness and to permit free circulation of air beneath.

(6) Nothing in this section shall be construed to prohibit "banking" with earth or other suitable material around the outside walls in areas subject to extreme low temperatures.

(7) All living quarters shall be provided with windows the total of which shall be not less than one-tenth of the floor area. At least one-half of each window shall be so constructed that it can be opened for purposes of ventilation.

(8) All exterior openings shall be effectively screened with 16-mesh material. All screen doors shall be equipped with self-closing devices.

(9) In a room where workers cook, live, and sleep a minimum of 100 square feet per person shall be provided. Sanitary facilities shall be provided for storing and preparing food.

(10) In camps where cooking facilities are used in common, stoves (in ratio of one stove to 10 persons or one stove to two families) shall be provided in an enclosed and screened shelter. Sanitary facilities shall be provided for storing and preparing food.

(11) All heating, cooking, and water heating equipment shall be installed in accordance with State and local ordinances, codes, and regulations governing such installations. If a camp is used during cold weather, adequate heating equipment shall be provided.

(c) Water supply.

(1) An adequate and convenient water supply, approved by the appropriate health authority, shall be provided in each camp for drinking, cooking, bathing, and laundry purposes.

(2) A water supply shall be deemed adequate if it is capable of delivering 35 gallons per person per day to the campsite at a peak rate of 2½ times the average hourly demand.

(3) The distribution lines shall be capable of supplying water at normal operating pressures to all fixtures for simultaneous operation. Water outlets shall be distributed throughout the camp in such a manner that no shelter is more than 100 feet from a yard hydrant if water is not piped to the shelters.

(4) Where water under pressure is available, one or more drinking fountains shall be provided for each 100 occupants or fraction thereof. The construction of drinking fountains shall comply with ANSI Standard Specifications for Drinking Fountains, Z4.2-1942. Common drinking cups are prohibited.

(d) Toilet facilities.

(1) Toilet facilities adequate for the capacity of the camp shall be provided.

(2) Each toilet room shall be located so as to be accessible without any individual pass-

ing through any sleeping room. Toilet rooms shall have a window not less than 6 square feet in area opening directly to the outside area or otherwise be satisfactorily ventilated. All outside openings shall be screened with 16-mesh material. No fixture, water closet, chemical toilet, or urinal shall be located in a room used for other than toilet purposes.

(3) A toilet room shall be located within 200 feet of the door of each sleeping room. No privy shall be closer than 100 feet to any sleeping room, dining room, lunch area, or kitchen.

(4) Where the toilet rooms are shared, such as in multifamily shelters and in barracks type facilities, separate toilet rooms shall be provided for each sex. These rooms shall be distinctly marked "for men" and "for women" by signs printed in English and in the native language of the persons occupying the camp, or marked with easily understood pictures or symbols. If the facilities for each sex are in the same building, they shall be separated by solid walls or partitions extending from the floor to the roof or ceiling.

(5) Where toilet facilities are shared, the number of water closets or privy seats provided for each sex shall be based on the maximum number of persons of that sex which the camp is designed to house at any one time, in the ratio of one such unit to each 15 persons, with a minimum of two units for any shared facility.

(6) Urinals shall be provided on the basis of one unit or 2 linear feet of urinal trough for each 25 men. The floor from the wall and for a distance not less than 15 inches measured from the outward edge of the urinals shall be constructed of materials impervious to moisture. Where water under pressure is available, urinals shall be provided with an adequate water flush. Urinal troughs in privies shall drain freely into the pit or vault and the construction of this drain shall be such as to exclude flies and rodents from the pit.

(7) Every water closet installed on or after August 31, 1971, shall be located in a toilet room.

(8) Each toilet room shall be lighted naturally, or artificially by a safe type of lighting at all hours of the day and night.

(9) An adequate supply of toilet paper shall be provided in each privy, water closet, or chemical toilet compartment.

(10) Privies and toilet rooms shall be kept in a sanitary condition. They shall be cleaned at least daily.

(e) Sewage disposal facilities.

In camps where public sewers are available, all sewer lines and floor drains from buildings shall be connected thereto.

(f) Laundry, handwashing, and bathing facilities.

(1) Laundry, handwashing, and bathing facilities shall be provided in the following ratio:

(i) Handwash basin per family shelter or per six persons in shared facilities.

(ii) Shower head for every 10 persons.

(iii) Laundry tray or tub for every 30 persons.

(iv) Slop sink in each building used for laundry, hand washing, and bathing.

(2) Floors shall be of smooth finish but not slippery materials; they shall be impervious to moisture. Floor drains shall be provided in all shower baths, shower rooms, or laundry rooms to remove waste water and facilitate cleaning. All junctions of the curbing and the floor shall be coved. The walls and partitions of shower rooms shall be smooth and impervious to the height of splash.

(3) An adequate supply of hot and cold running water shall be provided for bathing and

laundry purposes. Facilities for heating water shall be provided.

(4) Every service building shall be provided with equipment capable of maintaining a temperature of at least 70° F. during cold weather.

(5) Facilities for drying clothes shall be provided.

(6) All service buildings shall be kept clean.

(g) Lighting.

Where electric service is available, each habitable room in a camp shall be provided with at least one ceiling-type light fixture and at least one separate floor- or wall-type convenience outlet. Laundry and toilet rooms and rooms where people congregate shall contain at least one ceiling- or wall-type fixture. Light levels in toilet and storage rooms shall be at least 20 foot-candles 30 inches from the floor. Other rooms, including kitchens and living quarters, shall be at least 30 foot-candles 30 inches from the floor.

(h) Refuse disposal.

(1) Fly-tight, rodent-tight, impervious, cleanable or single service containers, approved by the appropriate health authority shall be provided for the storage of garbage. At least one such container shall be provided for each family shelter and shall be located within 100 feet of each shelter on a wooden, metal, or concrete stand.

(2) Garbage containers shall be kept clean.

(3) Garbage containers shall be emptied when full, but not less than twice a week.

(i) Construction and operation of kitchens, dining hall, and feeding facilities.

(1) In all camps where central dining or multiple family feeding operations are permitted or provided, the food handling facilities shall comply with the requirements of the "Food Service Sanitation Ordinance and Code," Part V of the "Food Serv-

ice Sanitation Manual," U.S. Public Health Service Publication 934 (1965).

(2) A properly constructed kitchen and dining hall adequate in size, separate from the sleeping quarters of any of the workers or their families, shall be provided in connection with all food handling facilities. There shall be no direct opening from living or sleeping quarters into a kitchen or dining hall.

(3) No person with any communicable disease shall be employed or permitted to work in the preparation, cooking, serving, or other handling of food, foodstuffs, or materials used therein, in any kitchen or dining room operated in connection with a camp or regularly used by persons living in a camp.

(j) Insect and rodent control.

