

VOSH PROGRAM DIRECTIVE: 02-003T**ISSUED: April 15, 2019****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 1.5 for 2017.**
- 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.

Certification

This Program Directive is considered to meet the definition of "guidance document" contained in a §2.2-4101 of the Code of Virginia: "any document developed by a state agency or staff that provides information or guidance of general applicability to the staff or public to interpret or implement statutes or the agency's rules or regulations, excluding agency minutes or documents that pertain only to the internal management of agencies."

Notwithstanding the issuance date of this Program Directive, and in accordance with §2.2-4002.1.B of the Code of Virginia, this Program Directive **has been or will be** subject to a 30-day public comment period, to include public comment through the Virginia Regulatory Town Hall website, after publication in the Virginia Register of Regulations and prior to its effective date.

Notwithstanding the issuance date of this Program Directive, and in accordance with §2.2-4002.1.C of the Code of Virginia, if a written comment is received during a public comment period asserting that the guidance document is contrary to state law or regulation, or that the document should not be exempted from the provisions of this chapter, the effective date of the guidance document by the agency shall be delayed for an additional 30-day period. During this additional period, the agency shall respond to any such comments in writing by certified mail to the commenter or by posting the response electronically in a manner consistent with the provisions for publication of comments on regulations provided in this chapter. Any person who remains aggrieved after the effective date of the final guidance document may avail himself of the remedies articulated in Article 5 (§ 2.2-4025 et seq.).

Scope This Directive applies to all VOSH personnel.

References OSHA Instr. CPL 02-00-051 (May 28, 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 (July 29, 2014)); and

Update of Appendix “A” (Memo: Loren Sweatt, U.S. Assistant Secretary, OSHA (December 18, 2018))

Cancellation VOSH Program Directive 02-003S (June 15, 2018)

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

Effective Date May 30, 2019

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, July 29, 2014); and
 - Attachments: OSHA Instruction CPL 02-00-051 (28 May 1998); and Revised Appendix “A” (December 18, 2018)

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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 (December 18, 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 December 18, 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 as well.** 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"~~
Change effective 12/18/2018 - Appendix "A"

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- 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

DEC 18 2018

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 1.5 for 2017. 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 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 compliance officer 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 at (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 1.5 for 2017.

Source: Bureau of Labor Statistic (BLS) data released November 8, 2018

2012 NAICS Code	2012 NAICS Title
Agriculture, Forestry, Fishing and Hunting	
113310	Logging
115310	Support Activities for Forestry
Mining	
211111	Crude Petroleum and Natural Gas Extraction
211112	Natural Gas Liquid Extraction
213111	Drilling Oil and Gas Wells
213112	Support Activities for Oil and Gas Operations
Utilities	
221111	Hydroelectric Power Generation
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
221210	Natural Gas Distribution
221320	Sewage Treatment Facilities
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

238190	Other Foundation, Structure, and Building Exterior Contractors
238210	Electrical Contractors and Other Wiring Installation Contractors
Manufacturing	
311221	Wet Corn Milling
311811	Retail Bakeries
311930	Flavoring Syrup and Concentrate Manufacturing
312120	Breweries
313110	Fiber, Yarn, and Thread Mills
313210	Broadwoven Fabric Mills
313310	Textile and Fabric Finishing Mills
314994	Rope, Cordage, Twine, Tire Cord, and Tire Fabric Mills
314999	All Other Miscellaneous Textile Product Mills
315190	Other Apparel Knitting Mills
315210	Cut and Sew Apparel Contractors
315240	Women's, Girls', and Infants' Cut and Sew Apparel Manufacturing
321114	Wood Preservation
321219	Reconstituted Wood Product Manufacturing
322110	Pulp Mills
322121	Paper (except Newsprint) Mills
322122	Newsprint Mills
322130	Paperboard Mills
322291	Sanitary Paper Product Manufacturing
323111	Commercial Printing (except Screen and Books)
323113	Commercial Screen Printing
324110	Petroleum Refineries
324122	Asphalt Shingle and Coating Materials 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
325220	Artificial and Synthetic Fibers and Filaments Manufacturing
325311	Nitrogenous Fertilizer Manufacturing
325312	Phosphatic Fertilizer Manufacturing
325411	Medicinal and Botanical 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
325920	Explosives Manufacturing
325992	Photographic Film, Paper, Plate, and Chemical Manufacturing
327992	Ground or Treated Mineral and Earth Manufacturing
331110	Iron and Steel Mills and Ferroalloy Manufacturing
331315	Aluminum Sheet, Plate, and Foil Manufacturing
331410	Nonferrous Metal (except Aluminum) Smelting and Refining
332911	Industrial Valve Manufacturing
332912	Fluid Power Valve and Hose Fitting Manufacturing
332991	Ball and Roller Bearing Manufacturing
332992	Small Arms Ammunition Manufacturing
332993	Ammunition (except Small Arms) Manufacturing
333131	Mining Machinery and Equipment Manufacturing
333132	Oil and Gas Field Machinery and Equipment Manufacturing
333242	Semiconductor 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
333511	Industrial Mold Manufacturing
333515	Cutting Tool and Machine Tool Accessory Manufacturing
333611	Turbine and Turbine Generator Set Units 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
333993	Packaging Machinery Manufacturing
333996	Fluid Power Pump and Motor Manufacturing
333999	All Other Miscellaneous General Purpose Machinery 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
334416	Capacitor, Resistor, Coil, Transformer, and Other Inductor Manufacturing
334417	Electronic Connector Manufacturing
334418	Printed Circuit Assembly (Electronic Assembly) Manufacturing
334419	Other Electronic Component Manufacturing
334510	Electromedical and Electrotherapeutic Apparatus Manufacturing
334511	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing
334512	Automatic Environmental Control Manufacturing for Residential, Commercial, and Appliance Use
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
335110	Electric Lamp Bulb and Part Manufacturing
335122	Commercial, Industrial, and Institutional Electric Lighting Fixture Manufacturing
335221	Household Cooking Appliance Manufacturing
335312	Motor and Generator Manufacturing
335313	Switchgear and Switchboard Apparatus Manufacturing
335314	Relay and Industrial Control Manufacturing
335921	Fiber Optic Cable Manufacturing
335931	Current-Carrying Wiring Device Manufacturing
335999	All Other Miscellaneous Electrical Equipment and Component 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

