Farm Management

OSHA alters grain farm approach

IN the last few months, the Occupational Safety and Health Administration made a controversial decision to inspect and fine small farms engaged in grain storage activities. The farmers subject to the inspections and fines argued that OSHA had no authority to do so because of the "small farm exemption" that limits the agency's authority to enforce safety regulations on small farms.

Country Counsel

By ROBERT MOORE

Recently, OSHA provided a memorandum that attempts to clarify how its administrators should interpret the small farm exemption. The agency now focuses on whether an activity on a small farm is "not related to farming operations and not necessary to gain economic value from products produced on the farm."

Interpretation changes

Since 1976, Congress has prohibited OSHA from enforcing safety regulations on "small farms," which are defined as those farm operations that employ 10 or fewer employees and do not maintain a temporary labor camp.

However, in the last few years the agency has turned its regulatory attention to grain operations on small farms. OSHA justified its inspections and enforcement actions for grain storage activities by arguing that "postharvest" grain storage and processing activities differ from "farming operations" and "core agricultural operations," and thus do not fit within the small farm exemption.

After objections from farmers and farm advocates earlier this year, OSHA changed its interpretation of the small farm exemption.

In its July 29, 2014, memorandum to employees, OSHA now states that a small farm would not be subject to OSHA enforcement if it simply stores its own grain on the farm, sells grain from the farm, or grows, stores and grinds grain on the farm to feed its own livestock. These activities fit within the definition of a "farming operation" because the activities are "necessary to gain economic value from grain grown on the farm."

However, the agency also defines other types of activities on a small farm that could be subject to OSHA authority. OSHA reserves the right to implement enforcement if a small farm engages in activities that "are not related to farming operations and are not necessary to gain economic value from products produced on the farm; those activities are not exempt from OSHA enforcement."

Food processing

The agency provides a few examples of activities on small farms that would not be exempt because they are not related to farming operations or are not necessary to gain economic value from farm products. The list includes grain-based activities, but also addresses food processing examples:

- a grain handling operation that stores and sells grain grown on other farms
- a food processing facility for making cider from apples grown on the farm or for processing large carrots into "baby" carrots
- milling of grain into flour used to make baked goods

The agency also explains that food manufacturing operations are not exempt from OSHA enforcement activities under the appropriations rider, even if they take place on a small farm.

Farms that store their own grain as part of traditional production and marketing practices likely are not subject to OSHA enforcement. However, farms that engage in food processing or manufacturing activities may not enjoy exemption from OSHA.

If in doubt, farmers should consider seeking a legal opinion from their attorney.

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