



February 10, 2014

The Honorable Mike Johanns
United States Senate
Washington, D.C. 20510

Dear Senator Johanns:

We received your December 20, 2013 letter expressing concerns that the Occupational Safety and Health Administration (OSHA) may be taking regulatory actions against farming activities that are exempted by Congress through appropriations language¹ from regulatory enforcement under the Occupational Safety and Health Act of 1976. The Department of Labor (Department or DOL) takes the appropriations language very seriously and has prohibited OSHA activities at farming operations that employ ten or fewer employees and that does not maintain a temporary labor camp.

Since 1987, OSHA has had a standard that establishes common sense, effective, safe practices that grain handling facilities must follow to prevent workers from becoming entrapped in the grain.² As you may be aware, fatalities can occur in grain storage facilities when workers become buried (entrapped) by grain as they walk on moving grain or attempt to clear grain built up on the inside of a grain bin. Moving grain acts like quick sand, entrapping and suffocating the worker. In 2010 there was a dramatic increase in the number of workers entrapped and suffocated in grain storage structures while performing grain handling operations. For 2010, researchers with the Agricultural Safety and Health Program of Purdue University, documented cases where 57 workers were entrapped by grain and 31 of those workers lost their lives, the highest number of annual fatalities on record since 1964.³

¹ The farming rider provides “That none of the funds appropriated under this paragraph [OSHA funds] shall be obligated or expended to prescribe, issue, administer, or enforce any standard, rule, regulation, or order under the Occupational Safety and Health Act of 1970 which is applicable to any person who is engaged in a farming operation which does not maintain a temporary labor camp and employs ten or fewer employees...” Public Law 102-170; November 22, 1991, 105 Stat. 1107.

² 29 CFR 1910.272. Available at https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=987

³ Issa, Roberts, and Field, Agricultural Safety and Health Program, Purdue University. 2012 Summary of Grain Entrapments in the United States (May 31, 2013). Available at <http://extension.entm.purdue.edu/grainlab/content/pdf/2012GrainEntrapments.pdf>.

As a result of these tragedies, which included the deaths of two teenagers in Illinois,⁴ OSHA has focused its resources on preventing grain entrapment fatalities through industry outreach, education, technical assistance, and enforcement.⁵ OSHA also sent a letter to approximately 13,000 grain facilities, describing safety measures and how to comply with OSHA's standard.⁶ Since OSHA launched its prevention initiative, the number of documented annual grain entrapments for 2012 compared to 2010 decreased by 67 percent (from 57 in 2010 to 19 in 2012) and the number of workers killed in these entrapments decreased by 74 percent (from 31 in 2010 to eight in 2012).⁷

On June 28, 2011, OSHA issued a memorandum to Regional Administrators and State Plan Designees to ensure that OSHA inspectors understood the limitations on OSHA's authority to conduct enforcement activities at small farming operations during OSHA's grain safety campaign. The June 28, 2011 memorandum was intended to provide clarification and not to change longstanding OSHA policy.⁸ To ensure that all OSHA inspectors clearly understand OSHA's policies and proper authority, and to address the concerns expressed in your letter and in the recent appropriations report language, DOL will issue new guidance after consulting with the U.S. Department of Agriculture (USDA) and with organizations representing farmers. To that end, OSHA held a preliminary call with the USDA on Friday, January 31, 2014, and to avoid any confusion in the meantime, OSHA has removed the June 28, 2011 memorandum from its website.

⁴ U.S. Department of Labor, News Release Number: 11-06-CHI (Jan. 24, 2011). Available at https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=19143. See also Judith Graham, Chicago Tribune, Drowned in corn: Grain bin deaths that killed 2 Illinois teens (Mar. 8, 2011). Available at http://articles.chicagotribune.com/2011-03-08/news/ct-met-grain-bins-20110309_1_grain-bin-grain-handling-illinois-grain.

⁵ See OSHA Safety and Health Topics: Grain Handling Webpage available at https://www.osha.gov/SLTC/grainhandling/index.html?utm_medium=email&utm_source=govdelivery.

⁶ See U.S. Department of Labor, Assistant Secretary for Safety and Health, Letter to Grain Storage Facility Operators (Feb. 1, 2011). <https://www.osha.gov/asst-sec/Grain-Letter-2-1-2011.html>.

⁷ 2012 Summary of Grain Entrapments in the United States (May 31, 2013) at 7.

⁸ OSHA policy had previously been articulated in the attached 1992 policy letter. See U.S. Department of Labor, Memorandum for Michael G. Connors, "Farming Appropriations Rider" July 22, 1992, https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=20764. Additionally, OSHA issues instructions regarding the appropriations rider following the enactment of each new appropriation bill containing the small farms limitation. That instruction has remained unchanged since 1998, and was twice reissued since the dissemination of the June 28, 2011, memo. See https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=DIRECTIVES&p_id=1519.

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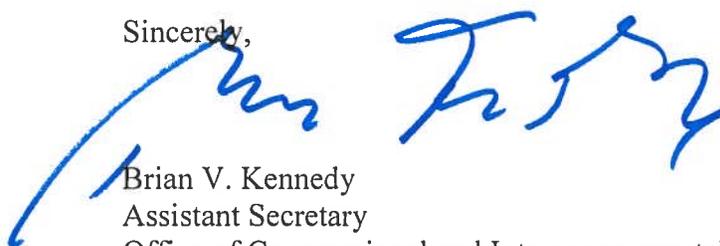
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In conducting inspections of farming operations, OSHA strives to ensure full compliance with the small farming operations exemption. To ensure consistent and appropriate enforcement of OSHA standards, in particular prior to the issuance of the new guidance, OSHA has instructed its Field Offices, in cases of uncertainty, to request clarification from the National Office when determining if farming operations are exempt. This additional level of review is intended to ensure compliance with the appropriations language.

The Department takes seriously the congressional concerns raised in your letter and intends to fully comply with the small farms exemption. If you or members of your staff have any questions, please contact Laura de la Torre in the Department's Office of Congressional and Intergovernmental Affairs. She may be reached at (202) 693-4600.

Sincerely,



Brian V. Kennedy
Assistant Secretary

Office of Congressional and Intergovernmental Affairs

cc: The Honorable Charles Grassley
The Honorable Michael Enzi
The Honorable John Hoeven
The Honorable John Thune
The Honorable Richard Burr
The Honorable John McCain
The Honorable Tom Coburn
The Honorable Deb Fischer
The Honorable John Barrasso
The Honorable Lindsey Graham
The Honorable Mitch McConnell
The Honorable Jim Inhofe
The Honorable David Vitter
The Honorable Rand Paul
The Honorable John Boozman
The Honorable Jerry Moran
The Honorable Jeff Flake
The Honorable Jeanne Shaheen
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