

# HIOSH DIRECTIVE

<b>DIRECTIVE NO.: CPL 02-00-170</b>	<b>EFFECTIVE DATE: July 18, 2024</b> <b>RE-ISSUED: December 13, 2024</b>
<b>SUBJECT:</b> <b>Enforcement Exemptions and Limitations Under the Annual Appropriations Act</b>	

**Clarifications:** For purposes of this OSHA Program Directive adopted by HIOSH, the following terms are defined:

Where the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) refers to the following terms or locations for HIOSH, their equivalent will be:

**11(c) of the OSHA Act:** §396-8(e), Hawaii Revised Statutes (HRS).

**1904:** As incorporated and amended in section §12-52.1, Hawaii Administrative Rules (HAR)

**1910:** As incorporated and amended in section §12-60, Hawaii Administrative Rules (HAR)

**1926:** As incorporated and amended in section §12-110, Hawaii Administrative Rules (HAR)

**1928:** As incorporated and amended in section §12-208, Hawaii Administrative Rules (HAR)

**Area Director(s)/Regional Administrator(s):** HIOSH Administrator or designated representative

**Compliance Safety and Health Officer(s) (CSHO/CSHOs):**

Environmental Health Specialist(s) (EHS/EHS's) and  
Occupational Safety & Health Compliance Officer(s) (OSHCO/OSHCOS)

**OSHA (Including Regional and Area Offices):**

Hawaii Occupational Safety & Health (HIOSH)  
Enforcement/Compliance and Consultation & Training,  
located at 830 Punchbowl Street, Room 425, Honolulu, Hawaii 96813

**Occupational Safety and Health Act of 1970 (Act):**

Chapter §396, Hawaii Revised Statutes, Hawaii Occupational Safety and Health Law.

**References:** Directive references adopted by HIOSH can be found at <http://labor.hawaii.gov/hiosh/guidelines/directives/> .

**By and Under the Authority of**

**HIOSH Administrator**



November 14, 2024

**MEMORANDUM FOR:** REGIONAL ADMINISTRATORS  
STATE DESIGNEES

**FROM:** SCOTT C. KETCHAM   
Director, Directorate of Enforcement Programs

**SUBJECT:** 2024 Low-Hazard Industries Table

Below 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 incidence rate below the national private sector average rate of 1.5 per 100 full-time equivalent workers for 2023. Incidence rate data were released on November 8, 2024, by the Bureau of Labor Statistics.

This new Low-Hazard Industries Table is referenced in [Enforcement Exemptions and Limitations under the Appropriations Act](#) (CPL 02-00-170) and contains the latest BLS occupational injury and illness rate data at the most precise industrial classification code. This updated Low-Hazard Industries list is effective for inspections opened on or after November 8, 2024.

Please note that per CPL 02-00-0170, if OSHA determines 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 most current BLS all-industry national average DART rate, 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 it becomes clear after an inspection that an employer was exempt from inspection or other OSHA activity under the applicable Appropriations Act limitations or exemptions at the time of the inspection, OSHA shall ensure that no citations are issued and/or penalties proposed as described in CPL 02-00-0170. If citations have already been issued and OSHA becomes aware that an Appropriations Act limitation or exemption may have applied, the Area Director should notify the Regional Administrator or designee promptly, the Regional Solicitor should be consulted on matters concerning such late discoveries, and prompt, collaborative steps should be

taken to address and, if appropriate, rescind any erroneously issued citations under such circumstances.

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

## Low-Hazard Industries Table of NAICS

The national private sector average rate of 1.5 per 100 full-time equivalent workers for 2023. Incidence rate data were released on November 8, 2024, by the Bureau of Labor Statistics.

NAICS Code	NAICS Title
<b>Oil and Gas Extraction</b>	
211120	Crude Petroleum Extraction
211130	Natural Gas Extraction
213111	Drilling Oil and Gas Wells
213112	Support Activities for Oil and Gas Operations
<b>Utilities</b>	
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
221117	Biomass 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
221330	Steam and Air-Conditioning Supply
<b>Construction</b>	
236210	Industrial Building Construction
236220	Commercial and Institutional Building Construction
237110	Water and Sewer Line and Related Structures Construction
237120	Oil and Gas Pipeline and Related Structures Construction
237130	Power and Communication Line and Related Structures Construction
237210	Land Subdivision
237990	Other Heavy and Civil Engineering Construction
238210	Electrical Contractors and Other Wiring Installation Contractors
238290	Other Building Equipment Contractors
238320	Painting and Wall Covering Contractors
238340	Tile and Terrazzo Contractors
238910	Site Preparation Contractors