339920	Sporting and Athletic Goods Manufacturing
339993	Fastener, Button, Needle, and Pin 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
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
424610	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers
424690	Other Chemical and Allied Products Merchant Wholesalers
Retail Trade	
441110	New Car Dealers
441120	Used Car Dealers
441222	Boat Dealers
441228	Motorcycle, ATV, and All Other Motor Vehicle Dealers
443141	Household Appliance Stores
443142	Electronics Stores
444120	Paint and Wallpaper Stores
444210	Outdoor Power Equipment Stores
445120	Convenience Stores
445220	Fish and Seafood Markets
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
448150	Clothing Accessories Stores
448190	Other Clothing Stores
448210	Shoe Stores
448310	Jewelry Stores
448320	Luggage and Leather Goods Stores
451110	Sporting Goods Stores
451140	Musical Instrument and Supplies Stores
451211	Book Stores

451212	News Dealers and Newsstands
453210	Office Supplies and Stationery Stores
453220	Gift, Novelty, and Souvenir Stores
453991	Tobacco Stores
453998	All Other Miscellaneous Store Retailers (except Tobacco Stores)
454111	Electronic Shopping
454112	Electronic Auctions
454113	Mail-Order Houses
Transportation and Warehousing	
481211	Nonscheduled Chartered Passenger Air Transportation
481212	Nonscheduled Chartered Freight Air Transportation
481219	Other Nonscheduled Air Transportation
483112	Deep Sea Passenger Transportation
483113	Coastal and Great Lakes Freight Transportation
483211	Inland Water Freight Transportation
483212	Inland Water Passenger Transportation
486210	Pipeline Transportation of Natural Gas
487210	Scenic and Sightseeing Transportation, Water
487990	Scenic and Sightseeing Transportation, Other
488330	Navigational Services to Shipping
488510	Freight Transportation Arrangement
488991	Packing and Crating
488999	All Other Support Activities for Transportation
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
512240	Sound Recording Studios
512290	Other Sound Recording 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
519130	Internet Publishing and Broadcasting and Web Search Portals
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
523110	Investment Banking and Securities Dealing
523120	Securities Brokerage
523130	Commodity Contracts Dealing
523910	Miscellaneous Intermediation
523920	Portfolio Management
523930	Investment Advice
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	
531210	Offices of Real Estate Agents and Brokers
531320	Offices of Real Estate Appraisers
531390	Other Activities Related to Real Estate
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
541211	Offices of Certified Public Accountants
541213	Tax Preparation Services
541214	Payroll Services
541219	Other Accounting Services
541310	Architectural Services
541320	Landscape Architectural Services
541330	Engineering 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
541611	Administrative Management and General Management Consulting Services
541612	Human Resources Consulting Services
541613	Marketing Consulting Services
541614	Process, Physical Distribution, and Logistics Consulting Services
541618	Other Management Consulting 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
541910	Marketing Research and Public Opinion Polling
541921	Photography Studios, Portrait
541922	Commercial Photography
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
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
561910	Packaging and Labeling Services
561920	Convention and Trade Show Organizers
561990	All Other Support Services
562213	Solid Waste Combustors and Incinerators
562910	Remediation Services
Educational Services	
611110	Elementary and Secondary Schools
611210	Junior Colleges
611310	Colleges, Universities, and Professional Schools
611410	Business and Secretarial Schools
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	
621112	Offices of Physicians, Mental Health Specialists
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
621610	Home Health Care Services
624110	Child and Youth Services
624190	Other Individual and Family Services
624230	Emergency and Other Relief Services
624410	Child Day Care Services
Arts, Entertainment and Recreation	
711410	Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures
713940	Fitness and Recreational Sports Centers
713950	Bowling Centers
Accommodation and Food Services	
721211	RV (Recreational Vehicle) Parks and Campgrounds
721214	Recreational and Vacation Camps (except Campgrounds)
722410	Drinking Places (Alcoholic Beverages)
722511	Full-Service Restaurants
722513	Limited-Service Restaurants

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
812111	Barber Shops
812112	Beauty Salons
812113	Nail Salons
812191	Diet and Weight Reducing Centers
812199	Other Personal Care Services

812320	Drycleaning and Laundry Services (except Coin-Operated)
812921	Photofinishing Laboratories (except One-Hour)
812922	One-Hour Photofinishing
812930	Parking Lots and Garages
812990	All Other Personal Services