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COLLEGE OF FOOD, AGRICULTURAL,
AND ENVIRONMENTAL SCIENCES

Darke County Extension News Release

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For Immediate Release –February 6, 2014

Understanding the “Small Farms Rider” and OSHA Inspection Authority on Farms

The federal Occupational Safety & Health Administration (OSHA) generated controversy recently when several of its enforcement actions against farms with grain bin storage hit the news headlines. The enforcement actions are contrary to a general understanding in the agricultural community that OSHA does not have authority to enforce its regulations against farms with ten or fewer employees, referred to as the “small farms rider.” While claiming that it does not intend to enforce beyond its authority, OSHA justifies its actions in an internal agency memorandum that interprets the small farms rider. Is OSHA’s justification reasonable or contrary to law? Here’s the language of the small farms rider and OSHA’s explanation of its authority:

- **The Small Farms Rider.** The 2014 Consolidated Appropriations Act passed by Congress, like every previous appropriations bill since 1976, states that none of the funds appropriated by Congress to OSHA “shall be obligated or expended to prescribe, issue, administer, or enforce any standard, rule, regulation, or order under the Act which is applicable to any person *who is engaged in a farming operation which does not maintain a temporary labor camp and employs 10 or fewer employees.*” (emphasis added)
- **OSHA's Memorandum.** In its standard interpretation memorandum titled [“Authority to Perform Enforcement Activities at Small Farms with Grain Storage Structures Involved in Postharvest Crop Activities”](#) dated June 28, 2011, OSHA begins by acknowledging the small farms rider but then lays out several reasons why grain storage facilities, even if located on farms, do not fall under the rider and are not exempt from OSHA enforcement:
 - The agency focuses on the small farm rider’s use of the term “farming operation” which, according to the agency’s prior interpretation, means “any operation involved in the growing or harvesting of crops, the raising of livestock or poultry, or related activities conducted by a farmer on sites such as farms, ranches, orchards, dairy farms or similar farming operations.”

- Not included in the definition of “farming operations,” according to the agency, are those establishments engaged in performing services on crops *subsequent to their harvest* with the intent of preparing them for market or further processing, including activities such as crop cleaning, sun drying, shelling, fumigating, curing, sorting, grading, packing and cooling, corn drying and shelling, grain drying, cleaning, and fumigating. Why are these not considered farming operations? Because the North American Industrial Classification System (NAICS) and Standard Industrial Codes (SIC) differentiate agricultural businesses that conduct crop and livestock production from those that conduct post-production activities. Small farms with grain storage structures where grain is fumigated, dried, or processed subsequent to harvest and sold into the market would fall under the post-harvest NAICS codes rather than the agricultural production codes and therefore are not “farming operations” exempted by the small farms rider, states OSHA.
- The agency also notes that grain handling operations are not “core agricultural operations” according to OSHA’s federal regulations. These regulations state that “core agricultural operations” include activities such as growing and harvesting crops, plants, vines, fruit trees, nut trees, ornamental plants, egg production, the raising of livestock, poultry, fish and livestock products.

Why is OSHA working so hard to distinguish grain storage activities from other farming activities?

Statistics could be one reason. The agency notes that over 900 grain entrapment fatalities have occurred in the past 50 years with the highest on record occurring in 2010, when 26 workers died in grain engulfments. This led to agency efforts to increase attempts to prevent deaths and injuries (see, for example, [“OSHA works with The Ohio State University to promote safe practices”](#)). The agency also points to statistics indicating steadily growing amounts of on-farm grain storage capacity. Finding a way to increase inspection opportunities on the expanding number of farms with grain storage would be consistent with OSHA’s efforts to reduce fatalities and injuries. Unfortunately, recent enforcement actions against farms in Nebraska and Ohio appear punitive in nature and not simply focused on reducing risk.

What’s next? Many members of Congress are pushing OSHA to revise its interpretation of the small farms rider. OSHA has agreed, stating that it plans to look to USDA for advice on which post-harvest activities are “intimately related to farming activities and which ones aren’t,” according to OSHA deputy assistant secretary Jordan Barab. An alternative to OSHA action would be for Congress to provide its own definition of “farming operations” rather than deferring to the agency’s interpretation.

The important issue here: grain handling safety. Agriculture prides itself on knowing how best to handle its own issues. As Congress and OSHA bicker over regulatory authority, let’s hope agriculture stays focused on grain handling practices and continues to reduce grain-related deaths. For resources on safe grain handling, visit OSU’s Agricultural Safety & Health Program at <http://agsafety.osu.edu/resources>

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