Effective measures shall be taken to prevent infestation by and harborage of animal or insect vectors or pests.

(k) First aid.

(1) Adequate first aid facilities approved by a health authority shall be maintained and made available in every labor camp for the emergency treatment of injured persons.

(2) Such facilities shall be in charge of a person trained to administer first aid and shall be readily accessible for use at all times.

(l) Reporting communicable disease.

(1) It shall be the duty of the camp superintendent to report immediately to the local health officer the name and address of any individual in the camp known to have or suspected of having a communicable disease.

(2) Whenever there shall occur in any camp a case of suspected food poisoning or an unusual prevalence of any illness in which fever, diarrhea, sore throat, vomiting, or jaundice is a prominent symptom, it shall be the duty of the camp superintendent to report immediately the existence of the outbreak to the health authority by telegram or telephone.

Appendix L
OSHA Housing Checklist

HOUSING INSPECTION CHECK LIST

OSHA MIGRANT HOUSING STANDARDS

Housing Site	YES	NO
1. Is the site itself adequately drained (at least 200 feet from stagnating pools, sink holes, or other surface collections of water)?	<input type="checkbox"/>	<input type="checkbox"/>
2. Is drainage from and through the site such that it will not endanger the water supply? Where, for example, is the well located? Is it adequately sealed to prevent contamination from entering?	<input type="checkbox"/>	<input type="checkbox"/>
3. Is the site free from depressions in which water may become a nuisance during wet weather or flash floods?	<input type="checkbox"/>	<input type="checkbox"/>
4. In single-family housing camps, are the houses adequately spaced apart to prevent overcrowding?	<input type="checkbox"/>	<input type="checkbox"/>
5. Is the house in which food is prepared and served, and where sleeping quarters are located, at least 500 feet from any area in which livestock is kept?	<input type="checkbox"/>	<input type="checkbox"/>
6. Is the site around the houses maintained in a clean and sanitary condition free from rubbish, debris, waste paper, garbage, or other refuse?	<input type="checkbox"/>	<input type="checkbox"/>
7. When the house is closed for the season (or permanently), is the garbage and other refuse collected and disposed of so as to prevent a nuisance?	<input type="checkbox"/>	<input type="checkbox"/>
8. Are all abandoned privy and garbage pits filled with earth, and the grounds and buildings left in a sanitary condition at the close of the season?	<input type="checkbox"/>	<input type="checkbox"/>
9. At the end of occupancy, are the privy buildings locked or otherwise secured to prevent the entrance of rodents and protection from the elements?	<input type="checkbox"/>	<input type="checkbox"/>
House (or Shelter)		
10. Is the house constructed and maintained in a manner that will provide adequate protection against the elements? Are the roof and walls in good repair?	<input type="checkbox"/>	<input type="checkbox"/>
11. Are beds (or cots and bunks if appropriate), clean mattresses, and suitable storage facilities (such as wall lockers for clothing and personal articles) provided in every room used for sleeping purposes?	<input type="checkbox"/>	<input type="checkbox"/>
12. Are beds at least 36 inches apart from each other and at least 12 inches above the floor?	<input type="checkbox"/>	<input type="checkbox"/>

- | | YES | NO |
|---|--------------------------|--------------------------|
| 13. If bunk beds are used, are they at least 48 inches apart from other beds? | <input type="checkbox"/> | <input type="checkbox"/> |
| 14. Are triple-deck bunks being used? (They are prohibited). | <input type="checkbox"/> | <input type="checkbox"/> |
| 15. Are the floors in each house constructed of wood, asphalt, or concrete? | <input type="checkbox"/> | <input type="checkbox"/> |
| 16. Are floors kept in good repair? (Free from splinters, holes, and nails.) | <input type="checkbox"/> | <input type="checkbox"/> |
| 17. If floors are wood, are they smooth, of tight construction, and elevated not less than one foot above the ground to prevent dampness and permit free circulation of air beneath? | <input type="checkbox"/> | <input type="checkbox"/> |
| 18. Are living quarters provided with windows in each room? (Window area not less than 10 percent of floor space) | <input type="checkbox"/> | <input type="checkbox"/> |
| 19. Are the windows constructed so that at least one-half of each window can be opened for purposes of ventilation (and escape in event of fire)? | <input type="checkbox"/> | <input type="checkbox"/> |
| 20. Are all windows and outside doors equipped with screens (standard 16 mesh material) and is the screen door equipped with a self-closing spring or similar device? | <input type="checkbox"/> | <input type="checkbox"/> |
| 21. Does each room used for sleeping purposes contain at least 50 square feet of floor space for each occupant? | <input type="checkbox"/> | <input type="checkbox"/> |
| 22. Does the house where workers cook, live, and sleep have a minimum floor space of 100 square feet per person? (and have at least a seven foot ceiling) | <input type="checkbox"/> | <input type="checkbox"/> |
| 23. Are sanitary facilities for storing and preparing food provided in each family unit? Kitchen, for example, must contain cupboards or shelves, table and chairs, and a working refrigerator. Central feeding facilities must comply with the requirements of the "Food Service Sanitation Ordinance and Code". | <input type="checkbox"/> | <input type="checkbox"/> |
| 24. Is the heating, cooking, and water heating equipment installed in accordance with State and local ordinances, codes, and regulations governing such installations? Is the hot water heater vented to the outside? | <input type="checkbox"/> | <input type="checkbox"/> |
| 25. If the house is used during cold weather, is adequate heating equipment provided? | <input type="checkbox"/> | <input type="checkbox"/> |

Water Supply

- | | | |
|---|--------------------------|--------------------------|
| 26. Does each housing site have an adequate and convenient water supply for drinking, cooking, bathing, and laundry purposes? | <input type="checkbox"/> | <input type="checkbox"/> |
| 27. Has the drinking water supply been approved by the appropriate health authority? | <input type="checkbox"/> | <input type="checkbox"/> |
| 28. If water is not piped into the house, is water available within 100 feet of the house? | <input type="checkbox"/> | <input type="checkbox"/> |

- | | YES | NO |
|---|--------------------------|--------------------------|
| 29. If a central water source is used by more than one family, are common drinking cups permitted? (They are prohibited.) | <input type="checkbox"/> | <input type="checkbox"/> |

