

VOSH PROGRAM DIRECTIVE: 02-003S

ISSUED: 15 June 2018

Subject

VOSH Procedures to comply with OSHA Enforcement Exemptions and Limitations under the Federal Appropriations Act, OSHA Instruction CPL 02-00-051 (formerly CPL 2-0.51J); Appendix "A" Revision

Purpose

- This Directive transmits to field personnel the annual exemptions and limitations for VOSH enforcement activity under the federal Appropriations Act. Attached as Appendix "A" is the **annual listing** of the North American Industrial Classification System (NAICS) codes for industries with a Days Away, Restricted, or Transferred (DART) occupational injury and illness rate below the most recent available national private sector rate from BLS. This rate is 1.6 for 2016.
- This Directive also includes a memorandum which clarifies OSHA's longstanding position on the limits of its authority to conduct enforcement activities on small farms.

This Program Directive is an internal guideline, not a statutory or regulatory rule, and is intended to provide instructions to VOSH personnel regarding internal operation of the Virginia Occupational Safety and Health Program and is solely for the benefit of the program. This document is not subject to the Virginia Register Act or the Administrative Process Act; it does not have general application and is not being enforced as having the force of law.

Scope

This Directive applies to all VOSH personnel.

References

OSHA Instr. CPL 02-00-051 (28 May 1998), Enforcement Exemptions and Limitations under the Appropriations Act;

Policy Clarification on OSHA's Enforcement Authority at Small Farms (Memo: Thomas Galassi, Director, Directorate of Enforcement Programs (29 July 2014)); and

Update of Appendix "A" (Memo: David Michaels, U.S. Assist. Sec. of Labor, OSHA (25 April 2018))

Cancellation

VOSH Program Directive 02-003R (01 July 2017)

Action

Directors and Managers shall ensure that compliance activities are scheduled and conducted following the guidelines set forth in this Directive.

Effective Date

15 June 2018

C. Ray Davenport
Commissioner

Distribution: Commissioner of Labor and Industry
Assistant Commissioner
VOSH Directors and Managers

VOSH Compliance & Cooperative Programs Staffs
Legal Support & OIS Staffs
OSHA Region III & Norfolk Area Offices

- Attachments:
- Sample TAL FLSA Sheet;
 - Policy Clarification on OSHA's Enforcement Authority at Small Farms Memo (Thomas Galassi, 29 July 2014); and
 - Attachments: OSHA Instruction CPL 02-00-051 (28 May 1998); and Revised Appendix "A" (25 April 2018)

Table of Contents

Summary	1
Implementation	1
Equivalency Terms	2
Sample TAL FLSA Sheet	Attachment A
OSHA Instruction CPL 02-00-051 (formerly CPL 2-0.51J) , Enforcement Exemptions and Limitations under the Appropriations Act	Attachment B
Policy Clarification Memorandum on OSHA’s Enforcement Authority at Small Farms	Attachment C
Replacement of Appendix A for CPL 02-00-051, Enforcement Exemptions and Limitations under the Appropriations Act.....	Attachment D

I. Summary

Each year, Congress passes the federal Appropriations Act or a **Continuing Resolution** which provides the funding for the operation of federal OSHA. In providing funding for OSHA and the related dependent 23g grant federal funding utilized by VOSH, Congress has placed significant restrictions on enforcement activities regarding two categories of employers: small farming operations and small employers in low-hazard industries.

This funding measure restriction focuses on limiting the inspection of those employers who employ ten or fewer employees. Since these 23g grant funds are passed through from OSHA to the State Program, VOSH is held to the same restrictions and limits imposed on federal OSHA for use of federal funds. However, these annual Appropriations Act limitations do not apply to activities that are funded with 100% state money.

This new Appendix "A" to CPL 02-00-051, Enforcement Exemptions and Limitations under the Appropriations Act (25 April 2018), contains the latest BLS occupational injury and illness rate data at the most precise industrial classification code. OSHA updates the list annually to meet the requirements of federal budget riders prohibiting OSHA from conducting planned safety inspections of small employers in low-hazard industries.

From the effective date of this Directive, this Appendix "A" will be effective **for any inspection opened on that date or thereafter, until the next annual revision becomes effective**. This Directive includes a revised Appendix "A" for CPL 02-00-051, formerly CPL 2-0.51J, Enforcement Exemptions and Limitations under the federal Appropriations Act, which was forwarded by memorandum dated 25 April 2018.

II. Implementation

To the extent that this Directive limits or prohibits the use of 50 percent federal matching 23g grant funding for certain VOSH activities normally covered under the grant for compliance efforts, VOSH reserves the right to conduct activities limited or prohibited under the federal Appropriations Act, should it choose to do so, and will pay for those activities with 100 percent 23g grant state matching funds, e.g., VOSH will conduct and pay for, with 100% state funds, fatal accident investigations on farms with 10 or fewer employees and no temporary labor camp activity within the previous 12 months. **However, approval to conduct and pay for such 100% state funded activities must be received in advance from the applicable VOSH program director.**

Please note that VOSH will issue penalties for any serious, repeat, willful or failure to abate notice that is identified during the inspection of an employer with 10 or fewer employees in a low hazard NAICS. VOSH will also issue penalties for any other-than-serious violation in the same manner as would be done for an inspection not covered by this directive (e.g., employer failure to report a fatal accident with 8 hours). This will necessitate the use of 100% state funds on those inspections. In such cases, please contact the applicable Compliance Director and assure that the CSHO follows the time keeping procedures outlined in the directive. REFERENCE: Va. Code §40.1-49.4.H provides that "serious" violations "shall be assessed a civil penalty for each such violation." (Emphasis added).

Compliance officers, who are approved to perform such inspections, shall keep a record of their time spent on such activities. This time must be entered as a separate line entry for that workday on the CSHO's TAL FLSA Individual Time Sheet with an explanatory comment: "23g exempt.-100% state funded activity". A sample TAL FLSA Individual Time Sheet is provided.