<sup>1</sup> North American Industry Classification System United States, 2017

NAICS Code	NAICS Title
238990	All Other Specialty Trade Contractors
<b>Manufacturing</b>	
311230	Breakfast Cereal Manufacturing
311314	Cane Sugar Manufacturing
311352	Confectionery Manufacturing from Purchased Chocolate
311514	Dry, Condensed, and Evaporated Dairy Product Manufacturing
311811	Retail Bakeries
311920	Coffee and Tea Manufacturing
311942	Spice and Extract Manufacturing
312140	Distilleries
313310	Textile and Fabric Finishing Mills
314110	Carpet and Rug Mills
314910	Textile Bag and Canvas Mills
314994	Rope, Cordage, Twine, Tire Cord, and Tire Fabric Mills
314999	All Other Miscellaneous Textile Product Mills
315110	Hosiery and Sock Mills
315190	Other Apparel Knitting Mills
315210	Cut and Sew Apparel Contractors
315220	Men's and Boys' Cut and Sew Apparel Manufacturing
315240	Women's, Girls', and Infants' Cut and Sew Apparel Manufacturing
315280	Other Cut and Sew Apparel Manufacturing
321219	Reconstituted Wood Product Manufacturing
322110	Pulp Mills
322130	Paperboard Mills
322212	Folding Paperboard Box Manufacturing
322230	Stationery Product Manufacturing
323111	Commercial Printing (except Screen and Books)
323113	Commercial Screen Printing
324110	Petroleum Refineries
324121	Asphalt Paving Mixture and Block Manufacturing
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
325212	Synthetic Rubber Manufacturing
325220	Artificial and Synthetic Fibers and Filaments Manufacturing

NAICS Code	NAICS Title
325311	Nitrogenous Fertilizer Manufacturing
325312	Phosphatic Fertilizer Manufacturing
325314	Fertilizer (Mixing Only) Manufacturing
325320	Pesticide and Other Agricultural Chemical Manufacturing
325411	Medicinal and Botanical Manufacturing
325412	Pharmaceutical Preparation Manufacturing
325414	Biological Product (except Diagnostic) Manufacturing
325520	Adhesive Manufacturing
325611	Soap and Other Detergent Manufacturing
325613	Surface Active Agent Manufacturing
325620	Toilet Preparation Manufacturing
325910	Printing Ink Manufacturing
326112	Plastics Packaging Film and Sheet (including Laminated) Manufacturing
326113	Unlaminated Plastics Film and Sheet (except Packaging) Manufacturing
326121	Unlaminated Plastics Profile Shape Manufacturing
326140	Polystyrene Foam Product Manufacturing
326160	Plastics Bottle Manufacturing
326220	Rubber and Plastics Hoses and Belting Manufacturing
326299	All Other Rubber Product Manufacturing
327410	Lime Manufacturing
327993	Mineral Wool Manufacturing
331110	Iron and Steel Mills and Ferroalloy Manufacturing
331313	Alumina Refining and Primary Aluminum Production
331314	Secondary Smelting and Alloying of Aluminum
331315	Aluminum Sheet, Plate, and Foil Manufacturing
331491	Nonferrous Metal (except Copper and Aluminum) Rolling, Drawing, and Extruding
332410	Power Boiler and Heat Exchanger Manufacturing
332420	Metal Tank (Heavy Gauge) Manufacturing
332710	Machine Shops
332811	Metal Heat Treating
332911	Industrial Valve Manufacturing
332912	Fluid Power Valve and Hose Fitting Manufacturing
332913	Plumbing Fixture Fitting and Trim Manufacturing
332919	Other Metal Valve and Pipe Fitting Manufacturing
332992	Small Arms Ammunition Manufacturing
332994	Small Arms, Ordnance, and Ordnance Accessories Manufacturing
333112	Lawn and Garden Tractor and Home Lawn and Garden Equipment Manufacturing
333132	Oil and Gas Field Machinery and Equipment Manufacturing
333241	Food Product Machinery Manufacturing

NAICS Code	NAICS Title
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
333318	Other Commercial and Service Industry Machinery Manufacturing
333415	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing
333514	Special Die and Tool, Die Set, Jig, and Fixture Manufacturing
333515	Cutting Tool and Machine Tool Accessory Manufacturing
333517	Machine Tool Manufacturing
333519	Rolling Mill and Other Metalworking Machinery Manufacturing
333611	Turbine and Turbine Generator Set Units Manufacturing
333613	Mechanical Power Transmission Equipment Manufacturing
333618	Other Engine Equipment Manufacturing
333912	Air and Gas Compressor Manufacturing
333914	Measuring, Dispensing, and Other Pumping Equipment Manufacturing
333993	Packaging 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
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

NAICS Code	NAICS Title
334519	Other Measuring and Controlling Device Manufacturing
335110	Electric Lamp Bulb and Part Manufacturing
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
335220	Major Household Appliance Manufacturing
335312	Motor and Generator Manufacturing
335313	Switchgear and Switchboard Apparatus Manufacturing
335314	Relay and Industrial Control Manufacturing
335912	Primary Battery Manufacturing
335921	Fiber Optic Cable Manufacturing
335931	Current-Carrying Wiring Device Manufacturing
335991	Carbon and Graphite Product Manufacturing
335999	All Other Miscellaneous Electrical Equipment and Component Manufacturing
336411	Aircraft 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
336510	Railroad Rolling Stock Manufacturing
336992	Military Armored Vehicle, Tank, and Tank Component Manufacturing
337211	Wood Office Furniture Manufacturing
337212	Custom Architectural Woodwork and Millwork 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
339930	Doll, Toy, and Game Manufacturing
339940	Office Supplies (except Paper) Manufacturing
339991	Gasket, Packing, and Sealing Device Manufacturing
<b>Wholesale Trade</b>	
423210	Furniture Merchant Wholesalers
423220	Home Furnishing Merchant Wholesalers
423410	Photographic Equipment and Supplies Merchant Wholesalers



