

## Chapter 10

### INDUSTRY SECTORS

#### I. Agriculture.

##### A. Introduction.

Special situations arising in the agriculture industry, which is regulated under 1928 and the General Duty Clause, are discussed in this section. Part 1928 covers “agricultural operations,” which include, but are not limited to, egg farms, poultry farms, livestock grain and feed lot operations, dairy farms, horse farms, hog farms, fish farms, and fur-bearing animal farms. OSHA has very few standards that are applicable to this industry. Part 1928 sets forth a few standards in full and lists particular Part 1910 standards which apply to agricultural operations. Part 1910 standards not listed do not apply. The General Duty Clause may be used to address hazards not covered by these standards.

##### B. Definitions.

###### 1. Agricultural Operations.

This term is not defined in Part 1928. Generally, agricultural operations would include any activities involved in the growing and harvesting of crops, plants, vines, fruit trees, nut trees, ornamental plants, egg production, the raising of livestock (including poultry and fish), as well as livestock products. The Federal Occupational Safety and Health Review Commission has ruled that activities integrally related to these core “agricultural operations” are also included within that term. *Darragh Company*, 9 BNA OSHC 1205, (Nos. 77-2555, 77-3074, and 77-3075, 1980) (delivery of feed to chicken farmer by integrator of poultry products is agricultural operation); *Marion Stevens dba Chapman & Stephens Company*, 5 BNA OSHC 1395 (No.13535, 1977) (removal of pipe to maintain irrigation system in citrus grove is agricultural operation). Post-harvest activities not on a farm, such as receiving, cleaning, sorting, sizing, weighing, inspecting, stacking, packaging and shipping produce, are not “agricultural operations.” *J. C. Watson Company*, 22 BNA OSHC 1235 (Nos. 05-0175 and 05-0176, 2008).

2. **Agricultural Employee.**

Federal OSHA regulation §1975.4(b)(2) states that members of the immediate family of the farm employer **are not** regarded as employees.

3. **Farming Operation.**

This term is used in OSHA's Appropriations Act, and has been defined in CPL 02-00-051, *Enforcement Exemptions and Limitations under the Appropriations Act*, dated May 28, 1998, to mean 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.

These are employers engaged in businesses that have a two digit Standard Industrial Classification (SIC) of 01 and three digit North American Industry Classification System (NAICS) of 111 (Agricultural Production - Crops); SIC 02 and NAICS 112 (Agricultural Production - Livestock and Animal Specialties); four digit SIC 0711 and six digit NAICS 115112 (Soil Preparation Services); SIC 0721 and NAICS 115112 (Crop Planting, Cultivating, and Protecting); SIC 0722 and NAICS 115113 (Crop Harvesting, Primarily by Machine); SIC 0761 and NAICS 115115 (Farm Labor Contractors and Crew Leaders); and SIC 0762 and NAICS 115116 (Farm Management Services).

4. **Post-Harvesting Processing.**

This is a term that is used in CPL 02-00-051, *Enforcement Exemptions and Limitations under the Appropriations Act*, dated May 28, 1998, in discussing enforcement guidance for small farming operations. Generally, post-harvest processing can be thought of as changing the character of the product (canning, making cider or sauces, etc.) or a higher degree of packaging versus field sorting in a shed for size.

C. **Appropriations Act Exemptions for Farming Operations.**

1. **Exempt Farming Operations.**

OSHA is limited by provisions in its Appropriations Act as to which employers it may inspect. Some of the Appropriations Act exemptions and limitations apply to small farming operations. Specifically, OSHA shall not inspect farming operations that have

10 or fewer employees **and** have had no temporary labor camp (TLC) activity within the prior 12 months.

2. **Non-Exempt Farming Operations.**

A farming operation with 10 or fewer employees that maintains a temporary labor camp or has maintained a temporary labor camp within the last twelve months **is not** exempt from inspection.

3. **State Plans States.**

States with OSHA-approved State Plans may enforce on small farms and provide consultation or training, provided that 100% state funds are used and the state has an accounting system in place to assure that no federal or matching state funds are expended on these activities.