When the guidelines, as set forth in this Program Directive, are applied to the Commissioner of the Department of Labor and Industry and/or to Virginia employers, the following federal terms if, and where they are used, shall be considered to read as below:

Federal Terms

VOSH Equivalent

OSHA

VOSH

Federal Agency

State Agency

Regional Administrator

Assistant Commissioner

Area Director

Regional Director
VOSH Program Director

Area Office/Regional Office

Regional Office

Regional Solicitor

Attorney General or VOSH
Division of Legal Support (DLS)

Office of Statistics

VOSH Research and Analysis

29 CFR

VOSH Standard

Compliance Safety and Health Officer (CSHO)
and/or Industrial Hygienist

CSHO

Agency

Department

OSHA Directives:

VOSH Program Directives:

OSHA Field Operations Manual (OFOM)

VOSH Field Operations Manual (FOM)

OSHA Instruction CPL 2.115

VOSH FOM, Chapter 2.

Virginia Department of Labor and Industry
 SAMPLE – Individual Timesheet for TAL

Timesheet Time Entry

Employees ID
 Agency Number

Name:
 Position:

Timesheet ID:

Version:

Current Version:

Start Date:

End Date:

Timesheet Status:

Process Normally?:

	Timesheet Comments	Entered By	Date Entered
View	Timesheet Created By		

	Date	Hol	Type	Shift	Hours	Category	Additional Pay	Notes
Edit						(for example)		
Edit								
Edit Add	Mon		Hours Worked		3	802		23g exempt.-100% state funds
Edit Add	Mon		Hours Worked		5	802		
Edit Add								
Edit Add								
Edit Add								

Submit

Save

Cancel

Print



OSHA INSTRUCTION

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

DIRECTIVE NUMBER: CPL 2-0.51J

EFFECTIVE DATE: May 28, 1998

SUBJECT: Enforcement Exemptions and Limitations under the Appropriations Act.

ABSTRACT

- Purpose:** Explains the limits on inspection activities under the Appropriations Act.
- Scope:** OSHA-wide.
- References:** CPL 2.103 -Field Inspection Reference Manual,
CPL 2.115 -Complaint Policy and Procedures,
STP 2.22A -State Plan Policies and Procedures Manual.
- Cancellations:** CPL 2-0.51I, Dated October 15, 1997.
- State Impact:** See Paragraph VI.
- Action Offices:** National, Regional, and Area Offices.
- Originating Office:** Directorate of Compliance Programs.
- Contact:** Don Kallstrom 202) 219-8031
Office of General Industry Compliance Assistance; FPB - N3107
200 Constitution Avenue, NW
Washington, DC 20210
- Special Notice:** Appendix "A" contains time sensitive information. OSHA will automatically update the information in Appendix "A" after it is received from the Bureau of Labor Statistics.

By and Under the Authority of
Charles N. Jeffress
Assistant Secretary

~~Change effective 01-15-99 - Appendix "A"~~
~~Change effective 02-07-00 - Appendix "A"~~
~~Change effective 02-09-01 - Appendix "A"~~
~~Change effective 01-02-02 - Appendix "A"~~
~~Change effective 01-07-03 - Appendix "A"~~
~~Change effective 02-23-05 - Appendix "A"~~
~~Change effective 12-05-05 - Appendix "A"~~
~~Change effective 11-20-06 - Appendix "A"~~
~~Change effective 12-10-07 - Appendix "A"~~
~~Change effective 12-03-08 - Appendix "A"~~
~~Change effective 12-18-09 - Appendix "A"~~
~~Change effective 01-03-11 - Appendix "A"~~
~~Change effective 12-23-11 - Appendix "A"~~
~~Change effective 02-22-13 - Appendix "A"~~
~~Change effective 05-27-14 - Appendix "A"~~
~~Change effective 01/30/2015 - Appendix "A"~~
~~Change effective 01/29/2016 - Appendix "A"~~
~~Change effective 01/10/2017 - Appendix "A"~~
Change effective 04/25/2018 - Appendix "A"

TABLE OF CONTENTS

I.	Purpose.....	1
II.	Scope.....	1
III.	References.....	1
IV.	Cancellation.....	1
V.	Action.....	1
VI.	Federal Program Change.....	1
VII.	Background.....	1
VIII.	Key Terms.....	2
IX.	General Enforcement Guidelines.....	2
	Table 1 (Exceptions and Limitations).....	3
X.	Enforcement Guidance for Small Farming Operations.....	3
XI.	Enforcement Guidance for Small Employers in low-hazard industries.....	4
XII.	Late Discovery of Exemption.....	5
XIII.	OIS.....	5
	Appendix "A".....	A-1