Toilet Facilities

- | | | |
|--|--------------------------|--------------------------|
| 30. Are toilet facilities adequate for the size of the shelter or camp? (One unit for each 15 persons.) | <input type="checkbox"/> | <input type="checkbox"/> |
| 31. Does each toilet room have a window not less than 6 square feet in area opening directly to the outside area or otherwise satisfactorily ventilated? | <input type="checkbox"/> | <input type="checkbox"/> |
| 32. Are all ventilation openings on the toilet screened with standard 16 mesh material? | <input type="checkbox"/> | <input type="checkbox"/> |
| 33. Are outdoor toilets located within 200 feet of the shelter but no closer than 100 feet? | <input type="checkbox"/> | <input type="checkbox"/> |
| 34. If toilet rooms are shared, such as in multi-family shelters, and in barracks type facilities, are separate toilet facilities provided for each sex? These rooms shall be marked "for men" and "for women". | <input type="checkbox"/> | <input type="checkbox"/> |
| 35. Is each toilet room or outdoor privy lighted naturally or artificially by a safe type of lighting at all hours of the day and night? (Porch or yard light may be used as artificial lighting for outdoor privy.) | <input type="checkbox"/> | <input type="checkbox"/> |
| 36. Is toilet paper available in each privy, water closet, or chemical toilet compartment? | <input type="checkbox"/> | <input type="checkbox"/> |
| 37. Is each privy or toilet room kept in a sanitary condition? (They must be cleaned daily if necessary.) | <input type="checkbox"/> | <input type="checkbox"/> |

Sewage Disposal Facilities

- | | | |
|---|--------------------------|--------------------------|
| 38. If public sewers are available at the site, are all sewer lines and floor drains from the building connected? No sewage seepage shall be permitted on the ground surface. | <input type="checkbox"/> | <input type="checkbox"/> |
|---|--------------------------|--------------------------|

Laundry, Handwashing, and Bathing Facilities

- | | | |
|--|--------------------------|--------------------------|
| 39. Is each house equipped with a handwash basin or per six persons in shared facilities? | <input type="checkbox"/> | <input type="checkbox"/> |
| 40. Is each site equipped with a shower facility (one shower head for each ten persons)? | <input type="checkbox"/> | <input type="checkbox"/> |
| 41. Does each site have a laundry tray or tub for every 30 persons? | <input type="checkbox"/> | <input type="checkbox"/> |
| 42. Is there a slop sink in each service building used for laundry, hand washing, and bathing? | <input type="checkbox"/> | <input type="checkbox"/> |
| 43. Are floors in laundry rooms of smooth finish (but not slippery) and impervious to moisture? | <input type="checkbox"/> | <input type="checkbox"/> |
| 44. Are floor drains provided in all shower baths, shower rooms, or laundry rooms to remove waste water and facilitate cleaning? | <input type="checkbox"/> | <input type="checkbox"/> |

- | | YES | NO |
|---|--------------------------|--------------------------|
| 45. Are junctions between the curbing and the shower floor covered? | <input type="checkbox"/> | <input type="checkbox"/> |
| 46. Are the walls and partitions of shower rooms smooth and impervious to the height of the splash? | <input type="checkbox"/> | <input type="checkbox"/> |
| 47. Is there an adequate supply of hot and cold running water provided at each site for bathing and laundry purposes? | <input type="checkbox"/> | <input type="checkbox"/> |
| 48. Does each site have a working stove or facilities for cooking and heating water? Are cooking facilities provided for each family unit? | <input type="checkbox"/> | <input type="checkbox"/> |
| 49. If a central service building is used for laundry or bathing, is it provided with equipment capable of maintaining a temperature of at least 70° F during cold weather? | <input type="checkbox"/> | <input type="checkbox"/> |
| 50. Are facilities (clotheslines or dryer) provided at each site for drying clothes? | <input type="checkbox"/> | <input type="checkbox"/> |
| 51. Are all service buildings (laundry, shower, etc.) being kept clean | <input type="checkbox"/> | <input type="checkbox"/> |

Lighting

- | | | |
|--|--------------------------|--------------------------|
| 52. If electricity is available at the housing site, does each habitable room in the house have at least one ceiling-type light fixture and at least one wall or floor receptacle? | <input type="checkbox"/> | <input type="checkbox"/> |
| 53. Does each laundry room and bathroom have at least one ceiling or wall-type light fixture and receptacle? | <input type="checkbox"/> | <input type="checkbox"/> |

Refuse Disposal

- | | | |
|---|--------------------------|--------------------------|
| 54. Are garbage cans available at each site, and are they fly-tight and rodent-tight? (Must have lids) | <input type="checkbox"/> | <input type="checkbox"/> |
| 55. Is at least one garbage can or disposal source available for each house, and located within 100 feet of the house? Are garbage cans placed on a wooden, metal, or concrete stand? | <input type="checkbox"/> | <input type="checkbox"/> |
| 56. Are garbage containers kept clean? | <input type="checkbox"/> | <input type="checkbox"/> |
| 57. Are garbage containers emptied when full, but not less than weekly when in use? | <input type="checkbox"/> | <input type="checkbox"/> |

Insect and Rodent Control

- | | | |
|--|--------------------------|--------------------------|
| 58. Are adequate measures taken to prevent infestation and harborage of insects, rodents, and pests? | <input type="checkbox"/> | <input type="checkbox"/> |
|--|--------------------------|--------------------------|

First Aid

- | | | |
|--|--------------------------|--------------------------|
| 59. Is a first aid kit available at the site for the emergency treatment of injured persons? | <input type="checkbox"/> | <input type="checkbox"/> |
|--|--------------------------|--------------------------|

General

YES

N

60. Is the grower aware they are to immediately report to the local health office the name of any individual at the site who is known or suspected of having a communicable disease?

61. Is the grower aware that any case of suspected food poisoning or an unusual prevalence of fever, diarrhea, sore throat, vomiting, or jaundice is to be reported immediately to the nearest health authority by telegram or telephone?



Migrant Housing Inspection Checklist

A Handy Reference Guide to Self-Inspection

√ the _ if the answer is YES, leave _ blank if the answer is NO, X if not applicable.

SITE 1910.142a

- a. Is there adequate drainage?
- b. Is there inactive water such as a sinkhole, swamp, etc. within 200 feet of camp and is it treated for mosquito control?
- c. Is the site graded, ditched or rendered free from depressions in which water may become a nuisance?
- d. Is there no danger to domestic or public water supply from poor drainage?
- e. Is the camp not subject to periodic flooding?
- f. Is the camp not within 500 feet of a livestock area?
- g. Is the camp not overcrowded with structures?
- h. Are the grounds an open areas maintained in a clean and sanitary condition?
- ----- Are the areas free from rubbish, debris, waste paper, garbage or other refuse?
- I. When the camp is closed for the season, is the refuse collected and disposed?
- j. Are abandoned toilet pits filled with dirt?
- k. Are toilet buildings locked when camp is closing for the season?

