



**MEMORANDUM OF UNDERSTANDING BETWEEN
THE U.S. DEPARTMENTS OF LABOR AND JUSTICE
ON CRIMINAL PROSECUTIONS OF
WORKER SAFETY LAWS**

I. PURPOSE

The U.S. Department of Labor (DOL) and the U.S. Department of Justice (DOJ), recognizing the importance of ensuring the health and safety of America's workforce, enter into this memorandum of understanding (MOU) to provide for coordination of matters pertaining to worker safety that could lead to criminal prosecution by DOJ. This MOU establishes a process and framework for notification, consultation and coordination between DOL and DOJ to aid both agencies in more effectively implementing our national workplace statutes.

II. BACKGROUND AND RESPONSIBILITIES

A. DOL

DOL is organized into over twenty-five different components. The following DOL components have responsibility for, *inter alia*, fostering, promoting, and developing the welfare of the workforce of the United States; improving working conditions; and assuring work-related benefits and rights.

1. The Occupational Safety and Health Administration (OSHA)

The Occupational Safety and Health Act of 1970 (OSH Act), 29 U.S.C. §§ 651-678, gives the Secretary of Labor authority over all working conditions of employees engaged in business affecting commerce except those conditions with respect to which other federal agencies exercise statutory authority to prescribe or enforce regulations affecting occupational safety or health. The OSH Act also provides that states may operate their own occupational safety and health programs under a plan approved by the Secretary. The OSH Act is enforced through administrative penalties, including fines and corrective actions. Additionally, the OSH Act provides criminal sanctions for three types of conduct: (1) willfully violating a specific standard, and thus causing the death of an employee; (2) giving advance notice of OSHA inspection activity; and (3) falsification of documents filed or required to be maintained under the OSH Act.

2. The Mine Safety and Health Administration (MSHA)

The Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. §§ 801-965, authorizes the Secretary of Labor to promulgate and enforce safety and health standards regarding working conditions of employees engaged in underground and surface mineral extraction (mining), related operations, and preparation and milling of the minerals extracted. The Mine Act is enforced through administrative penalties, including fines and corrective actions. Additionally, the Mine Act provides criminal sanctions for: (1) knowing or willful violations of mandatory safety and health standards; (2) giving advance notice of MSHA inspection activity; and (3) falsification of documents filed or required to be maintained under the Mine Act.

3. The Wage and Hour Division (WHD)

The Migrant and Seasonal Agricultural Worker Protection Act (MSPA), 29 U.S.C. §§ 1801-1872, provides employment-related protections to migrant and seasonal agricultural workers. The WHD administers the MSPA. The MSPA provides for administrative penalties in the form of monetary fines and for civil injunctive relief. Additionally, the MSPA provides a criminal sanction for a willful or knowing violation of the MSPA or any regulation under the MSPA.

B. DOJ

DOJ has the responsibility to determine whether to institute criminal prosecution for violations of all federal statutes, including the OSH Act, MSHA, and MSPA, through the components set out below.

1. The Environment and Natural Resources Division

The Environment and Natural Resources Division (ENRD) is a litigating division within DOJ responsible, within a designated set of statutes, for the prosecution of criminal cases brought by the federal government. ENRD is responsible for supervision of enforcement under the OSH Act, MSHA and MSPA. United States Attorneys' Manual, 5-11.101.

2. United States Attorneys' Offices

United States Attorneys' Offices (USAOs) litigate cases in which the United States is a party. Among the USAOs' statutory responsibilities is the prosecution of criminal cases brought by the federal government. This includes enforcement of the worker safety statutes set out in II.A.

III. PRINCIPLES OF COORDINATION AND COOPERATION

DOL and DOJ will cooperate, to the extent authorized by law (specifically, consistent with grand jury secrecy requirements or enumerated statutory or procedural constraints), in developing and carrying out training, data and information exchanges, technical and professional assistance, referrals of alleged violations, and related matters concerning compliance and law enforcement activity to ensure the health and well-being of the Nation's workforce.

A. COORDINATION

1. Policy Matters

The DOL Deputy Solicitor for Regional Enforcement serves as the overall DOL coordinator, and as the primary DOL point of contact for policy matters arising under this MOU. ENRD's Environmental Crimes Section (ECS) shall serve as the overall DOJ coordinator and as the primary point of contact for policy matters arising under this MOU.