- I. **Purpose.** This instruction explains the limits (exemptions and limitations) for the Occupational Safety and Health Administration's (OSHA) enforcement activity under the Appropriations Act. This funding measure's riders and this instruction focus on limiting the inspection of those employers who employ ten or fewer employees.
- II. **Scope.** This instruction applies OSHA-wide and where applicable, to those Employment Standards Administration (ESA) offices enforcing OSHA's Field Sanitation and Temporary Labor Camp standards in agricultural settings. The restrictions to OSHA's enforcement activity apply to places of employment (farms and establishments whose Standard Industrial Classification code is listed in Appendix "A") that employ 10 or fewer employees.
- III. **References.**
- A. OSHA Instruction STP 2.22A, May 14, 1986, the State Plan Policies and Procedures Manual
 - B. OSHA Instruction CPL 2.103, September 26, 1994, the Field Inspection Reference Manual (FIRM)
 - C. Orders 5-96 and 6-96, December 27, 1996, Delegation of Authority and Assignment of Responsibility Standards Administration and the Assistant Secretary for Occupational Safety and Health.
 - D. OSHA Instruction CPL 2.115, June 14, 1996, Complaint Policies and Procedures
- IV. **Cancellation.** OSHA Instruction CPL 2.51I, October 15, 1997, is canceled.
- V. **Action.** OSHA Regional Administrators and Area Directors are to ensure that they schedule and conduct enforcement activities following the guidelines set forth in this instruction. They shall insure distribution of these guidelines to Employment Standards Administration, Wage and Hour Division District offices which are responsible for enforcing the OSHA field sanitation and temporary labor camp standards pursuant to Secretary's Orders 5-96 and 6-96. These guidelines are in effect until superseded or amended.
- The Directorate of Administrative Programs will ensure that the updated Appendix "A" appears on the OSHA Internet site as soon as possible after receiving it from the Directorate of Compliance Programs. The version of Appendix "A" which appears on OSHA's Internet Web Page is the one currently being applied. The date Appendix "A" is updated will be noted on the Abstract.
- VI. **Federal Program Change.** This instruction describes a Federal program change which affects State Programs. Under OSHA's Appropriations Act, States cannot be reimbursed for any share of funds expended for activities prohibited by these exemptions and limitations and must be able to demonstrate that no Federal funds have been used for prohibited activities. The States shall respond via the two-way memorandum to the Regional Office as soon as the State's intention regarding the enforcement activity limitations and exemptions is known, but no later than 60 calendar days after the date of transmittal from the Directorate of Federal-State Operations. If a State plans to fund the prohibited activities, it shall provide a brief description of its alternative funding approach in the Comment Section of the two-way memorandum and maintain appropriate accounting procedures for assuring that no 23(c) funds are expended for these activities.

VII. Background. In providing funding for OSHA, Congress has placed restrictions on enforcement activities regarding two categories of employers: small farming operations and small employers in low-hazard industries. The Appropriations Act contains limits for OSH Act activities on a year-by-year basis.

VIII. Key Terms. Definitions pertinent to this Directive are the following:

A "**farming operation**" 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. These are employers engaged in businesses that have a two digit Standard Industrial Classification (SIC) of 01 (Agricultural Production - Crops), 02 (Agricultural Production- Livestock and Animal Specialties), and four digit SIC 0711 (Soil Preparation Services), 0721 (Crop Planting, Cultivating, and Protecting), 0722 (Crop Harvesting, Primarily by Machine), 0761 (Farm Labor Contractors and Crew Leaders), and 0762 Farm Management Services).

A "**temporary labor camp**" means farm housing directly related to the seasonal or temporary employment of farm workers.

"**Housing**" includes both permanent and temporary structures located on or off the property of any employer who meets the above definition.

"**Lost Workday Injury Rate Below the National Average**" is an occupational lost workday injury (LWDI) rate which is lower than the national average rate for the private industry sector, as most recently published by the Bureau of Labor Statistics, at the most precise (SIC) code for which such data is published, using the 1987 manual.

IX. General Enforcement Guidelines. Before initiating enforcement activities OSHA will decide whether the appropriation rider prohibits OSHA enforcement. Where this determination cannot be made beforehand, the CSHO will determine the status of the small farming operation or a small employer in a low-hazard industry upon arrival at the workplace. If the prohibition applies, the inspector must immediately discontinue the inspection activities and leave the premises as soon as possible. Table No. 1 provides an at-a-glance reference to our activities under the funding measure.

**Table 1
(Exceptions and Limitations)**

TLC = Temporary Labor Camp

EES = Employees

ERS = Employer

OSHA Activity	Farm with 10 or fewer EES and no TLC activity within 12 mo.	Farm with more than 10 EES or a farm with an active TLC within 12 Mo.	Non-farm ERS with 10 or fewer EES in the NAICS listed in Appendix "A"
Programmed Safety Inspections	Not Funded	Can Inspect	Cannot Inspect
Programmed Health Inspections	Not Funded	Can Inspect	Can Inspect
Employee Complaint	Not Funded	Can Inspect	Can Inspect (See limits on Citations and Penalties)
FAT/CAT and Accidents	Not Funded	Can Inspect	Can Inspect
Imminent Danger	Not Funded	Can Inspect	Can Inspect
11C	Not Funded	Can Inspect	Can Inspect
Consultation & Technical Assistance	Not Funded	Permitted	Permitted
Education and Training	Not Funded	Permitted	Permitted
Conduct Surveys & Studies	Not Funded	Permitted	Permitted

X. Enforcement Guidance for Small Farming Operations. The Appropriations Act exempts small farming operations from enforcement of **all** rules, regulations, standards or orders under the Occupational Safety and Health Act.

A. A farming operation is **exempt** from **all** OSHA activities if it:

1. Employs 10 or fewer employees currently and at all times during the last 12 months; and
2. Has not had an active temporary labor camp during the preceding 12 months.

Note: Family members of farm employers are not counted when determining the number of employees.

B. 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. For OSHA, the inspection may include all working conditions covered by OSHA standards except for Field Sanitation, 29 CFR1928.110, and except as noted, Temporary Labor Camps, 29 CFR 1910.142, which are being enforced by the Wage and Hour Division under Secretary of Labor Order 6-96.

1. OSHA, however, retains inspection responsibility for those camps of employees engaged in eggs or poultry production (SIC 025) or red meat production (SIC 021) or engaged in the post-harvest processing of agricultural or horticultural commodities. 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 (washing, bundling and bagging carrots) versus field sorting in a shed for size.
- C. The Wage and Hour Division, ESA, will also exercise responsibility for enforcement in agriculture of OSHA field sanitation and temporary labor camp standards, except as noted in “B” above, in nine States operating OSHA-approved State plans which have elected to follow the jurisdictional transfer of authority as effected by Secretary’s Orders 5-96 and 6-96. These States are: Alaska, Indiana, Iowa, Kentucky, Minnesota, South Carolina, Utah, Virgin Islands, and Wyoming.

In the fourteen (14) other States operating OSHA-approved State plans, enforcement of field sanitation and temporary labor camp standards in agriculture will not transfer to ESA and will continue as a State responsibility. These States are: Arizona, California, Hawaii, Maryland, Michigan, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, Tennessee, Vermont, Virginia, and Washington.