SHELTER 1910.142b

- a. Does the shelter provide protection against the elements?
- b. Is there 50 or more square feet per person in sleeping rooms?
- c. Is the ceiling at least 7 feet high?
- d. Are there wall lockers for clothing and personal articles provided in sleeping rooms?
- e. Is there a bed, cot or bunk provided for each occupant?
- f. Are the beds, cots or bunks at least 3 feet apart, and/or more than 12 inches from the floor?
- g. For double decker bunk beds:
Is there more than 4 feet between bunks, side to sides and end to end; and at least 27 inches between bunks?
- h. Are triple decker bunks not used?
- I. Are the floors in the structures made of wood, asphalt or concrete?
- j. Are the wooden floors of smooth and tight construction?
- k. Are the floors in good repair?
- l. Are the wooden floors elevated at least 1 foot above ground level?
- m. Do the windows and doors in the

- living quarters total at least 1/10 of the floor area?
- n. Can the windows be opened one-half to allow for ventilation?
- n. Are the windows unbroken?
- o. Are the openings in shelter screened with 16-mesh material?
- p. Are the doors equipped with self-closing devices?
- q. Is there at least 100 square feet per person in a room where workers cook, live and sleep?
- r. Are sanitary facilities provided for storing and preparing food in rooms where workers cook, live and sleep?
- s. Is There at least 1 stove for each 10 people or 2 families provided where cooking facilities are used in common?
- t. Are the cooking facilities used in common provided in an enclosed and screened shelter?
- u. Are heating, cooking and water heating equipment installed in accordance with applicable codes and regulations?
- v. Is adequate heating provided in every shelter used during cold weather to maintain a comfortable temperature?

WATER SUPPLY 1910.142c

- a. Is the water supply adequate and/or convenient for drinking, cooking, bathing and laundry?
- b. Is the water supply at least 35 gallons per person per day?
- c. Was the water approved by the health department for drinking, cooking, bathing and laundry purposes?
- d. Is the water fit for human use?
- e. Is the shelter less than 100 feet from available water outlet when no indoor facilities are provided?
- f. Are drinking fountains (at a ratio of 1 fountain per 100 occupants) provided where water under pressure is available?
- g. Are common drinking cups not used?

TOILET FACILITIES 1910.142d

- a. Is the toilet room accessible by other than the sleeping room?
- b. Are the toilet rooms adequately ventilated and/or have a 6 feet square opening to the outside?
- c. Are the privies at least 100 feet away from any sleeping room, dining room, lunch area or kitchen?
- d. Are toilet rooms located less than 200 feet away from every sleeping room?
- e. Are separate toilet facilities provided for each sex?
- f. Are the facilities for each sex separated by solid walls or partitions

For a complete list of housing requirements see 29 CFR 1910.142 et. Seq.

- extending from floor to ceiling?
- g. Are the toilet facilities provided in the required ratio of one unit for each 15 persons and urinals of at least 2 feet of trough for every 25 men?
- h. Does the construction of the pit or vault keep out flies and rodents?
- I. Are the water closets installed after August 31, 1971 located in a toilet room?
- j. Are the toilet rooms, commodes and urinals kept lighted all hours of the night and day?
- k. Are the outside openings screened?
- l. Is toilet paper provided in adequate supply?
- m. Are the toilets in a sanitary condition?
- n. Are the toilet rooms cleaned daily?

SEWAGE DISPOSAL FACILITIES 1910.142e

- Are the sewer lines and drains connected to available public sewers?

LAUNDRY, HAND WASHING, AND BATHING FACILITIES 1910.142f

- a. Are laundry facilities provided?
- b. Are hand washing facilities provided?
- c. Are bathing facilities provided?
- d. Are hand wash basins at a ratio of 1 per family shelter or 1 per every 6 persons in shared facility provided?
- e. Is there at least one shower head for every 10 persons?
- f. Is there a laundry tray or tub at a ratio of one for every 30 persons provided?
- g. Are there slop sinks in buildings used for laundry and bathing facilities provided?
- h. Are there waterproof, smooth, non-slip floors provided in laundry and bathing facilities?
- I. Are there floor drains or adequate drainage?
- j. Are there walls and partitions of waterproof material up to the splash line?
- k. Is there an adequate supply of hot and/or cold running water for bathing and laundry purposes?
- l. Is there hot water available?
- m. Are there facilities available for heating, bathing and laundry water?
- n. Is the service building equipped with heating facilities to maintain a temperature of 70°F during cold weather?
- o. Are there facilities provided for drying clothes?
- p. Are the service buildings kept clean?

LIGHTING 1910.142g

- a. Is the electric service available and supplied to each habitable room, laundry rooms, toilet rooms, kitchens, dining rooms and storage rooms?
- b. Is each room supplied with at least one ceiling-type light fixture?
- c. Are electrical outlets provided in each room?
- d. Is the lighting of an adequate level provided in each room?

REFUSE DISPOSAL 1910.142h

- a. Are refuse containers (insect and rodent - proof) provided?
- b. Is there at least one container for each family unit?
- c. Are the containers kept clean?
- d. Are the containers on a wooden, metal or concrete stand?
- e. Are the containers within 100 feet of the shelters?
- f. Are the containers emptied when full?
- g. Are the containers emptied more than twice a week?

CONSTRUCTION AND OPERATION OF KITCHEN, DINING HALLS AND CENTRAL FEEDING FACILITIES 1910.142i

- a. Is food free from vermin, rodents, flies, etc.?
- b. Is the food free from spoilage?
- c. Are poisonous or toxic materials not stored with food or in food preparation area?
- d. No persons with communicable disease working in preparation, cooking or handling of food?
- e. Are the equipment and utensils clean?
- f. Is the kitchen area clean?
- g. Are hot and cold running water provided?
- h. Are garbage containers, leakproof and with tight lids, provided in kitchen area?
- I. Are the central feed facilities separate from sleeping quarters provided?

INSECT AND RODENT CONTROL 1910.142j

- Is there a lack of infestation by and harborage of insects and/or pests?

FIRST AID 1910.142k

- a. Are there first aid supplies or equipment available in camp?
- b. Is there a person in camp trained to administer first aid?

COMMUNICABLE DISEASE 1910.142l

- a. Is there a report made to local health authorities on the identity of anyone in the camp suspected of having a communicable disease?
- b. Is it reported immediately to local health authorities a case of food poisoning or an unusual prevalence of any illness in which fever, diarrhea, sore throat, vomiting or jaundice is prominent?

SPECIAL PROCEDURES

LABOR CERTIFICATION PROCESS FOR

SHEEPHERDERS AND GOATHERDERS

UNDER

THE H-2A PROGRAM

Part I: Procedures Applicable to All Shepherd and Goatherder Applications

Except as otherwise provided for in these special procedures, the basic H-2A regulations at 20 C.F.R. Part 655, Subpart B, and the H-2A operating guidelines in ETA Handbook No. 398 apply to shepherd applications. These procedures apply as well to goatherders attending goats grazing on the range, and except as otherwise provided, references to sheep apply to goats as well. They do not apply to sheep and goat ranch hands who would be classified as "Farmworker, Livestock," 410.664-010 (DOT)

A. Filing of Applications

The filing procedures in 20 C.F.R. § 655.101 apply to an application which is being submitted for the purpose of certifying a job opportunity which is vacant, (an "initial" certification), and to an application being submitted for the purpose of "renewing" a certification for a position which is encumbered by a nonimmigrant foreign worker completing the first or second year of a planned 3-year work period with an employer (a "renewal" certification).