NAICS Code	NAICS Title
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
423710	Hardware Merchant Wholesalers
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers
423730	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers
423740	Refrigeration Equipment and Supplies 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
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
424710	Petroleum Bulk Stations and Terminals
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)
<b>Retail Trade</b>	
441110	New Car Dealers

NAICS Code	NAICS Title
441120	Used Car Dealers
441210	Recreational Vehicle Dealers
441222	Boat Dealers
441228	Motorcycle, ATV, and All Other Motor Vehicle Dealers
442210	Floor Covering Stores
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
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
446191	Food (Health) Supplement Stores
446199	All Other Health and Personal Care Stores
447110	Gasoline Stations with Convenience Stores
448110	Men'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
451130	Sewing, Needlework, and Piece Goods Stores
451211	Book Stores
451212	News Dealers and Newsstands
453210	Office Supplies and Stationery Stores
453220	Gift, Novelty, and Souvenir Stores
453920	Art Dealers
454110	Electronic Shopping and Mail-Order Houses
454390	Other Direct Selling Establishments
<b>Transportation and Warehousing</b>	
481211	Nonscheduled Chartered Passenger Air Transportation
481212	Nonscheduled Chartered Freight Air Transportation

NAICS Code	NAICS Title
481219	Other Nonscheduled Air Transportation
483111	Deep Sea Freight Transportation
483112	Deep Sea Passenger Transportation
483113	Coastal and Great Lakes Freight Transportation
483114	Coastal and Great Lakes Passenger Transportation
485320	Limousine Service
486210	Pipeline Transportation of Natural Gas
487110	Scenic and Sightseeing Transportation, Land
487210	Scenic and Sightseeing Transportation, Water
488310	Port and Harbor Operations
488330	Navigational Services to Shipping
488390	Other Support Activities for Water Transportation
488410	Motor Vehicle Towing
488490	Other Support Activities for Road Transportation
488510	Freight Transportation Arrangement
<b>Information</b>	
511110	Newspaper Publishers
511120	Periodical Publishers
511130	Book Publishers
511140	Directory and Mailing List Publishers
511191	Greeting Card Publishers
511199	All Other 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
515210	Cable and Other Subscription Programming
517312	Wireless Telecommunications Carriers (except Satellite)
519110	News Syndicates
519120	Libraries and Archives
519130	Internet Publishing and Broadcasting and Web Search Portals
519190	All Other Information Services
<b>Finance and Insurance</b>	
522110	Commercial Banking
522120	Savings Institutions

NAICS Code	NAICS Title
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
523140	Commodity Contracts Brokerage
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
525110	Pension Funds
525120	Health and Welfare Funds
525190	Other Insurance Funds
	<b>Real Estate and Rental and Leasing</b>
531120	Lessors of Nonresidential Buildings (except Miniwarehouses)
531190	Lessors of Other Real Estate Property
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
532411	Commercial Air, Rail, and Water Transportation Equipment Rental and Leasing

NAICS Code	NAICS Title
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
<b>Professional, Scientific, and Technical Services</b>	
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
541340	Drafting 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
541713	Research and Development in Nanotechnology
541714	Research and Development in Biotechnology (except Nanobiotechnology)
541715	Research and Development in the Physical, Engineering, and Life Sciences (except Nanotechnology and Biotechnology)
541720	Research and Development in the Social Sciences and Humanities

NAICS Code	NAICS Title
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
<b>Management of Companies and Enterprises</b>	
<b>Administrative and Support and Waste Management and Remediation Services</b>	
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
561710	Exterminating and Pest Control Services
561720	Janitorial Services
562112	Hazardous Waste Collection
562910	Remediation Services
<b>Educational Services</b>	
611110	Elementary and Secondary Schools
611210	Junior Colleges

NAICS Code	NAICS Title
611310	Colleges, Universities, and Professional Schools
611610	Fine Arts Schools
611620	Sports and Recreation Instruction
611630	Language Schools
611691	Exam Preparation and Tutoring
611692	Automobile Driving Schools
611699	All Other Miscellaneous Schools and Instruction
611710	Educational Support Services
<b>Health Care and Social Assistance</b>	
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
621610	Home Health Care Services
624110	Child and Youth Services
624120	Services for the Elderly and Persons with Disabilities
624190	Other Individual and Family Services
624221	Temporary Shelters
624229	Other Community Housing Services
624230	Emergency and Other Relief Services
624410	Child Day Care Services
<b>Arts, Entertainment and Recreation</b>	
711310	Promoters of Performing Arts, Sports, and Similar Events with Facilities
711320	Promoters of Performing Arts, Sports, and Similar Events without Facilities
711410	Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures
713120	Amusement Arcades
713930	Marinas

