

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

PROGRAM DIRECTIVE

Program Directive: A-214
Issued: January 10, 1997
Revised: May 4, 2015

SUBJECT: Inspection Guidance for Agriculture Small Employer Exemption

**AFFECTED
CODES**

[Division 1, OAR 437-001-0057 Scheduling Inspection](#)
[Division 4/A, OAR 437-004-0002 Scope](#)

PURPOSE: Provide guidance to assist the compliance officer in determining when an agriculture employer meets the inspection exemption requirements of OAR 437-001-0057(12).

BACKGROUND: In 1995, Oregon OSHA enacted rules in response to legislation that gives small agriculture employers a conditional exemption from schedule 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). Use the worksheet at the end of this program directive to document exemption and assist in evaluation.

- A. **Small Agriculture Employer:** An employer with ten or fewer permanent year-round employees, both full-time and part-time, who falls under the scope of Division 4 requirements.

For 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:

Accident: Within the preceding two year period the employer must not have had an accident resulting in death, in-patient hospitalization or injury resulting in more than three days of lost work **that was the result of a violation of Oregon OSHA rules.**

We must rely on information provided by the employer at the opening conference and our review of the Form 801 to determine if the accident was the result of a violation of Oregon OSHA rules. We cannot do an accident investigation to make the determination. If we are unsure the employer will be given the benefit of the doubt.

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 within the last 12 month period. 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 and you cannot do an inspection to determine if problems identified in the report were corrected.

EXEMPT: If you determine that the employer meets all the requirements of the Small Agricultural Employer Exemption, show it as no inspection/ "000" 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:
Optional Information: Use the following code:
S 11 AG EXEMPT

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 a serious disabling injury or illness from a violation of the Oregon Safe Employment Act or rules adopted under the act, 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.

EFFECTIVE

DATE:

This directive is effective immediately and will remain in effect until canceled or superseded.

History: Issued 1-10-1997 Revised 7-24-2002, 4-25-2006, 4-9-2009, 1-7-2011, 3-3-2011,8-18-2011, 12-3-2014, and 5-4-2015

**Oregon OSHA SMALL AGRICULTURAL EMPLOYER EXEMPTION
WORKSHEET/FIELD NOTES
(Revised 10/30/14)**

Firm _____ OPT RPT # _____

Date _____

SMALL AGRICULTURAL EMPLOYER? Yes _____ No _____ Number of Employees _____

(For purposes of determining the number of employees, members of the agricultural employer's immediate family are excluded. This includes grandparents, parents, children, step-children, foster children and any blood relative living as a dependent of the core family.)

Exemption does not apply to Complaints, Accidents, ALH, or Field Sanitation Inspections.

DETERMINATION OF EXEMPTION FROM SCHEDULED INSPECTION

1. Has there been an accident resulting in death, in-patient hospitalization or injury resulting in more than 3 days of lost work within the last two-years preceding the date of the inspection **that was the result of a violation of Oregon OSHA rules?**

Yes _____ No _____ Date of Accident _____

Did Oregon OSHA do an Accident Investigation? Yes _____ No _____

2. Have the employer **and** principal supervisors completed 4 hours of annual instruction on agriculture safety and health?

Yes _____ No _____

Date of Instruction _____ Duration of Instruction _____

Name of Provider _____

Subject of Instruction _____

Signature of the Provider Yes _____ No _____

Certified Applicator Training Core A & B by Oregon Dept of Ag = 1 hour per year.
Attendance during comprehensive consultation is acceptable as instruction.

3. Has the employer had a comprehensive consultation in the past 4 years?

Yes _____ No _____ Who provided consultation? _____

Verify through questioning if all problems identified during the consultation were corrected. You cannot ask to see the consultation report.

Corrected: Yes _____ No _____ If No, why do you believe they were not corrected?

**Oregon OSHA SMALL AGRICULTURAL EMPLOYER EXEMPTION
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If the employer does not meet all the criteria for exemption, conduct planned inspection activity.

If the employer meets ALL the inspection exemption requirements, it will be a no inspection/ "000" with the OSHA-1 and INSPECTION NUMBER. Remember to mark "S-11-AG EXEMPT" in field 42 on the OSHA-1.

ADDRESSING OBSERVED HAZARDS WHEN EMPLOYER EXEMPT FROM INSPECTION

If the S/HCO observes an imminent danger situation or a serious hazard with employee exposure they will inform the employer the scope of the inspection is being expanded to address the situation and a citation issued if there is a violation of Oregon OSHA rules. The inspection and citation will be limited to the imminent danger or serious hazard situation.

If the S/HCO observes a hazard that would be classified as serious but there is no employee exposure, the hazard will be discussed with the employer and immediate correction will be requested. A hazard letter will be sent to address the issue. The inspection and hazard letter will be limited to the serious hazard observed.

If the S/HCO observes a hazard that would be classified as other than serious the employer should be informed of the hazard and document it in the report. No citation will be issued.

NOTES