Exception: The filing procedure for the Western Range Association is an exception to this process in that "master" applications and job orders are used. See Part II, Section C.

B. Contents of Job Offers to U.S. and Foreign Workers

1. Job Specifications

As a general rule, the job specifications in Item No. 13 on the ETA 750 and Item No.11 on the Form ETA-790 should be based on the description in the Dictionary of Occupational Titles (D.O.T.) for "shepherd (agric.," 410.687-022 and "goatherder (agric.," 410-687-014. Based on current practices in the industry, the following would be the standard job description:

Attends sheep and/or goat flock grazing on range or pasture: Herds flock and rounds up strays using trained dogs. Beds down flock near evening campsite. Guards flock from predatory animals and from eating poisonous plants. May examine animals for signs of illness and administer vaccines, medications and insecticides according to instructions. May assist in lambing, docking and shearing. May feed animals supplementary feed. May perform other farm or ranch chores related to the production and husbandry of sheep and/or goats on an incidental basis.

Employers who wish to supplement this description with additional duties which are required due to business necessity may do so on a case-by-case basis, with the review and approval of the Regional Office. In addition, Regional Offices may amplify this job description if it is believed

additional information, such as size of flocks (open range bands of sheep are often 1,000 head and up), necessity to use pack and saddle horses to reach range, and climatic conditions, is needed in order to provide a more comprehensive picture for recruitment purposes.

2. Hours

The description of anticipated hours of work in Item No. 9 on ETA-790 must show "on call for up to 24 hours per day, 7 days per week." This will exempt employers from those requirements in 20 C.F.R. § 655.102(b) (7) and (8) which require the recording and reporting of hours offered and worked.

3. Experience

The job offer may specify that applicants possess at least 1 - 3 months experience as sheepherders or in similar occupations involving the range tending and production of livestock. This is consistent with "Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles," Part A. It is acceptable for job offers to state that one month summer herding and one month winter herding experience is desirable, but this cannot be required.

4. References

An H-2A employer may require an applicant to provide the name, address, and telephone number of a previous employer or other qualified individual who can serve as a reference about an applicant's experience in attending sheep or goats. However, a requesting employer's difficulty or delays in contacting a previous employer or other reference will not be considered a legitimate reason for deferring a decision on hiring or refusing to hire an applicant who is otherwise considered qualified and available, unless the applicant provided an inaccurate or falsified name, address or telephone number of a previous reference. Applicants who provide satisfactory reference information will be considered available for purposes of making a labor certification determination.

5. Period of Employment and Worker Contract

The total period of employment (Item No. 5 on Form ETA-790) must be for less than 1 year. The Regional Office cannot grant an H-2A labor certification for a period of time longer than 1 year minus 1 day.

Each sheepherder (goatherder) employer must offer all domestic hired sheepherders (goatherders) a contract which has a duration of employment period identical to the one on the employer's job order which the Regional Office used for labor certification determination purposes, unless the employer chooses to utilize the job order itself for this purpose, as the regulations permit. Employers may, however, negotiate a longer-term contract with U.S. workers after the U.S. workers arrive at the job site, provided that all the other terms and conditions in the job order are

not changed without prior approval from the Regional Office.

When a longer term contract is negotiated with a U.S. worker, the employer is not relieved of the responsibility for reimbursement to the worker for travel and subsistence expenses incurred in getting to the job site which were advanced by the employer and subsequently withheld from the worker's pay until 50% of the original contract period elapsed. These payments must be made to the U.S. worker at the 50% completion point of the original period of employment (about 6 months). The employer also is responsible for "return" transportation and subsistence expenses if the U.S. worker successfully fulfills his/her obligations under the original terms of employment for less than 1 year. However, such payment does not actually have to be made to the U.S. worker until the worker and the employer sever their employer/employee relationship, which will occur at a point in time subsequent to the end of the original period of employment when a longer term contract is negotiated. Successful completion of the "original" contract or job order entitles the worker to return transportation and subsistence regardless of performance under a "renewal" or extended contract.

Employers may negotiate longer term contracts (up to 3 years) with foreign workers provided that any contracts of a year or longer are expressly conditioned upon renewal of certification by DOL. In the event certification renewal is not obtained, the contract will be construed as being effective for the period of the initial certification, and the employer is liable for return transportation and subsistence after the worker completes employment for the initial certification period. The 3/4 guarantee for individual employers is based on the 1 year contract, as is the requirement for transportation reimbursement at 50% of the contract period.

Shepherder (goatherder) employers (except for WRA members) must be able to make available a copy of each worker/employer contract or the job order itself, for inspection by Employment Standards Administration, Wage and Hour compliance officers responsible for enforcing contractual obligation aspects of the H-2A program.

6. Wages

Employers requesting H-2A certification for shepherders and goatherders must offer U.S. and foreign workers, as a minimum the highest of the following: the prevailing wage rate for the occupation in the State as determined by the SESA prevailing wage survey and verified by the National Office, or a special monthly Adverse Effect Wage Rate (AEWR) established by the National Office, or the legal federal or state minimum wage rate. Workers must be paid twice monthly in accordance with the frequency of pay requirement at 20 C.F.R. § 655.102(b) (10), unless the employer/employee mutually agree to a monthly payment arrangement, and this is reflected in the contract. Employers may offer and pay wages higher than the established minimum depending upon experience and longevity as long as the same wage levels are offered to both foreign and U.S. workers.

Procedures for Setting Wages

SESAs should conduct prevailing wage surveys and submit them to the National Office by May 15th each year. The National Office will review and verify the findings, and communicate them to the Regional Offices by June 1st. The Regional Offices will publicize the new rates and send copies to the Western Range Association, Mountain Plains Association, and independent ranchers who participate in the H-2A program immediately upon receipt. The rates will become effective July 1st.

Prevailing wage surveys conducted by SESAs should be performed in accordance with the procedures set forth in the Forms Preparation Handbook, ETA Handbook No. 385, Pages 1-111 through 1-143, except that the SESA should not devote time distinguishing between In-State and Inter-State workers. Since the shepherd occupation is a year round job, all herders can legitimately be considered In-State after 6 months on the job and attempts to distinguish between In-State and Inter-State are largely artificial. If the SESA gets specific information that appropriately characterizes a herder as Inter-State, such herder should be listed in Column IV of the ETA 232. Otherwise, all herders should be listed in Column III.