2. Criminal Referrals

The designated DOL points of contact for coordination of criminal enforcement referrals under the three statutes are as follows:

- a. OSH Act: DOL Regional Solicitors in cooperation with OSHA Regional Administrators and the Office of Solicitor (SOL) Associate Solicitor for the Occupational Safety and Health Division;
- b. MSHA: The Associate Solicitor for the Mine Safety and Health Division in consultation with the MSHA Administrator for either Coal Mine Safety and Health or Metal/Nonmetal Mine Safety and Health;
- c. MSPA: DOL Regional Solicitors in cooperation with Wage Hour Regional Administrators and the SOL Associate Solicitor for the Fair Labor Standards Division.

These designated points of contact shall discuss periodically with DOJ those employers or worker safety matters that may be appropriate for enhanced investigation or criminal referral.

If a decision is made to refer a matter for consideration of criminal action, DOL will generally prepare a detailed referral memorandum and recommendation. Referrals may be made by either the Regional Solicitors or the Division, as is the developed practice in the DOL component program area, and may be made to either ECS, which will coordinate with the appropriate U.S. Attorney's Office and law enforcement agency, or to a U.S. Attorney's Office

in judicial districts in which DOL has an established relationship with that office, with a copy to ECS for tracking.

B. INFORMATION AND DATA SHARING

Upon identification of any matter appropriate for further investigation or prosecution, DOL commits to robust information sharing, including making its investigative files available to DOJ as needed for case development or litigation purposes to the extent permitted by law. DOJ agrees to protect confidential or sensitive information that may be found within DOL materials as authorized by law. DOL shall provide all information that is required to satisfy a federal prosecutor's legitimate due diligence requirements in pretrial discovery concerning, *inter alia*, the search for exculpatory evidence, in the event an indictment has been secured.

DOL and DOJ acknowledge that the information involved in these investigations may identify United States persons, whose information is protected by the Privacy Act of 1974 and/or Executive Order 12333 (or any successor executive order), as well as confidential business information and/or trade secrets, the identities of whistleblowers, and other possible areas of legal concern. All such information will be handled lawfully pursuant to the provisions thereof. Documents obtained pursuant to this MOU that are encompassed by a Freedom of Information Act, 5 U.S.C. § 552, request should be referred to the originating agency for a direct response to the requestor.

C. TRAINING

DOL and DOJ will cooperate in developing and conducting periodic training programs for each other's personnel regarding the respective laws, regulations, and procedures of each agency, as appropriate, to ensure that valid referrals are made when potential violations are found and to increase the frequency and effectiveness of criminal prosecutions of worker-safety violations.

IV. IMPLEMENTATION

This MOU is not an obligation or commitment of funds, nor a basis for transfer of funds, but rather is a basic statement of the understanding between the parties of the matters described herein. Expenditures by each of the parties are to be subject to their respective budgetary processes and to the availability of funds and resources pursuant to applicable laws, regulations, and policies. The parties expressly acknowledge that the language in this MOU in no way implies that funds will be made available for such expenditures.

This MOU is not intended to, does not, and may not be relied upon, to create any rights or benefits, substantive or procedural, enforceable at law by a party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person, including any party to litigation arising out of any investigation conducted pursuant to this MOU.

Nothing in this MOU commits DOJ to investigate or prosecute any particular worker-safety incident.

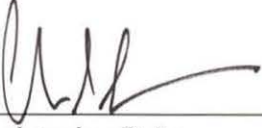
V. POINTS OF CONTACT

The following personnel are designated as the principal points of contact between the parties in the performance of this MOU.

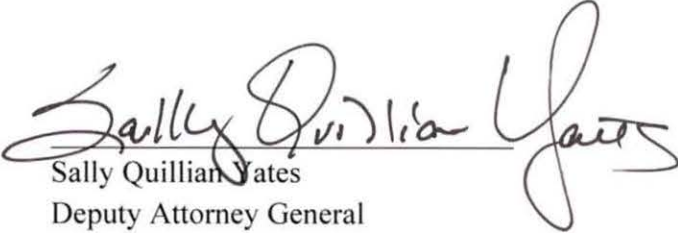
DOL	DOJ
Deputy Solicitor for Regional Enforcement	Chief, Environmental Crimes Section

VI. DURATION, MODIFICATION AND TERMINATION

This MOU supersedes all previous MOUs or agreements between the parties on the subject of criminal prosecution under the OSH Act, MSHA and MSPA (or its predecessor, the Farm Labor Contractor Registration Act). This MOU is effective when signed by both parties. Modifications to this MOU must be in writing and signed by appropriate officials of both parties. This MOU will be reviewed periodically by the parties and shall remain in effect until cancelled, in writing, by either party with at least sixty days advance notice. The confidentiality provisions will survive cancellation.



Christopher P. Lu
Deputy Secretary of Labor
U.S. Department of Labor



Sally Quillian Yates
Deputy Attorney General
U.S. Department of Justice

Date: 12/17/15

12/17/15