XI. Enforcement Guidance for Small Employers in low-hazard industries. The Appropriations Act exempts small employers in low-hazard industries from **programmed safety inspections**.

- A. No programmed safety inspections are permitted of a small employer if:
 1. It employs 10 or fewer employees currently and at all times during the last 12 months; and
 2. The lost workday case rate for its primary SIC work activity is below the all-industry national average. (See Appendix “A” for listings.)
- B. The Appropriations Act allows several OSHA activities in establishments of small (10 or fewer employees) low-hazard rate employers that are exempt from programmed safety inspections. All OSHA Offices are allowed to:
 1. Provide consultation and technical assistance as well as educational and training services. It can also conduct surveys and studies authorized by the OSHA.
 2. Investigate or schedule inspections in response to an employee complaint in accordance with current complaint procedures in CPL 2.115. The only complaint inspections which are permitted under the rider are those from current employees.
 - a. Citations may be issued for any violation found during a complaint inspection whether or not the violative condition is a subject of the complaint. But:
 - b. Penalties may **only** be assessed when the violations are classified as willful violations or failure to abate notifications and when such violations and failure to abate notifications are related to the original complaint.
 3. Take any action authorized by the Act with respect to alleged imminent danger situations.

4. Take any action authorized by the Act with respect to **health hazards**.
 - a. Health inspections are to be scheduled, observed health hazards cited, and penalties assessed for all classifications of violations in accordance with current procedures.
 - b. Apparent safety violations noted during a health inspection of an establishment exempted from programmed safety inspections shall not be cited or referred for later inspection unless such violations create an imminent danger.
 - c. If this inspection is a health-related complaint, the procedures in paragraph XI. B. 4. take precedence over the procedures in paragraph XI.B. 2.

Note: A Compliance Officer can discuss non-citable violations during the closing conference and provide information relating to consultation services.

5. Take any action authorized by the Act with respect to employment accidents involving a fatality of one or more employees or **hospitalization** of two or more employees. All apparent violative conditions involving safety or health may be cited and penalties proposed related to the accident.

Note: The reporting requirements of 29 CFR 1904.8 have not changed. Employers are not obligated to report accidents involving overnight hospitalization of fewer than three employees. However, OSHA is allowed to conduct any accident investigation of a small, non-farming, employer once we become aware that an accident as described above has occurred. Where OSHA learns of such accidents, we can inspect or investigate.

6. Take any action authorized by the Act with respect to alleged discrimination against employees.

XII. Late Discovery of Exemption. If it becomes clear after an inspection that the employer was exempt from inspection at the time of the inspection, the Area Director shall ensure that no citations are issued or penalties proposed contrary to the provisions of this instruction.

- A. If already issued, but not yet contested, any such citation or proposed penalty shall be withdrawn.
- B. If the employer has already filed a notice of intent to contest, the Area Director shall inform the Regional Solicitor who shall take appropriate action to ensure that the case is not pursued before the Occupational Safety and Health Review Commission.
- C. If such citations and penalties have become a final order, the Area Director shall ensure that no penalties are collected.

XIII. OIS. If an inspection is not conducted because of an Appropriations Act rider exemption, the CSHO shall complete an OSHA-1 Form according to current OIS instructions. Also where the scope of an inspection has been limited, due to restrictions imposed by a rider to the Appropriations Act, it can be so noted in block 42 – Optional Information.

U.S. Department of Labor

Occupational Safety and Health Administration
Washington, D.C. 20210

Reply to the attention of:

DEP/CPSEI/SMK

JUL 28 2014

MEMORANDUM FOR: REGIONAL ADMINISTRATORS

THROUGH: *Dorothy Dougherty*
DOROTHY DOUGHERTY
Deputy Assistant Secretary

FROM: *Thomas Galassi*
THOMAS GALASSI, Director
Directorate of Enforcement Programs

SUBJECT: Policy Clarification on OSHA's Enforcement Authority at Small Farms

The purpose of this memorandum is to clarify OSHA's longstanding position on the limits of its authority to conduct enforcement activities on small farms. This memorandum supersedes OSHA's June 28, 2011, memorandum on this subject.

Since 1976, an appropriations rider has precluded OSHA from expending appropriated funds to conduct enforcement activities with respect to any person engaged in a farming operation with ten or fewer non-family employees that has not maintained a temporary labor camp within the preceding twelve months.¹

OSHA defines a "farming operation" as "any operation involved in the growing or harvesting of crops or 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."² Crop farming operation activities include preparing the ground, sowing seeds, watering, weeding, spraying, harvesting, and all related activities necessary for these operations, such as storing, fumigating, and drying crops grown on the farm. An exempt small³ farm would not become subject to

¹ See Consolidated Appropriations Act, 2014, Pub. L. No. 113-76 (2014).

² 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), two digit 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), and SIC 0761 and NAICS 115115 (Farm Management Services). See OSHA Compliance Directive CPL 02-00-051, *Enforcement Exemptions and Limitations under the Appropriation Act*.

³ In this memorandum, the term "small" means that the employer has ten or fewer non-family employees and does not maintain a temporary labor camp.

OSHA enforcement simply because, for example, it stores its own grain on the farm or sells that grain from the farm. Onsite storage or sale of grain grown on the farm would constitute a “related activity” under OSHA's interpretation of “farming operation” because it is necessary to gain economic value from grain grown on the farm. Similarly, a small farm that grows grain to feed its own livestock, and stores and grinds that grain on the farm would not become subject to OSHA enforcement because of those activities.

However, if an employer performs activities on a small farm 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. For example, if an exempt small farm maintains a grain handling operation storing and selling grain grown on other farms, the grain handling operation would not be exempt from OSHA enforcement under the appropriations rider. If a small farm employer maintains a food processing facility for making cider from apples grown on the farm or for processing large carrots into "baby" carrots, or if the employer mills its grain into flour and then uses the flour to make baked goods, those food processing operations would be food manufacturing, not farming. Food manufacturing operations are not exempt from OSHA enforcement activities under the appropriations rider, even if they take place on a small farm.