SESAs should prepare the ETA-232 Report (wage surveys) on all domestic workers included in the survey according to ETA Handbook No. 385 instructions. A summary data sheet should be attached to the ETA-232 Report showing the number of domestic workers listed in Section 4, Columns II, III and IV on the ETA-232 form who have been reported by survey respondents or otherwise determined by the SESA to have received specific benefits, free housing and/or free board. This must be done for each separate wage rate listed on separate lines in Section 4, Column I. This will be used by the National Office in connection with the establishment of prevailing, common and normal practices which apply both to H-2A and non-criteria Intra- and Inter-State Orders.

For example, a completed ETA-232 form might show the following array:

<u>RATE</u>	<u>NO. OF U.S. WORKERS</u>		
	I	TOTAL INSTATE	INTERSTATE
TOTAL	26	23	3
\$1,000 Month	1	0	1
950 Month	1	0	1
800 Month	2	1	1
750 Month	9	9	0
725 Month	3	3	0
700 Month	1	1	0
675 Month	2	2	0
650 Month	7	7	0

In the proceeding example, an acceptable summary attachment might show the following:

BENEFITS PROVIDED TO WORKERS

SUMMARY	TOTAL WORKERS	NO-COST HOUSING	FREE BOARD	OTHER BENEFITS
Wage Rate	26	23	22	
\$1,000 Month	1	0	0	
950 Month	1	0	0	
800 Month	2	1	1	
750 Month	9	9	9	
725 Month	3	3	3	
700 Month	1	1	1	
675 Month	2	2	1	
650 Month	7	7	7	

In the above example, the correct wage determination would be \$750 a month in accordance with the 51 percent rule as outlined in the ETA Handbook 385, page 1-117.

In most instances, the results of the State prevailing wage survey will be used to establish the State prevailing wage. The only exception to this rule will be cases where modifications to ETA Handbook No. 385 procedures are necessary to compensate for inadequate sample sizes. In the event of inadequate sample sizes, as determined by the National and Regional Offices, every attempt will be made to establish a prevailing wage by using other comparable information, e.g., utilizing data from adjoining areas or States, merging shepherd (goatherder) data from several States or using past survey data for shepherders (goatherder) in that State. If inadequate sample sizes cannot be compensated through such practice (no relevant) data in an adjoining wage reporting area or no relevant data in the previous year), then consideration should be given to merging shepherd (goatherder) data across States to create regional prevailing wages or to surveys of comparable occupations in the same State. When regional prevailing wages are contemplated, consideration may be given to the regional groupings of States used by the U.S. Department of Agriculture when it conducts its quarterly farm wage surveys.

The determination of legal status may be affected by advising the survey respondent providing data to distinguish between those workers for whom the Form I-9 indicates they are U.S. citizens, permanent legal residents, or the recipient of temporary legal work authorization (other than an H-2A visa). (Note: It is not necessary for the survey interviewer to actually inspect the Form I-9.) If a mailed questionnaire is used to collect data, it must contain such instructions regarding the worker's legal status. Any worker personally interviewed to obtain data must similarly fall within the covered categories. However, in no event should survey respondents or workers be asked by SESA staff to present any documentation to support a claim of legal work status.

7. Board

All H-2A shepherd (goatherder) employers must offer their U.S. and foreign workers free food. Board arrangements may involve the provision of three prepared meals a day when workers are in camp or free and convenient cooking facilities and provision of food for the workers to prepare themselves while in camp or on the range.

8. Positive Recruitment Plan

All shepherd (goatherder) employers are exempt from the requirement to submit a positive recruitment plan at 20 C.F.R. § 655.102(d). However, the Regional Office, with National Office concurrence, may require special positive recruitment efforts in accordance with 20 C.F.R. § 655.105(a) if it is determined that there are a significant number of able and qualified U.S. workers, who, if recruited, would likely be willing to make themselves available for work at the time and place needed.

9. Advance Transportation and Subsistence Costs

All shepherd (goatherder) employers must offer to provide advance transportation and

subsistence costs to workers being recruited. Determinations on advance transportation and subsistence matters shall be made in accordance with 20 C.F.R. § 655.102(b) (5).

10. Housing

All shepherd (goatherder) housing is governed by the procedures presented in Part III.

11. H-2A Requirements for All Employers

All shepherd (goatherder) employers must comply with the H-2A regulations provisions regarding the payment of a fee for granted certifications (20 C.F.R. § 655.103(h)) and proof of workers compensation or comparable insurance (20 C.F.R. § 102(b) (2)). The fee payment requirement applies to "renewal" as well as initial applications.

C. Regional Office Certification Determinations

The Regional Office may render a certification determination on shepherd (goatherder) applications earlier than the normal **30** days before date of need deadline for such determinations as prescribed in the H-2A regulations. In exercising this discretion, the Regional Office will take into consideration past and continuing recruitment efforts and SESA-provided information (general or specific) on U.S. worker availability.

Part II: Procedures Applicable Only to Western Range Association (WRA) Applications

A. WRA Status

The WRA is an association of sheep ranchers which acts as a joint employer for H-2A program purposes with its rancher members. It represents the majority of employers of shearherders who participate in the H-2A program. The WRA has provided appropriate Regional Offices with a statement setting forth details of its joint employer association relationship with its members, including the specific tasks and responsibilities it performs and assumes on behalf of the individual rancher members. The WRA operates as a joint employer solely for H-2A program purposes.

Regional Offices which have need for clarification of the role of the WRA should contact the WRA directly by letter or telephone. The address and telephone number is:

Western Range Association
6060 Sunrise Vista Drive, Suite 2400
Citrus Heights, California 95610-7057
(916) 962-1500

B. Advertising

The WRA will satisfy the advertising requirements of 20 C.F.R. § 655.103(d) (2) by placing advertisements once each quarter of the calendar year in newspapers of general circulation or trade journals in areas that the Regional Office determines to be potential sources of individuals interested in shearherder jobs. The WRA may also conduct radio advertising in areas determined by the Regional Office.

At least once a year, in accordance with a schedule to be established, the WRA will submit a plan that sets forth the advertising agenda for the next year. This plan will be reviewed for sufficiency by the Regional Office. The Regional Office has the discretion to request additional or other methods of advertising if the Certifying Officer determines, based on his/her knowledge of the labor market, that U.S. workers are available. The Regional Office, upon receipt of the initial application, will assess the advertising plan to ascertain if the advertising agenda has been followed.

In the event the Regional Office and the WRA are not able to agree on the adequacy of the advertising plan, the WRA may request the National Office to intervene and resolve any disputes. Such requests must be in writing and be addressed to the Administrator, U.S. Department of Labor, Office of Workforce Security. The decision of the Administrator in such matters will be binding on the parties.