NAICS Code	NAICS Title
713940	Fitness and Recreational Sports Centers
713950	Bowling Centers
713990	All Other Amusement and Recreation Industries
<b>Accommodation and Food Services</b>	
721191	Bed-and-Breakfast Inns
721199	All Other Traveler Accommodation
721211	RV (Recreational Vehicle) Parks and Campgrounds
721310	Rooming and Boarding Houses, Dormitories, and Workers' Camps
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
<b>Other Services (except Public Administration)</b>	
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
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) 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
812210	Funeral Homes and Funeral Services
812220	Cemeteries and Crematories



NAICS Code	NAICS Title
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



# OSHA INSTRUCTION

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

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**DIRECTIVE NUMBER:** CPL 02-00-170

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**SUBJECT:** Enforcement Exemptions and Limitations under the Annual Appropriations Act

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**DIRECTORATE:** Directorate of Enforcement Programs

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**SIGNATURE DATE:** July 18, 2024

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**EFFECTIVE DATE:** July 18, 2024

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## ABSTRACT

<b>Purpose:</b>	This instruction describes congressional Appropriations Act exemptions and limitations that are applicable to Occupational Safety and Health Administration (OSHA) enforcement activities, compliance assistance, and outreach efforts.
<b>Scope:</b>	This instruction applies OSHA-wide, as well as to Wage and Hour Division (WHD) offices enforcing OSHA's Field Sanitation and Temporary Labor Camp standards in agricultural settings. The Appropriations Act exemptions from and limitations to OSHA's enforcement activities and compliance assistance apply to small farming operations and small employers in low-hazard industries.
<b>References:</b>	See section III for references.
<b>Cancellations:</b>	OSHA Instruction CPL 2-0.51J, May 28, 1998, its supplemental memoranda.
<b>State Plan Impact:</b>	Notice of Intent required. See section VI for State Plan Impact.
<b>Action Offices:</b>	OSHA Regional and Area Offices, On-Site Consultation Programs, and State Plans.
<b>Originating Office:</b>	Directorate of Enforcement Programs, Office of General Industry and Agriculture Enforcement.
<b>Contact:</b>	Directorate of Enforcement Programs Office of General Industry and Agriculture Enforcement Occupational Safety and Health Administration

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By and Under the Authority of

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Assistant Secretary

## Executive Summary

This instruction cancels and replaces OSHA Instruction CPL 2-0.51J, *Enforcement Exemptions and Limitations under the Appropriations Act*, issued May 28, 1998, and its supplemental memoranda. In providing funding for OSHA on a year-by-year basis, Congress has included exemptions and limitations in its annual appropriating legislation (i.e., “Appropriations Act” legislation) concerning two categories of small employers with 10 or fewer employees: farming operations and businesses in low-hazard industries. This instruction explains these exemptions and limitations. Although there has been no substantive change to these Appropriations Act exemptions and limitations since CPL 2-0.51J was issued, this revised instruction further clarifies OSHA’s application of these exemptions, streamlines the process for incorporating yearly changes to the list of low-hazard industries, and includes appendices with additional information.

## Significant Changes

- Added a link to the OSHA webpage with the most recent [Low-Hazard Industries Table of NAICS](#) to section XIII of this Instruction. This change eliminates the need to annually amend this Instruction.
- Moved and updated former Table 1--Exemptions and Limitations to Appendix A and renamed as At-A-Glance Reference Exemptions and Limitations Table.
- Added New Appendix B – Frequently Asked Questions.

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## **I. Purpose.**

This instruction describes congressional Appropriations Act exemptions and limitations that are applicable to OSHA enforcement activities, compliance assistance, and outreach efforts that concern two categories of small employers: farming operations and businesses in low-hazard industries. The Appropriations Act exemptions and limitations only apply to such employers if they employ ten or fewer employees. The references section of this instruction provides a link to the most recent [Low-Hazard Industries Table](#), which lists NAICS<sup>1</sup> industries that currently qualify as low-hazard for purposes of the Appropriations Act exemptions and limitations. The Appendices of this instruction provide additional clarification in applying these exemptions and limitations.

## **II. Scope.**

This instruction applies OSHA-wide, as well as to WHD offices enforcing OSHA's Field Sanitation and Temporary Labor Camp standards in agricultural settings. The Appropriations Act provides exemptions and limitations to OSHA's enforcement and compliance assistance activities for specific employers and farming operations that employ 10 or fewer employees.

## **III. References.**

- A. The Occupational Safety and Health Act (OSH Act), [29 U.S.C. § 654](#).
- B. [Secretary's Order 8-2020](#): Delegation of Authority and Assignment of Responsibility to the Assistant Secretary for Occupational Safety and Health, Federal Register, September 18, 2020 (85 FR 58393).
- C. OSHA Instruction [CPL 02-00-164](#), Field Operations Manual (FOM), December 22, 2022.
- D. OSHA Instruction [CSP 01-00-005](#), State Plan Policies and Procedures Manual, March 6, 2020.
- E. OSHA Instruction [CSP 02-00-005](#), Consultation Policies and Procedures Manual, September 6, 2023.
- F. [Memorandum of Understanding](#) between The U.S. Department of Labor, Occupational Safety and Health Administration and The U.S. Department of Labor, Wage and Hour Division, August 4, 2021.
- G. [Memorandum](#) on Policy Clarification on OSHA's Enforcement Authority at Small Farms, July 29, 2014.