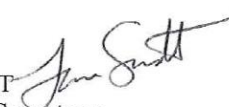
To ensure consistent compliance with the appropriations rider, please consult with Art Buchanan of the Office of General Industry and Agriculture Enforcement, at 202-693-1850, when the applicability of the appropriations rider to a particular activity or employer is unclear. To avoid inadvertently conducting enforcement activity on an exempt small farming operation, this consultation should occur before OSHA initiates the inspection.

U.S. Department of Labor

Occupational Safety and Health Administration
Washington, D.C. 20210

APR 25 2018

Reply to the attention of:

MEMORANDUM FOR:REGIONAL ADMINISTRATORS
STATE DESIGNEES**FROM:**LOREN SWEATT 
Acting Assistant Secretary**SUBJECT:**Appropriations Act: Replacement of Appendix A
for CPL 02-00-051, Enforcement Exemptions and
Limitations under the Appropriations Act

Attached is the most recent listing of the North American Industry Classification System (NAICS) codes for industries with a Days Away, Restricted, or Transferred (DART) occupational injury and illness rate below the national private sector rate of 1.6 for 2016. This new Appendix A to CPL 02-00-051, Enforcement Exemptions and Limitations under the Appropriations Act, contains the latest BLS occupational injury and illness rate data at the most precise industrial classification code. It will be added to the electronic version of CPL 02-00-051 on the OSHA Website. Appendix A will be effective on the date of this memorandum **for any inspection opened on this date or thereafter, until the next revision.**

Please note that if the Compliance Safety and Health Officer (CSHO) discovers that the employer has 10 or fewer employees currently and at all times during the previous 12 months and the DART rate for the employer's primary NAICS is below the all-industry national average, the CSHO will not conduct an inspection. The NAICS coding system is very detailed and the CSHO should pay particular attention to the code being selected to ensure a correct decision is made.

For construction inspections, upon arrival at a worksite to conduct a programmed safety inspection, the CSHO should ascertain as soon as practicable whether the appropriations rider exempts a particular contractor. Exempt contractors shall not be inspected. However, the inspection of other, non-exempt contractors on the worksite will proceed.

If you have any questions regarding the above, please contact the Office of General Industry and Agricultural Enforcement (202) 693-1850. In addition, for questions concerning the construction industry, please contact the Directorate of Construction at (202) 693-2020.

Attachment

Appendix A

North American Industrial Classification System (NAICS) Codes for Industries with a Days Away, Restricted or Transferred (DART) Rate Less Than the National Average Rate of 1.6 for 2016.

Source: Bureau of Labor Statistic (BLS) data released November 9, 2017

2012 NAICS Code	2012 NAICS Title
Agriculture, Forestry, Fishing and Hunting	
111110	Soybean Farming
111120	Oilseed (except Soybean) Farming
111130	Dry Pea and Bean Farming
111140	Wheat Farming
111150	Corn Farming
111160	Rice Farming
111191	Oilseed and Grain Combination Farming
111199	All Other Grain Farming
115112	Soil Preparation, Planting, and Cultivating
115310	Support Activities for Forestry
Mining	
211111	Crude Petroleum and Natural Gas Extraction
213111	Drilling Oil and Gas Wells
213112	Support Activities for Oil and Gas Operations
Utilities	
221112	Fossil Fuel Electric Power Generation
221113	Nuclear Electric Power Generation
221114	Solar Electric Power Generation
221115	Wind Electric Power Generation
221116	Geothermal Electric Power Generation
221118	Other Electric Power Generation
221121	Electric Bulk Power Transmission and Control
221122	Electric Power Distribution
Construction	
236210	Industrial Building Construction
236220	Commercial and Institutional Building Construction
237120	Oil and Gas Pipeline and Related Structures Construction

237210	Land Subdivision
237990	Other Heavy and Civil Engineering Construction
238210	Electrical Contractors and Other Wiring Installation Contractors
238330	Flooring Contractors
Manufacturing	
311221	Wet Corn Milling
311225	Fats and Oils Refining and Blending
311230	Breakfast Cereal Manufacturing
311811	Retail Bakeries
311930	Flavoring Syrup and Concentrate Manufacturing
312140	Distilleries
313110	Fiber, Yarn, and Thread Mills
313240	Knit Fabric Mills
314110	Carpet and Rug Mills
314120	Curtain and Linen Mills
315190	Other Apparel Knitting Mills
315220	Men's and Boys' Cut and Sew Apparel Manufacturing
315240	Women's, Girls', and Infants' Cut and Sew Apparel Manufacturing
315990	Apparel Accessories and Other Apparel Manufacturing
322110	Pulp Mills
322121	Paper (except Newsprint) Mills
322122	Newsprint Mills
322130	Paperboard Mills
322211	Corrugated and Solid Fiber Box Manufacturing
322291	Sanitary Paper Product Manufacturing
323111	Commercial Printing (except Screen and Books)
323113	Commercial Screen Printing
324110	Petroleum Refineries
324121	Asphalt Paving Mixture and Block Manufacturing
325110	Petrochemical Manufacturing
325120	Industrial Gas Manufacturing
325130	Synthetic Dye and Pigment Manufacturing
325180	Other Basic Inorganic Chemical Manufacturing