Advertisements shall generally conform to the language in the following format:

Range Shepherders (some experience needed). Immediate Openings Available. Attends sheep grazing on range or pasture. Herds sheep using trained dogs. Guards flock from predators and from eating poisonous plants. May examine animals for signs of illness and administer vaccines, medications and insecticides. May assist in lambing, docking and shearing. May perform other ranch duties incidental to goat/sheep production. Large flocks with single/pair herder. Free food, housing, tools, supplies and equipment provided. May be on call 24 hours per day, 7-days per week. Minimum 11-month employment. Employment for 3/4 of workdays guaranteed. Workers compensation provided. Transportation to job and subsistence provided; deducted from wages until 50% of employment contract completed, then paid to worker. Return transportation provided at end of employment contract. A reference is required. Employment available in several Western States including _____ (States)_____. Minimum salary varies according to State, from _____ to _____ per month. Contact (Local Office), (Phone No.) _____ or your nearest local office of the _____ (SESA)_____.

C. Year Round, Open Job Orders

Because of the historic shortage of domestic shepherders, the WRA has agreed to place with its rancher members any qualified U.S. worker who applies for a WRA job opening at any time of the year that such a qualified worker applies for shepherding employment. An open job order will be filed with Regional Offices and SESAs for this purpose.

The WRA will prepare and submit a "master" job order (Form ETA-790) to appropriate Regional Offices and the appropriate centralized H-2A processing location within the state of intended employment once each calendar year in accordance with a schedule to be established. This "master" job order will comply with all the requirements of 20 C.F.R. Part 653, Subpart F, and 20 C.F.R. Part 655, Subpart B (unless otherwise provided for in this document). "Master" orders should also conform to the guidelines in the H-2A Program Handbook, ETA No. 398, P. 1-9, and have as attachments names, addresses and phone numbers of all individual rancher members of the WRA and rancher-specific job information, e.g., number of openings; directions to ranch headquarters location; and estimated dates of need.

After these "master" orders are approved by the Regional Office, they will be distributed to all appropriate SESA local offices determined jointly by the Regional Office and the SESAs to be potential applicant holding offices. A copy of the approved "master" order will be returned to the WRA by the Regional Office. This procedure will be considered to comply with agricultural clearance order requirements at 20 C.F.R, Part 653, Subpart F, for WRA shepherd jobs only. If an interested applicant requests referral to a shepherding job from a local office where he/she is registered, and the WRA "master" order and attachments are not available at that office, that local office should contact the State office to secure a copy of the order before a referral is made.

The WRA must submit an ETA 750 form simultaneously to the RA and the centralized H-2A processing location within the state of intended employment no later than **45** days before each rancher's date of need setting forth the fact that a certification determination is requested no later than **30** days before the date of need for the specific ranchers. This will generate Regional Office certification determination activity which may include, at the discretion of the Regional Offices, securing reports from the WRA and SESAs on U.S. worker referrals.

The WRA may amend the "master" application on behalf of "new" employers or to show other changes in employer-specific needs at any time, subject to Regional Office approval.

D. Referral Procedures

A local office which locates and has for referral an available and qualified applicant should place a collect telephone call to the WRA central office at (916) 962-1500. This office will normally be open on weekdays from 8:00 a.m. to 4:30 p.m. Pacific time. The applicant interested in a shepherd job should be physically present in the local office for interviewing by telephone when such calls to the WRA are made. In the event it is not possible to arrange for a direct conversation between the applicant and the WRA on the initial contact, the local office should schedule a subsequent telephone interview at a time convenient for both parties.

The WRA will conduct a telephone interview with the applicant while the applicant is in the SESA office to verify that the applicant is qualified, willing and available, and to determine if there is a job opening in the geographic area of the applicant's choice. The WRA will have current information on job openings with its specific employer members, and will attempt to the maximum extent possible to place an applicant with a rancher member in the geographic area of his/her choice within 3 working days of the telephone interview.

If the applicant is determined to be qualified and the geographic assignment choice can be accommodated, the WRA, after verbal authorization from the specific employer, will make a hiring commitment for the rancher member who has the job opening in which the applicant will be placed, subject to confirmation of past employment history with an applicant's reference. Failure to verify an applicant's reference is not justifiable cause for refusing to hire a SESA-referred worker, unless false or incorrect reference information is involved. The WRA/applicant telephone interview after SESA screening will satisfy the applicant's interviewing responsibility.

The WRA also may have available information on job openings with non-WRA member sheep ranchers. This information will be made available to the applicant and to the SESA in the event the WRA is not able to readily accommodate the geographic assignment choice of the applicant. However, this will not preclude the applicant from choosing a different geographic area for WRA-member placement purposes or from deferring a job choice decision until an opening in the geographic area of choice becomes available with a WRA-member.

After the matters of geographic location/assignment and reference checks are resolved, the applicant-holding local office will confirm with the WRA that the applicant has been hired and will facilitate the arrangements necessary to ensure that transportation and subsistence are provided in advance to the worker by the WRA. For reporting purposes, the local office confirming the placement will serve as both applicant-holding and order-holding office.

The WRA will provide documentation related to U.S. worker referrals and interviews and the results of such actions to the Regional Office. Information regarding reasons for refusing to hire referred U.S. workers will be provided to the Regional Office as required by the Regional Office Certifying Officer.

At its discretion, the Regional Office may secure U.S. worker referral information for individual rancher certification determination purposes from SESAs. At least once each calendar year, the Regional Office will conduct analyses of SESA referral activity against WRA job openings and compare the information with WRA-supplied information in order to ensure continued program integrity.

When certifications are granted, the Regional Office will issue the certification jointly to both the WRA and to the individual rancher member(s).

E. Transfer of Workers

1. Notifying Local Office

The WRA may transfer a domestic or foreign sheepherder from one rancher-member to another rancher-member, but not to employers who do not belong to the WRA. Such transfers may be made at the WRA's discretion. When a worker objects to a transfer, the WRA will consider the worker's concerns and preferences. However, ultimate refusal on the part of a worker to a transfer may subject the worker to dismissal for a lawful, job-related reason, as provided for in DOL regulations.

In order to ensure that the employer to whom a worker is being transferred has suitable housing to accommodate the worker, the WRA shall notify the local office serving the area of the employer receiving the transferred worker of the planned transfer no less than 7 working days prior to the transfer. This will permit the local office to ascertain the availability and suitability of housing. If suitable housing is not available, the local office shall inform the WRA and the planned transfer shall be put in abeyance until: (1) the housing is determined by the local office to be acceptable; or (2) the WRA effects a transfer to another employer who has suitable housing.

2. Contractual Obligations

The "new" employer assumes the existing obligations of the work contract entered into with the previous employer including a multi-year contract negotiated with the worker, and an amendment

to the existing contract will be made which reflects the new employer/employee relationship and will be on file in WRA's Office. WRA will maintain and make available for inspection a copy of all worker/employer contracts, and individual WRA members are relieved of this responsibility. If the worker is moved to another State with a different wage rate, the established wage rate for the "new" State applies. The WRA will amend the appropriate attachments to the "master" job order in order to reflect any changes in the employer's situation.