## **IV. Cancellations.**

This instruction cancels OSHA Instruction CPL 2.-0.51J, May 28, 1998, and its supplemental memoranda.

## **V. Action Offices.**

- A. **Responsible Office.**

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<sup>1</sup> The NAICS definitions can be found in the [North American Industry Classification System Manual, 2022](#).

Directorate of Enforcement Programs, Office of General Industry and Agriculture Enforcement.

**B. Action Office.**

National, Regional, and Area Offices; On-Site Consultation programs; and State Plans.

**C. Information Offices.**

None.

**VI. Federal Program Change.**

Notice of Intent required. This instruction discusses Appropriations Act exemptions and limitations that affect State programs. States cannot be reimbursed for any share of funds expended for activities prohibited by these Appropriations Act exemptions and limitations and must be able to demonstrate that no federal funds have been used for prohibited activities.

Within 60 days of the effective date of this Instruction, State Plans must submit a notice of intent indicating whether the State Plan will adopt or already has in place policies and procedures that are identical or different than the federal program. If the State Plan adopts or maintains a program that differs from this directive, the State Plan must identify the differences and may either post its policy on its website and provide the link to OSHA or submit an electronic copy to OSHA with information on how the public may obtain a copy. This action must occur within 60 days of the date of adoption. If a State plans to fund the prohibited activities, it shall provide a brief description of its alternative funding approach in a memorandum and maintain appropriate accounting procedures to ensure that no 23(c) funds are expended for these activities. OSHA will provide summary information on the State's responses to this Instruction on its website.

**VII. Expiration.**

This instruction remains in effect until canceled or superseded.

**VIII. Significant Changes.**

- A. Added a link to the OSHA webpage with the most recent [Low-Hazard Industries Table](#) to section XIII of this instruction. This change eliminates the need to annually amend this instruction.
- B. Moved and updated former Table 1, *Exemptions and Limitations to Appendix A*, and renamed to *At-A-Glance Reference Exemptions and Limitations*.
- C. Added Appendix B, containing Frequently Asked Questions, to address questions that have commonly arisen for OSHA Action Offices in applying the Appropriations Act exemptions and limitations.

**IX. Background.**



An “Appropriations Act” is a law of Congress that authorizes the use of U.S. Treasury funds by government agencies, including OSHA, for specified purposes. Congress generally provides funding for a single fiscal year or a shorter period (through an interim funding step known as a continuing appropriation act or continuing resolution). When OSHA uses the phrase “Appropriations Act” in this instruction, that phrase includes all laws through which Congress appropriates funding to OSHA, including continuing resolutions.

An Appropriations Act can include exclusions and limitations (also referred to as “riders”) that limit an agency’s authority for using such funding. In providing funding for OSHA, Congress has typically included riders, including riders that place restrictions on OSHA’s activities regarding two categories of employers: small farming operations and small employers in low-hazard industries.

The Appropriations Act exclusion for small farming operations precludes OSHA from expending appropriated funds to take certain activities (such as issue regulations or standards, conduct enforcement, or to provide compliance assistance or educational outreach) with respect to any person engaged in a farming operation with ten or fewer non-family employees that have not maintained a temporary labor camp within the preceding 12 months.

The Appropriations Act exclusion specifically states, with respect to OSHA funding, to administer the OSH Act (referred to in the appropriations language as “the Act”):

*“...[t]hat none of the funds appropriated under this paragraph shall be obligated or expended to prescribe, issue, administer, or enforce any standard, rule, regulation, or order under the Act which is applicable to any person who is engaged in a farming operation which does not maintain a temporary labor camp and employs 10 or fewer employees....”*

Congress also establishes Appropriations Act limitations on expending appropriated funds to conduct enforcement activities for employers in certain industries that are identified as “low-hazard industries” based on the application of certain criteria. The relevant Appropriations Act language specifically states:

*“...[t]hat no funds appropriated under this paragraph shall be obligated or expended to administer or enforce any standard, rule, regulation, or order under the Act with respect to any employer of 10 or fewer employees who is included within a category having a Days Away, Restricted, or Transferred (DART) occupational injury and illness rate, at the most precise industrial classification code [NAICS] for which such data are published, less than the national average rate as such rates are most recently published [yearly] by the Secretary, acting through the Bureau of Labor Statistics, in accordance with section 24 of the Act, except—*

- *to provide, as authorized by the Act, consultation, technical assistance, educational and training services, and to conduct surveys and studies;*

- *to conduct an inspection or investigation in response to an employee complaint, to issue a citation for violations found during such inspection, and to assess a penalty for violations which are not corrected within a reasonable abatement period and for any willful violation found;*
- *to take any action authorized by the Act with respect to imminent dangers;*
- *to take any action authorized by the Act with respect to health hazards;*
- *to take any action authorized by the Act with respect to a report of an employment accident which is fatal to one or more employees or which results in hospitalization of two or more employees, and to take any action pursuant to such investigation authorized by the Act; and*
- *to take any action authorized by the Act with respect to complaints of discrimination against employees for exercising rights under the Act..."*

#### **X. Key Terms and Definitions.**

The following section provides OSHA's definitions of key terms for purposes of this instruction.

