

OREGON OCCUPATIONAL SAFETY AND HEALTH DIVISION
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

PROGRAM DIRECTIVE

Program Directive A-214
Issued: 1/10/97
Revised 4/09/09

- SUBJECT:** Inspection Guidance for Agriculture Small Employer Exemption
- AFFECTED CODES:** OAR 437, Division 1
- PURPOSE:** Provide guidance to assist the Compliance Officer in determining when an agriculture employer meets the inspection exemption requirements of OAR437-001-0057(12).
- BACKGROUND:** In 1995 Oregon OSHA enacted rules in response to legislation that gives small agriculture employers a conditional exemption from scheduled inspections. The exemption does not include inspections for agricultural labor housing or field sanitation, complaints, catastrophes, or accident investigations.
- ACTION:** Oregon OSHA's Safety and Health Compliance Officers will use the following criteria to determine if an agricultural employer meets the exemption requirements of OAR 437-001-0057(12).
- A. Small Agriculture Employer: Is an employer ten or fewer permanent year-round employees, both full-time and part-time in Standard Industrial Classifications 01 (NAICS 111), 02 (NAICS 112), 0711 (NAICS 115112), 0721 (NAICS 115112), 0722 (NAICS 115113), 0723 (NAICS 115114), 0761 (NAICS 115115), 0762 (NAICS 115116), 0811, and portions of 0831 (Forest Nurseries and Gathering of Forest Products, Division 4 covers establishments growing trees for other purposes, including seedlings for reforestation. Other activities like gathering needles, bark, and other secondary products covered by NAICS 113210 are in Division 7).
- For purposes of determining the number of employees, exclude members of the agricultural employer's immediate family. Immediate family are parents, spouses, sisters, brothers, daughters,

sons, daughters-in-law, sons-in-law, nieces, nephews, grandchildren, foster children, stepparents, and any blood relative living as a dependent of the core family.

- B. During the opening conference, determine if the employer is a small agricultural employer as defined above. If they are, they must meet all the requirements of OAR437-001-0057(12) to be exempt from a scheduled inspection, including:

Training: The employer and principal supervisors of the agricultural establishment must complete, annually, at least four hours of instruction on agriculture safety or health rules and procedures. The employer must have documentation that includes the date of training, name and signature of the provider, length of training, and the subjects covered in the training.

Acceptable training includes any practices or instructions about safety and health issues related to agricultural employment. Any supplier can provide this training. The training may be given or received in any venue or media, including self-study courses, videos, interactive CDs, etc. Evaluate the training to determine if it meets the intent of the rule.

Certified Applicator Training Core A and B classes, certified by the Oregon Department of Agriculture, satisfy one hour of the required training annually.

Attending a comprehensive safety and health consultation done on an agricultural place of employment is also acceptable as training.

Example: Farmer A has a comprehensive consultation done in January 1996. All principal supervisors accompany the consultant. Several neighboring growers also attend the consultation. This would satisfy the annual training requirement for those people in attendance.

Consultation: The employer must have had a comprehensive consultation within the last four years. The time period begins when the consultation happens.

A comprehensive consultation covers the entire establishment and includes a physical hazard assessment evaluation, review of records, written programs, and the employer's illness and injury prevention plan. Comprehensive consultations include a written report by the provider including findings, recommendations, and

the guidance necessary to resolve the problems identified in the report.

Ask the employer if they have had a consultation during the previous four years and if all problems identified in the report were corrected. Ask to see documentation showing the date of the consultation and the name of the provider. The employer doesn't need to provide a copy of the report.

EXEMPT: If you determine that the employer meets all the requirements of the Small Agricultural Employer Exemption, show it as a partial inspection on the OSHA-1. Include a narrative in the report packet explaining what the employer did to meet the exemption requirements.

OSHA-1: Include the following information on the OSHA-1:

Block 42, Optional Information: Use the following code:

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INSPECTIONS NOT SUBJECT TO EXEMPTION:

Valid Complaint, Fatality / Catastrophe / Accident Investigations, and Agricultural Labor Housing and Field Sanitation Inspections are not part of the small agricultural employer exemption. These inspections continue as in the past.

Valid Complaints: If there is a valid complaint against the employer, do a complaint inspection regardless of the number of employees.

A valid complaint is a written or oral report that an occupational safety or health violation could exist at a place of employment. An employee, employee representative, or other person can issue a complaint. The Field Office Manager or a Senior Compliance Officer must evaluate the complaint to determine if it is valid.

Fatality / Catastrophe / Accident: If within the two years preceding the inspection, an accident occurred resulting in death or injury, an illness resulting in a hospital in-patient admission overnight for medical treatment, or if an employee had more than three days of lost work, do the inspection regardless of the number of employees.

Use the Claims System to get this information before going on site for the inspection, or get it during the opening conference by reviewing the OSHA 300 Log and 801s.

Other Hazards: Use the following procedures if you see a hazard that is

not a part of the scope of the inspection during a complaint, fatality / catastrophe / accident investigation, or farm labor camp / field sanitation inspection at an agricultural place of employment that is exempt from scheduled inspections:

Imminent danger or serious hazard with employee exposure: If you observe an imminent danger situation or a serious hazard with employee exposure, inform the employer that the scope of the inspection will expand to address the situation. You must limit the inspection and citation to the initial inspection and the imminent danger or serious hazard situation.

Serious hazard without employee exposure: If you observe a hazard classified as serious but there is no employee exposure, discuss the hazard with the employer and request immediate correction. Send a hazard letter as part of the initial inspection. Limit the inspection and hazard letter to the scope of the initial inspection and the serious hazard observed.

Other than serious: If you observe a hazard that is not serious, tell the employer about it and document it in the report. Do not issue a citation.