Part III: Mobile Housing for Range Shepherders

A. Procedures

In accordance with regulations at 20 C.F.R. § 655.102(b)(1)(ii), standards in this section must be used in determining the adequacy of mobile housing for use on the range. Housing used exclusively at the ranch site is subject to the same standards as those for other agricultural workers at 20 C.F.R. §§ 654.400-654.417, see also 29 C.F.R. § 1910.142.

Both range and ranch site housing may be self-certified by an employer. Individual employers must submit a signed statement with the application for labor certification assuring that the housing is available, is sufficient to accommodate the number of workers being requested, and meets DOL standards.

SESAs must inspect at least one-third of such self-certified housing once a year, and develop a schedule of inspections which ensures that each employer's housing is inspected at least once every 3 years. These inspections may be performed either before or after a request is submitted for foreign shepherders. Before referring a worker who is entitled to such housing, the local office must ensure that the housing is available and has been inspected in accordance with the 3-year schedule. If a SESA determines that an employer's housing does not meet DOL standards, the Certifying Officer may require additional inspections as needed.

B. Mobile Housing Standards

1. Housing Site

Housing sites shall be well drained and free from depressions in which water may stagnate.

2. Water Supply

a. An adequate and convenient supply of water that meets standards of the State health authority shall be provided. The amount of water provided must be enough for normal drinking, cooking, and bathing needs of each worker.

b. Individual drinking cups shall be provided.

C. Excreta and Liquid Waste Disposal

1. Facilities shall be provided and maintained for effective disposal of excreta and liquid waste according to requirements of State health authority or involved Federal agency.

2. If pits are used for the disposal by burying of excreta and liquid waste, they shall be

kept fly-tight when not filled in completely after each use.

D. Housing Structure

1. Housing shall be structurally sound, in good repair, in sanitary condition and shall provide protection to occupants against the elements.
2. Housing, other than tents, shall have flooring constructed of rigid materials easy to clean and so located as to prevent ground and surface water from entering.
3. Each housing unit shall have at least one window which can be opened or skylight opening directly to the outdoors.
4. Tents may be used where terrain and/or land regulations do not permit use of other more substantial mobile housing which provides facilities and protection closer in conformance with the Department's intent.

E. Heating

1. Where the climate in which the housing will be used is such that the safety and health of a shepherd requires heated living quarters, all such quarters shall have properly installed, operable heating equipment which supplies adequate heat. In considering whether the heating equipment is acceptable, the RA shall first determine if the housing will be located in a National Forest Wilderness as specified in the Wilderness Act (16 U.S.C. §§ 1131-1136). Such a location has a bearing on the type of equipment practicable, or whether any heavy equipment is practicable. For example, Section 4 (c) of the Act (16 U.S.C. § 1133(c)) restricts certain motorized or mechanical transport and certain roads in wilderness areas. The U.S. Forest Service has regulations for this at 36 C.F.R. Part 293.

Aside from the above, other factors to consider in evaluating heating equipment are how severe the weather will be and the kinds of protective clothing and bedding made available to the herder. If the climate in which the housing will be used is mild and not reasonably expected to drop below 50 degrees Fahrenheit continuously for 24-hours, no separate heating equipment is required if proper protective clothing and bedding are available.

2. Any stoves or other sources of heat using combustible fuel shall be installed and vented in such a manner as to prevent fire hazards and a dangerous concentration of gases. Portable electrical heaters may be used, and if approved by Underwriters' Laboratory, kerosene heaters may be used according to manufacturer's instructions.

If a solid or liquid fuel stove is used in a room with wooden or other combustible

flooring, there shall be a concrete slab, insulated metal sheet, or other fireproof material on the floor under each stove, extending at least 18 inches beyond the perimeter of the base of the stove.

3. Any wall or ceiling within 18 inches of a solid or liquid fuel stove or stove pipe shall be of fireproof material. A vented metal collar shall be installed around a stovepipe or vent passing through a wall, ceiling, floor or roof.

4. When a heating system has automatic controls, the controls shall be of the type which cuts off the fuel supply when the flame fails or is interrupted or whenever a predetermined safe temperature or pressure is exceeded.

F. Lighting

1. In areas where it is not feasible to provide electrical service to mobile shepherd housing, including tents, lanterns shall be provided (Kerosene wick lights meet the definition of lantern).

2. Lanterns, where used, shall be provided in a minimum ratio of one per occupant of each unit, including tents.

G. Bathing. Laundry and Hand washing. Movable bathing, laundry and hand washing facilities shall be provided when it is not feasible to provide hot and cold water under pressure.

H. Food Storage. When mechanical refrigeration of food is not feasible, the worker must be provided with another means of keeping food fresh and preventing spoilage, such as a butane or propane gas refrigerator. Other proven methods of safeguarding fresh foods, such as salting, are acceptable.

I. Cooking and Eating Facilities

1. When workers or their families are permitted or required to cook in their individual unit, a space shall be provided with adequate lighting and ventilation.

2. Wall surfaces next to all food preparation and cooking areas shall be of nonabsorbent, easy to clean material. Wall surfaces next to cooking areas shall be of fire-resistant material.

J. Garbage and Other Refuse

1. Durable, fly-tight, clean containers shall be provided to each housing unit, including tents, for storing garbage and other refuse.

2. Provision shall be made for collecting or burying refuse, which includes garbage, at least twice a week or more often if necessary. Refuse disposal shall conform to Federal, State or local law, whichever applies.

K. Insect and Rodent Control. Appropriate materials, including sprays, must be provided to aid housing occupant in combating insects, rodents and other vermin.

L. Sleeping Facilities Separate sleeping unit shall be provided for each person, except in a family arrangement. Such a unit shall include a comfortable bed, cot or bunk with a clean mattress. When filing an application for certification, the employer may request a variance from the separate sleeping units requirement allow for a second herder to temporarily join the herding operation. The employer must explain why it is impractical to set up a second unit. The second herder must provide his/her individual sleeping bag or bed roll. If this is impractical, the employer must supply a sleeping bag or bed roll.

M. Fire, Safety and First Aid

1. All units in which people sleep or eat shall be constructed and maintained according to applicable State or local fire and safety law.
2. No flammable or volatile liquid or materials shall be stored in or next to room used for living purposes, except for those needed for current household use.
3. Mobile housing units for range use must have a second means of escape. The second egress must be a window which can be easily opened, a hatch or other provision. It must be demonstrated that the herder would be able to crawl through the second egress without difficulty.
4. Tents are not required to have a second means of escape, except when large tents with walls of rigid material are used. A heater may be used in a tent if the heater is approved by a testing service, such as Underwriters' Laboratory, and if the tent is fireproofed.
5. Adequate fire extinguishers in good working condition and first aid kits shall be provided in the mobile housing.