##### **A. Farm Employer (also referred to as Agricultural Employer or Farmer).**

Any person engaged in farming operations employing one or more employees comes within the definition of an employer under the OSH Act. However, members of the immediate family of the farm employer are not regarded as employees. Note that the terms "agriculture" and "farming" are used interchangeably in this instruction. See [29 CFR 1975.4\(b\)\(2\)](#).

##### **B. Farming Operation.**

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 employers' primary business activity is one of the following NAICS classifications: 111 - Crop Production, 112 - Animal Production and Aquaculture, 115112 - Soil Preparation, Planting, and Cultivating, 115113 - Crop Harvesting, Primarily by Machine, NAICS 115115 - Farm Labor Contractors and Crew Leaders, or NAICS 115116 - Farm Management Services

##### **C. Immediate Family Member.**

An employer's parent, spouse, or child. Stepchildren, foster children, stepparents, and foster parents will also ordinarily be considered as immediate family members. Other relatives, even when living permanently in the same household as the employer, will not ordinarily be considered part of the immediate family.

##### **D. Imminent Danger.**

[Section 13\(a\)](#) of the OSH Act defines imminent danger as "...any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Act."

E. **Low-Hazard Industry.**

As defined by Congress in OSHA's annual appropriations, an industry with a NAICS Code with a DART rate that is less than the national average, based on the latest published Bureau of Labor Statistics (BLS) data.

F. **Low-Hazard Industries Table.**

A table that OSHA develops yearly, using statistics provided by BLS, to identify industries by NAICS Code that have a DART rate less than the national DART average. The current table is linked to in section XIII of this Directive.

G. **North American Industry Classification System (NAICS).**

A classification system developed by the Office of Statistical Standards, Executive Office of the President/Office of Management and Budget for use in classifying establishments based on the activities in which they are primarily engaged. NAICS divides the economy into 20 sectors. Establishments are grouped into industries according to the similarity of production processes.

H. **Post-Harvesting Processing.**

Generally, post-harvest processing can be thought of as changing the character of the product (such as canning, making cider, sauces, butchering or processing animals) or a higher degree of packaging versus field sorting in a shed for size. These activities are not considered farming operations and thus are not covered by the OSHA appropriations exclusion for small farming operations.

I. **Small Employer.**

Employers with 10 or fewer employees. The term "small" refers to the number of employees employed, not the size of the farm, worksite, or the operation.

J. **Temporary.**

The term temporary in § 1910.142 refers to employees who enter into an employment relationship for a discrete or defined time period.

K. **Temporary Labor Camp.**

Required employer-provided housing that, due to company policy or practice, necessarily renders such housing a term or condition of employment. Note that the term "temporary" refers to the length of employment and not to the physical structures housing employees.

Housing may be a permanent or temporary structure that is on or off the property of the employer and is used by seasonal or temporary employees.

See [Frank Diehl Farms v. Secretary of Labor](#), 696 F.2d 1325 (11th Cir. 1983). For additional discussion, see [FOM, Chapter 12 – Specialized Inspection Procedures](#).

## **XI. General Appropriations Act Guidance.**

Before initiating any OSHA enforcement, compliance assistance, or outreach activities, OSHA will determine whether the current Appropriations Act prohibits such activities for a particular employer. Where this determination cannot be made beforehand, the Compliance Safety and Health Officer (CSHO) will determine whether an Appropriations Act exemption or limitation applies (i.e., whether the employer is (1) a person who is engaged in a farming operation that does not maintain a temporary labor camp *and* employs 10 or fewer employees *or* (2) an employer in a low-hazard industry which employs 10 or fewer employees) upon arrival at the workplace. If the prohibition applies, the CSHO must immediately discontinue the inspection activities and leave the premises as soon as possible.

OSHA will use the criteria below to determine whether an Appropriations Act exemption or limitation applies. Note that Appendix A provides an at-a-glance reference to our activities under the funding measure.

### **A. Farming Operations.**

The small farms exemption applies if **all** of the following criteria are met:

1. The employer is “engaged in a farming operation.” An employer will be considered to be engaged in a farming operation if their primary activity falls under the following NAICS classifications:
  - a. NAICS 111 – Crop Production
  - b. NAICS 112 – Animal Production and Aquaculture
  - c. NAICS 115112 – Soil Preparation, Planting, and Cultivating
  - d. NAICS 115113 – Crop Harvesting, Primarily by Machine
  - e. NAICS 115115 – Farm Labor Contractors and Crew Leaders
  - f. NAICS 115116 – Farm Management Services.and
2. The employer currently has 10 or fewer employees *and* has not had more than 10 employees at any time during the previous 12 months.  
and
3. The employer does not currently have an active temporary labor camp and has not had an active temporary labor camp during the previous 12 months.