325194	Cyclic Crude, Intermediate, and Gum and Wood Chemical Manufacturing
325199	All Other Basic Organic Chemical Manufacturing
325211	Plastics Material and Resin Manufacturing
325212	Synthetic Rubber Manufacturing
325220	Artificial and Synthetic Fibers and Filaments Manufacturing
325311	Nitrogenous Fertilizer Manufacturing
325312	Phosphatic Fertilizer Manufacturing
325314	Fertilizer (Mixing Only) Manufacturing
325320	Pesticide and Other Agricultural Chemical Manufacturing
325412	Pharmaceutical Preparation Manufacturing
325413	In-Vitro Diagnostic Substance Manufacturing
325414	Biological Product (except Diagnostic) Manufacturing
325611	Soap and Other Detergent Manufacturing
325612	Polish and Other Sanitation Good Manufacturing
325613	Surface Active Agent Manufacturing
325910	Printing Ink Manufacturing
325920	Explosives Manufacturing
325992	Photographic Film, Paper, Plate, and Chemical Manufacturing
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing
326160	Plastics Bottle Manufacturing
327310	Cement Manufacturing
327420	Gypsum Product Manufacturing
331110	Iron and Steel Mills and Ferroalloy Manufacturing
331315	Aluminum Sheet, Plate, and Foil Manufacturing
332710	Machine Shops
332811	Metal Heat Treating
332911	Industrial Valve Manufacturing

332912	Fluid Power Valve and Hose Fitting Manufacturing
332993	Ammunition (except Small Arms) Manufacturing
332996	Fabricated Pipe and Pipe Fitting Manufacturing
333131	Mining Machinery and Equipment Manufacturing
333132	Oil and Gas Field Machinery and Equipment Manufacturing
333242	Semiconductor Machinery Manufacturing
333243	Sawmill, Woodworking, and Paper Machinery Manufacturing
333244	Printing Machinery and Equipment Manufacturing
333249	Other Industrial Machinery Manufacturing
333314	Optical Instrument and Lens Manufacturing
333316	Photographic and Photocopying Equipment Manufacturing
333318	Other Commercial and Service Industry Machinery Manufacturing
333511	Industrial Mold Manufacturing
333515	Cutting Tool and Machine Tool Accessory Manufacturing
333519	Rolling Mill and Other Metalworking Machinery Manufacturing
333618	Other Engine Equipment Manufacturing
333911	Pump and Pumping Equipment Manufacturing
333912	Air and Gas Compressor Manufacturing
333913	Measuring and Dispensing Pump Manufacturing
333991	Power-Driven Handtool Manufacturing
333992	Welding and Soldering Equipment Manufacturing
333994	Industrial Process Furnace and Oven Manufacturing
333996	Fluid Power Pump and Motor Manufacturing
334111	Electronic Computer Manufacturing

334112	Computer Storage Device Manufacturing
334118	Computer Terminal and Other Computer Peripheral Equipment Manufacturing
334210	Telephone Apparatus Manufacturing
334220	Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing
334290	Other Communications Equipment Manufacturing
334310	Audio and Video Equipment Manufacturing
334412	Bare Printed Circuit Board Manufacturing
334413	Semiconductor and Related Device Manufacturing
334417	Electronic Connector Manufacturing
334418	Printed Circuit Assembly (Electronic Assembly) Manufacturing
334510	Electromedical and Electrotherapeutic Apparatus Manufacturing
334511	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing
334513	Instruments and Related Products Manufacturing for Measuring, Displaying, and Controlling Industrial Process Variables
334514	Totalizing Fluid Meter and Counting Device Manufacturing
334515	Instrument Manufacturing for Measuring and Testing Electricity and Electrical Signals
334516	Analytical Laboratory Instrument Manufacturing
334517	Irradiation Apparatus Manufacturing
334519	Other Measuring and Controlling Device Manufacturing
334613	Blank Magnetic and Optical Recording Media Manufacturing

334614	Software and Other Prerecorded Compact Disc, Tape, and Record Reproducing
335121	Residential Electric Lighting Fixture Manufacturing
335122	Commercial, Industrial, and Institutional Electric Lighting Fixture Manufacturing
335129	Other Lighting Equipment Manufacturing
335210	Small Electrical Appliance Manufacturing
335314	Relay and Industrial Control Manufacturing
335921	Fiber Optic Cable Manufacturing
335929	Other Communication and Energy Wire Manufacturing
335931	Current-Carrying Wiring Device Manufacturing
336412	Aircraft Engine and Engine Parts Manufacturing
336413	Other Aircraft Parts and Auxiliary Equipment Manufacturing
336414	Guided Missile and Space Vehicle Manufacturing
336415	Guided Missile and Space Vehicle Propulsion Unit and Propulsion Unit Parts Manufacturing
336419	Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing
336991	Motorcycle, Bicycle, and Parts Manufacturing
336992	Military Armored Vehicle, Tank, and Tank Component Manufacturing
336999	All Other Transportation Equipment Manufacturing
339112	Surgical and Medical Instrument Manufacturing
339113	Surgical Appliance and Supplies Manufacturing
339114	Dental Equipment and Supplies Manufacturing
339116	Dental Laboratories
339910	Jewelry and Silverware Manufacturing
339930	Doll, Toy, and Game Manufacturing

339991	Gasket, Packing, and Sealing Device Manufacturing
Wholesale Trade	
423410	Photographic Equipment and Supplies Merchant Wholesalers
423420	Office Equipment Merchant Wholesalers
423430	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers
423440	Other Commercial Equipment Merchant Wholesalers
423450	Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers
423460	Ophthalmic Goods Merchant Wholesalers
423490	Other Professional Equipment and Supplies Merchant Wholesalers
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers
423620	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers
423690	Other Electronic Parts and Equipment Merchant Wholesalers
423810	Construction and Mining (except Oil Well) Machinery and Equipment Merchant Wholesalers
423820	Farm and Garden Machinery and Equipment Merchant Wholesalers
423830	Industrial Machinery and Equipment Merchant Wholesalers
423840	Industrial Supplies Merchant Wholesalers
423850	Service Establishment Equipment and Supplies Merchant Wholesalers
423860	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers
423910	Sporting and Recreational Goods and Supplies Merchant Wholesalers
423920	Toy and Hobby Goods and Supplies Merchant Wholesalers