4. **Enforcement Guidance for Small Farming Operations.**

Federal OSHA’s Appropriations Act exempts qualifying small farming operations from enforcement or administration of **all** rules, regulations, standards or orders under the Occupational Safety and Health Act, including rules affecting consultation and technical assistance or education and training services.

Table 10-1, below, provides an at-a-glance reference to OSHA activities under its funding legislation.

Table 10-1: OSHA’s Appropriation Act Exemptions for Farming Operations

| OSHA Activity                                  | Farming operations with 10 or fewer employees (EEs) and no TLC activity within 12 months. | Farming operations with more than 10 EEs or a farming operation with an active TLC within 12 months. |
|--|---|--|
| Programmed Safety Inspections                  | Not Permitted   | Permitted  |
| Programmed Health Inspections                  | Not Permitted   | Permitted  |
| Employee Complaint                             | Not Permitted   | Permitted  |
| Fatality and/or three or more Hospitalizations | Not Permitted   | Permitted  |
| Imminent Danger                                | Not Permitted   | Permitted  |
| 88.9(3) (whistleblower investigation)          | Not Permitted   | Permitted  |

|                                     |               |           |
|-------------------------------------|---------------|-----------|
| Consultation & Technical Assistance | Not Permitted | Permitted |
| Education & Training                | Not Permitted | Permitted |
| Conduct Surveys & Studies           | Not Permitted | Permitted |

NOTE: See CPL 02-00-051, *Enforcement Exemptions and Limitations under the Appropriations Act*, May 28, 1998, for additional information.

**D. Standards Applicable to Agriculture.**

OSHA has very few standards that apply to employers engaged in agricultural operations. Activities that take place after harvesting are considered general industry operations and are covered by OSHA's general industry standards.

**1. Agricultural Standards (Part 1928).**

- a. Roll-over Protective Structures (ROPS) for Tractors (§§1928.51, 1928.52, and 1928.53).
- b. Guarding of Moving Machinery Parts of Farm Field Equipment, Farmstead Equipment, and Cotton Gins (§1928.57).
- c. Field Sanitation (§1928.110). See Paragraph I.F. of this chapter, *Wage & Hour/OSHA Shared Authority under Secretary's Order*, regarding Wage & Hour authority. OSHA has no authority to issue any citations under this standard.

**2. General Industry Standards (Part 1910).**

- a. Temporary Labor Camps (§1910.142). See Chapter 12, Section II, *Temporary Labor Camps*.
- b. Storage and Handling of Anhydrous Ammonia (§1910.111(a) and (b)).
- c. Logging Operations (§1910.266).
- d. Specifications for Accident Prevention Signs and Tags – Slow-Moving Vehicle Emblem (§1910.145(d)(10)).
- e. Hazard Communication (§1910.1200).
- f. Cadmium (§1910.1027).

- g. Retention of Department of Transportation Markings, Placards and Labels (§1910.1201).

Except to the extent specified above, the standards contained in subparts B through T and subpart Z of Part 1910 of Title 29 do not apply to agricultural operations.

3. **General Duty Clause.**

As in any situation where no standard is applicable, Iowa Code 88.4 may be used; all the elements for a 88.4 citation must be met. See Chapter 4, Section III, General Duty Clause.

- E. **Pesticides.**

1. **Coverage.**

- a. Pursuant to the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), the Environmental Protection Agency (EPA) has jurisdiction over employee protection relating to pesticides (which also includes herbicides, fungicides and rodenticides). The EPA Worker Protection Standard (WPS) protects employees on farms, forests, nurseries, and greenhouses from occupational exposure to agricultural pesticides. The WPS includes provisions for personal protective equipment, labeling, employee notification, safety training, safety posters, decontamination supplies, emergency assistance, and restricted field entry. See 40 CFR Part 170, Worker Protection Standard.
- b. The regulation covers two types of employees:
  - **Pesticide Handlers.** Those who mix, load, or apply agricultural pesticides; clean or repair pesticide application equipment; or assist with the application of pesticides in any way.
  - **Agricultural Workers.** Those who perform tasks related to the cultivation and harvesting of plants on farms or in greenhouses, nurseries, or forests – such as carrying nursery stock, repotting plants, or watering – related to the production of agricultural plants on an agricultural establishment.
- c. For all pesticide use, including uses not covered by 40 CFR Part 170, it is a violation of FIFRA to use a registered pesticide in a manner inconsistent with its labeling. Thus, OSHA has no authority to issue any citations related to pesticide exposures,