**Note:** The term “previous 12 months” refers to the 12 months preceding the opening conference date.

**Result:** If the small farm exemption applies, then the employer is exempt from all OSHA enforcement activities, and OSHA is also prohibited from providing compliance assistance or outreach activities.

**B. Small Employers in Low-Hazard Industries.**

The small employer/low-hazard industry rider applies if **both** of the following criteria are met:

1. If an employer has 10 or fewer employees currently *and* has not had more than 10 employees at any time during the previous 12 months, and
2. The NAICS Code for the employer’s industry is included in the current [Low-Hazard Industries Table](#), which is in the link in section XIII of this Instruction, indicating that the DART rate for this industry is currently below the national DART average, per the most recently published BLS data.

**Result:** If the small employer/low-hazard rider applies, then the employer is exempt from programmed safety inspections, and OSHA is prohibited from otherwise administering or enforcing its standards, rules, regulations, or orders unless one of the exceptions to the rider applies.

The exceptions permit OSHA to proceed with many types of enforcement activities (e.g., in response to health hazards) and conduct outreach activities. But, even in situations where OSHA can inspect or engage in other enforcement activities, there may be limitations on citation issuance and penalty assessment. See section XIII of this Instruction for details.

**XII. Enforcement Guidance for Farming Operations.**

If a farming operation meets all the requirements for the small farming operation exemption, OSHA should not proceed with any enforcement, compliance assistance, or outreach activities. If OSHA determines the operation is exempt after conducting an inspection, section XIV of this Instruction must be followed.

**A. Inspection Guidance.**

1. OSHA’s [FOM, Chapter 10 - Industry Sectors](#), includes a list of standards that apply to farming operations and additional guidance regarding conducting farming operations inspections.
2. If OSHA determines that a farming operation employer is not exempt (i.e., the Appropriations Act exemption does not apply), then OSHA may

inspect and the inspection may include all working conditions covered by OSHA standards except for Field Sanitation, [29 CFR 1928.110](#), and except as noted, Temporary Labor Camps, [29 CFR 1910.142](#). See section XII.A.3-4 – Temporary Labor Camps of instruction.

WHD has shared enforcement authority with OSHA over the Temporary Labor Camp Standard and sole enforcement authority for the Field Sanitation Standard. OSHA and WHD shared authority and WHD sole authority are authorized by the Delegation of Authorities and Assignment of Responsibility to the Assistant Secretary for Occupational Safety and Health ([Federal Register, September 18, 2020](#) (85 FR 58393)).

3. Temporary Labor Camp Standard (29 CFR 1910.142). Enforcement authority for the Temporary Labor Camp Standard is split between the WHD and OSHA. See [FOM, Chapter 12 – Specialized Inspection Procedures](#).

OSHA retains inspection responsibility for temporary labor camps, regardless of the number of employees, for workplaces where the employer is engaged in the following activities:

- a. When the employer is engaging in post-harvesting processing for agricultural or horticultural commodities. See [FOM, Chapter 10 – Industry Sectors](#).
- b. When the temporary labor camp houses employees engaged in red meat production covered by one of the following NAICS:
  - NAICS 1121 – Cattle Ranching and Farming
  - NAICS 1122 – Hog and Pig Farming
  - NAICS 1124 – Sheep and Goat Farming
  - NAICS 1129 – Other Animal Production  
(Only where red meat is produced.)
- c. When the temporary labor camp houses employees engaged in egg or poultry production covered by one of the following NAICS:
  - NAICS 1123 – Poultry and Egg Production

**NOTE:** OSHA should evaluate each NAICS on a case-by-case basis.

WHD has enforcement authority over any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed. Additionally, WHD has separate authority to enforce the OSHA Temporary Labor Camp standards under the Migrant and Seasonal

Agricultural Worker Protection Act (MSPA) and under the H-2A provisions of the Immigration and Nationality Act (INA). WHD's authority to conduct temporary labor camp inspections under MSPA and H-2A is not subject to the exemptions and limitations described in this directive.

4. Field Sanitation Standard (29 CFR 1928.110). As specified in the Secretary's Order 8-2020, the WHD has sole federal enforcement authority for OSHA's Field Sanitation Standard, including to conduct inspections and investigations, issue citations, assess and collect penalties, or enforce any other remedies available under the OSH Act, and to develop and issue compliance interpretations.

OSHA **shall not** issue citations under the Field Sanitation Standard. See [FOM, Chapter 10 – Industry Sectors](#). If OSHA discovers information relating to a possible violation of the laws and regulations enforced by WHD (including the Field Sanitation Standard), OSHA shall provide information to WHD by making a referral, in accordance with the August 4, 2021, [Memorandum of Understanding](#) Between the U.S. Department of Labor, Occupational Safety and Health Administration and the U.S. Department of Labor, Wage and Hour Division.