423940	Jewelry, Watch, Precious Stone, and Precious Metal Merchant Wholesalers
423990	Other Miscellaneous Durable Goods Merchant Wholesalers
424110	Printing and Writing Paper Merchant Wholesalers
424120	Stationery and Office Supplies Merchant Wholesalers
424130	Industrial and Personal Service Paper Merchant Wholesalers
424210	Drugs and Druggists' Sundries Merchant Wholesalers
424310	Piece Goods, Notions, and Other Dry Goods Merchant Wholesalers
424320	Men's and Boys' Clothing and Furnishings Merchant Wholesalers
424330	Women's, Children's, and Infants' Clothing and Accessories Merchant Wholesalers
424340	Footwear Merchant Wholesalers
424710	Petroleum Bulk Stations and Terminals
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)
Retail Trade	
441110	New Car Dealers
441120	Used Car Dealers
442210	Floor Covering Stores
443141	Household Appliance Stores
443142	Electronics Stores
444210	Outdoor Power Equipment Stores
445120	Convenience Stores
445220	Fish and Seafood Markets
445230	Fruit and Vegetable Markets
445291	Baked Goods Stores
445292	Confectionery and Nut Stores
445299	All Other Specialty Food Stores
445310	Beer, Wine, and Liquor Stores
446110	Pharmacies and Drug Stores
446120	Cosmetics, Beauty Supplies, and Perfume Stores
446130	Optical Goods Stores

446191	Food (Health) Supplement Stores
446199	All Other Health and Personal Care Stores
447110	Gasoline Stations with Convenience Stores
447190	Other Gasoline Stations
448110	Men's Clothing Stores
448120	Women's Clothing Stores
448130	Children's and Infants' Clothing Stores
448140	Family Clothing Stores
448150	Clothing Accessories Stores
448190	Other Clothing Stores
448210	Shoe Stores
448310	Jewelry Stores
448320	Luggage and Leather Goods Stores
451110	Sporting Goods Stores
451120	Hobby, Toy, and Game Stores
451130	Sewing, Needlework, and Piece Goods Stores
451140	Musical Instrument and Supplies Stores
451211	Book Stores
451212	News Dealers and Newsstands
453110	Florists
453210	Office Supplies and Stationery Stores
453220	Gift, Novelty, and Souvenir Stores
453920	Art Dealers
453930	Manufactured (Mobile) Home Dealers
453991	Tobacco Stores
453998	All Other Miscellaneous Store Retailers (except Tobacco Stores)
454111	Electronic Shopping
454112	Electronic Auctions
454113	Mail-Order Houses
454210	Vending Machine Operators
Transportation and Warehousing	
481112	Scheduled Freight Air Transportation
481211	Nonscheduled Chartered Passenger Air Transportation

481212	Nonscheduled Chartered Freight Air Transportation
481219	Other Nonscheduled Air Transportation
483111	Deep Sea Freight Transportation
483112	Deep Sea Passenger Transportation
483211	Inland Water Freight Transportation
486210	Pipeline Transportation of Natural Gas
486910	Pipeline Transportation of Refined Petroleum Products
486990	All Other Pipeline Transportation
487210	Scenic and Sightseeing Transportation, Water
487990	Scenic and Sightseeing Transportation, Other
488510	Freight Transportation Arrangement
493130	Farm Product Warehousing and Storage
Information	
511110	Newspaper Publishers
511120	Periodical Publishers
511130	Book Publishers
511140	Directory and Mailing List Publishers
511191	Greeting Card Publishers
511199	All Other Publishers
511210	Software Publishers
512110	Motion Picture and Video Production
512120	Motion Picture and Video Distribution
512131	Motion Picture Theaters (except Drive-Ins)
512132	Drive-In Motion Picture Theaters
512191	Teleproduction and Other Postproduction Services
512199	Other Motion Picture and Video Industries
515111	Radio Networks
515112	Radio Stations
515120	Television Broadcasting
517210	Wireless Telecommunications Carriers (except Satellite)

517911	Telecommunications Resellers
517919	All Other Telecommunications
519110	News Syndicates
519120	Libraries and Archives
519190	All Other Information Services
Finance and Insurance	
522110	Commercial Banking
522120	Savings Institutions
522130	Credit Unions
522190	Other Depository Credit Intermediation
522210	Credit Card Issuing
522220	Sales Financing
522291	Consumer Lending
522292	Real Estate Credit
522293	International Trade Financing
522294	Secondary Market Financing
522298	All Other Nondepository Credit Intermediation
522310	Mortgage and Nonmortgage Loan Brokers
522320	Financial Transactions Processing, Reserve, and Clearinghouse Activities
522390	Other Activities Related to Credit Intermediation
523910	Miscellaneous Intermediation
523920	Portfolio Management
523991	Trust, Fiduciary, and Custody Activities
523999	Miscellaneous Financial Investment Activities
524113	Direct Life Insurance Carriers
524114	Direct Health and Medical Insurance Carriers
524126	Direct Property and Casualty Insurance Carriers
524127	Direct Title Insurance Carriers
524128	Other Direct Insurance (except Life, Health, and Medical) Carriers
524130	Reinsurance Carriers
524210	Insurance Agencies and Brokerages
524291	Claims Adjusting

524292	Third Party Administration of Insurance and Pension Funds
524298	All Other Insurance Related Activities
Real Estate and Rental and Leasing	
531120	Lessors of Nonresidential Buildings (except Miniwarehouses)
531210	Offices of Real Estate Agents and Brokers
531311	Residential Property Managers
531312	Nonresidential Property Managers
531320	Offices of Real Estate Appraisers
531390	Other Activities Related to Real Estate
532210	Consumer Electronics and Appliances Rental
532220	Formal Wear and Costume Rental
532411	Commercial Air, Rail, and Water Transportation Equipment Rental and Leasing
532412	Construction, Mining, and Forestry Machinery and Equipment Rental and Leasing
532420	Office Machinery and Equipment Rental and Leasing
532490	Other Commercial and Industrial Machinery and Equipment Rental and Leasing
Professional, Scientific, and Technical Services	
541110	Offices of Lawyers
541120	Offices of Notaries
541191	Title Abstract and Settlement Offices
541199	All Other Legal Services
541213	Tax Preparation Services
541214	Payroll Services
541219	Other Accounting Services
541310	Architectural Services
541320	Landscape Architectural Services
541330	Engineering Services
541340	Drafting Services
541350	Building Inspection Services
541360	Geophysical Surveying and Mapping Services
541370	Surveying and Mapping (except Geophysical) Services