pursuant to Section 4(b)(1) of the OSH Act. In the event that a CSHO should encounter any cases of pesticide exposure or the lack of an appropriate pesticide label on containers, a referral shall be made to the local EPA office or to state agencies administering pesticide laws.

- d. EPA also has jurisdiction in non-agriculture situations where pesticides are being applied by pest control companies. This would include, but not be limited to, applications in and around factories, warehouses, office buildings, and personal residences. OSHA may not cite its Hazard Communication standard in such situations.

## 2. **OSHA's Hazard Communication Standard.**

Although OSHA will not cite employers covered under EPA's WPS with regard to hazard communication requirements for pesticides, agricultural employers otherwise covered by OSHA are still responsible for having a hazard communication program for all hazardous chemicals that are not considered pesticides.

## F. **Wage & Hour/OSHA Shared authority under Secretary's Order.**

Since 1997, the Wage & Hour Division (WHD) of the Employment Standards Administration (ESA) has had shared authority with OSHA over two standards: the Field Sanitation standard (1928.110), and the Temporary Labor Camp standard (1910.142). See *Delegation of Authorities and Assignment of Responsibilities to the Assistant Secretary for Employment Standards and Other Officials in the Employment Standards Administration (Federal Register, January 2, 1997 (62 FR 107))* and *Secretary's Order 5-2002: Delegation of Authority and Assignment of Responsibility to the Assistant Secretary for Occupational Safety and Health, Federal Register, October 22, 2002 (67 FR 65007)*.

### 1. **Field Sanitation Standard.**

- a. The WHD has sole federal enforcement authority for this standard, including the issuing of citations.
- b. OSHA, therefore, shall not issue citations under this standard.
- c. The provisions of the Field Sanitation standard are also applicable to reforestation activities involving "hand-labor operations" as defined by the standard. This position regarding reforestation activities was developed through extensive intra-agency discussions and was intended to provide, in the absence

of a clear and unambiguous exemption of this activity from the provisions of the standard, the broadest possible coverage for these employees.

2. **Temporary Labor Camp (TLC) Standard.**

Under the Secretary's Order, enforcement authority for the TLC standard is split between the WHD and OSHA. See Chapter 12, Section II, Temporary Labor Camps, for a detailed discussion on Temporary Labor Camps.

3. **Compliance Interpretation Authority.**

WHD has sole interpretation authority for both the Field Sanitation and the Temporary Labor Camp standards, even over those temporary labor camp areas for which OSHA has enforcement authority.

4. **Standard Revision and Variance Authority.**

OSHA retains all authority for revisions of both the Field Sanitation and the Temporary Labor Camp standards, as well as the evaluation and granting of temporary and permanent variances.

5. **State Plan States.**

- a. Eight of the twenty-two jurisdictions (21 states and Puerto Rico) that have OSHA-approved state plans covering private sector employment elected not to enforce the Field Sanitation standard in agriculture and the Temporary Labor Camp standard, except with respect to egg, poultry, red meat production, and post-harvesting processing of agricultural and horticultural commodities. Thus, WHD enforces these standards, except as noted above, in the following states: Alaska, Indiana, Iowa, Kentucky, Minnesota, South Carolina, Utah and Wyoming.
- b. The 14 other jurisdictions with OSHA-approved state plans covering private sector employment have retained enforcement authority for the Field Sanitation and Temporary Labor Camp standards in agriculture. They are Arizona, California, Hawaii, Maryland, Michigan, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, Tennessee, Vermont, Virginia and Washington.

**II. Construction [Reserved].**

**III. Maritime [Reserved].**