541380	Testing Laboratories
541410	Interior Design Services
541420	Industrial Design Services
541430	Graphic Design Services
541490	Other Specialized Design Services
541511	Custom Computer Programming Services
541512	Computer Systems Design Services
541513	Computer Facilities Management Services
541519	Other Computer Related Services
541620	Environmental Consulting Services
541690	Other Scientific and Technical Consulting Services
541711	Research and Development in Biotechnology
541712	Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology)
541720	Research and Development in the Social Sciences and Humanities
541810	Advertising Agencies
541820	Public Relations Agencies
541830	Media Buying Agencies
541840	Media Representatives
541850	Outdoor Advertising
541860	Direct Mail Advertising
541870	Advertising Material Distribution Services
541890	Other Services Related to Advertising
541921	Photography Studios, Portrait
541922	Commercial Photography
541930	Translation and Interpretation Services
541990	All Other Professional, Scientific, and Technical Services
Management of Companies and Enterprises	
551111	Offices of Bank Holding Companies
551112	Offices of Other Holding Companies
551114	Corporate, Subsidiary, and Regional Managing Offices

Administrative and Support and Waste Management and Remediation Services

561110	Office Administrative Services
561311	Employment Placement Agencies
561312	Executive Search Services
561320	Temporary Help Services
561330	Professional Employer Organizations
561410	Document Preparation Services
561421	Telephone Answering Services
561422	Telemarketing Bureaus and Other Contact Centers
561431	Private Mail Centers
561439	Other Business Service Centers (including Copy Shops)
561440	Collection Agencies
561450	Credit Bureaus
561491	Repossession Services
561492	Court Reporting and Stenotype Services
561499	All Other Business Support Services
561510	Travel Agencies
561520	Tour Operators
561591	Convention and Visitors Bureaus
561599	All Other Travel Arrangement and Reservation Services
561611	Investigation Services
561612	Security Guards and Patrol Services
561621	Security Systems Services (except Locksmiths)
561622	Locksmiths
561740	Carpet and Upholstery Cleaning Services
561910	Packaging and Labeling Services
561920	Convention and Trade Show Organizers
561990	All Other Support Services
562211	Hazardous Waste Treatment and Disposal
562213	Solid Waste Combustors and Incinerators

Educational Services

611110	Elementary and Secondary Schools
--------	----------------------------------

611310	Colleges, Universities, and Professional Schools
611420	Computer Training
611430	Professional and Management Development Training
611511	Cosmetology and Barber Schools
611512	Flight Training
611513	Apprenticeship Training
611519	Other Technical and Trade Schools
611610	Fine Arts Schools
611691	Exam Preparation and Tutoring
611692	Automobile Driving Schools
611699	All Other Miscellaneous Schools and Instruction
611710	Educational Support Services
Health Care and Social Assistance	
621111	Offices of Physicians (except Mental Health Specialists)
621112	Offices of Physicians, Mental Health Specialists
621210	Offices of Dentists
621310	Offices of Chiropractors
621320	Offices of Optometrists
621330	Offices of Mental Health Practitioners (except Physicians)
621340	Offices of Physical, Occupational and Speech Therapists, and Audiologists
621391	Offices of Podiatrists
621399	Offices of All Other Miscellaneous Health Practitioners
621410	Family Planning Centers
621420	Outpatient Mental Health and Substance Abuse Centers
621491	HMO Medical Centers
621492	Kidney Dialysis Centers
621493	Freestanding Ambulatory Surgical and Emergency Centers
621498	All Other Outpatient Care Centers
621511	Medical Laboratories
621512	Diagnostic Imaging Centers
624110	Child and Youth Services
624221	Temporary Shelters

624229	Other Community Housing Services
624410	Child Day Care Services
Arts, Entertainment and Recreation	
711219	Other Spectator Sports
711310	Promoters of Performing Arts, Sports, and Similar Events with Facilities
711320	Promoters of Performing Arts, Sports, and Similar Events without Facilities
711510	Independent Artists, Writers, and Performers
713940	Fitness and Recreational Sports Centers
713950	Bowling Centers
713990	All Other Amusement and Recreation Industries
Accommodation and Food Services	
721191	Bed-and-Breakfast Inns
721199	All Other Traveler Accommodation
722410	Drinking Places (Alcoholic Beverages)
722511	Full-Service Restaurants
722513	Limited-Service Restaurants
722514	Cafeterias, Grill Buffets, and Buffets
722515	Snack and Nonalcoholic Beverage Bars
Other Services	
811111	General Automotive Repair
811112	Automotive Exhaust System Repair
811113	Automotive Transmission Repair
811118	Other Automotive Mechanical and Electrical Repair and Maintenance
811121	Automotive Body, Paint, and Interior Repair and Maintenance
811122	Automotive Glass Replacement Shops
811191	Automotive Oil Change and Lubrication Shops
811192	Car Washes
811198	All Other Automotive Repair and Maintenance
811211	Consumer Electronics Repair and Maintenance

811212	Computer and Office Machine Repair and Maintenance
811213	Communication Equipment Repair and Maintenance
811219	Other Electronic and Precision Equipment Repair and Maintenance
811411	Home and Garden Equipment Repair and Maintenance
811412	Appliance Repair and Maintenance
811420	Reupholstery and Furniture Repair
811430	Footwear and Leather Goods Repair
811490	Other Personal and Household Goods Repair and Maintenance
812210	Funeral Homes and Funeral Services
812220	Cemeteries and Crematories
812320	Drycleaning and Laundry Services (except Coin-Operated)
812921	Photofinishing Laboratories (except One-Hour)
812922	One-Hour Photofinishing
812930	Parking Lots and Garages