5. If a farming operation has 10 or fewer employees, OSHA cannot conduct any type of referral inspection. However, if a farming operation has more than 10 employees or an active temporary labor camp within the last 12 months, OSHA may conduct a referral inspection. See [FOM, Chapter 9 – Complaint and Referral Processing](#).

#### **B. State Plans.**

Eight of the twenty-two jurisdictions (21 states and Puerto Rico) that have OSHA-approved State Plans covering private sector employment elected not to enforce the Field Sanitation Standard in agriculture and the Temporary Labor Camp Standard, except for egg, poultry, red meat production, and post-harvesting processing of agricultural and horticultural commodities. Thus, WHD enforces these standards, except as noted above, in the following states: Alaska, Indiana, Iowa, Kentucky, Minnesota, South Carolina, Utah, and Wyoming.

The 14 other jurisdictions with OSHA-approved State Plans covering private-sector employment have retained enforcement authority for the Field Sanitation and Temporary Labor Camp Standards in agriculture. They are Arizona, California, Hawaii, Maryland, Michigan, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, Tennessee, Vermont, Virginia, and Washington.

### **XIII. Enforcement Guidance for Small Employers in Low-Hazard Industries.**

If the employer meets the requirements of the small employer low-hazard industry limitation (i.e., 10 or fewer employees over the previous 12 months and the DART rate

for the employer's primary NAICS industry classification is below the national private sector average), OSHA may not conduct a programmed safety inspection. However, the exceptions to the Appropriations Act limitation permit OSHA to conduct some other types of inspections and enforcement activity and to provide compliance assistance and outreach as discussed below. Please see the current [Low-Hazard Industries Table](#) for covered NAICS.

**A. Construction Activities.**

Upon arrival at a worksite to conduct any programmed safety inspection, OSHA should determine whether the [Low-Hazard Industries Table](#) exempts a particular contractor. Any exempt contractor shall not be inspected. However, OSHA may proceed to inspect other non-exempt contractors on the worksite.

**B. Programmed Safety Inspections.**

Before initiating programmed safety inspections, OSHA should make efforts to verify the employer's primary NAICS industry classification. Upon verification of the employer's primary NAICS classification, OSHA may not proceed with a programmed safety inspection if both of the following conditions are met:

1. [Low-Hazard Industries Table](#)  
and
2. The employer currently employs 10 or fewer employees and has not had more than 10 employees at any time during the previous 12 months.

**C. Permissible Activities.**

The Appropriations Act includes some exceptions which allow OSHA to carry out some activities in establishments of small (10 or fewer employees) low-hazard industries. All inspections or investigations of employee complaints, alleged violations, and proposed penalties should be in accordance with the FOM. Specifically, the following categories of activities are permissible:

**1. Health Inspections.**

OSHA may schedule and conduct all health inspections, issue citations, assess and collect penalties, and take any other action authorized by the OSH Act with respect to health hazards.

**2. Employee Complaints.**

OSHA may conduct inspections or investigations in response to an employee complaint. The Appropriations Act allows a complaint inspection only when received from a current employee. OSHA may issue a citation for any violations found during such an inspection without any penalty, but OSHA may only assess a penalty for failure to abate violations and any willful violations found during the complaint



inspection or investigation. OSHA has broader authority under the rider when dealing with health hazards, including complaints concerning health hazards. See the health inspection section above for information.

NOTE: This exception to the rider may apply when a representative of a current employee files a complaint on behalf of a current employee, e.g., a lawyer acting on behalf of the employee, a representative forwarding a signed employee complaint. However, for this exception to apply, the affected employee should have requested, or at least approved, the filing of the complaint on their behalf. Each complaint received from a current employee's representative should be evaluated on a case-by-case basis with assistance from RSOL, if necessary.

3. **Referrals.**

OSHA may conduct referral inspections when the reported condition falls into one of the other exceptions, e.g., health hazards, hospitalization of two or more employees, or imminent danger. See sections for health hazards, hospitalization, or imminent danger for issuing citations and/or penalties.

4. **Fatalities, Catastrophes, and Hospitalizations.**

OSHA may schedule and conduct inspections or take any other action authorized under the OSH Act with respect to an employment incident involving a fatality of one or more employees, or which results in hospitalization of two or more employees.

Following a fatality and hospitalization of two or more employees inspection or investigation, OSHA may only issue citations and assess penalties for violative conditions related to the fatality and/or hospitalizations.

It should be noted, the Appropriations Act allows inspections if two or more employees are hospitalized. This differs from catastrophes, which are defined in the FOM as three or more hospitalization. CSHOs should be aware of this distinction.

**NOTE:** Employers are obligated to report to OSHA incidents involving a fatality, the in-patient hospitalization of one or more employees, an amputation, or the loss of an eye. Employer reports of a hospitalization involving one employee, amputation, or loss of an eye are considered Employer Reported Referrals and may not be inspected if the employer is on the [Low-Hazard Industries Table](#). Please note, OSHA is allowed to inspect or investigate an incident involving a fatality of one or more employees or the hospitalization of two or more employees of a small, non-farming employer once we become aware of the incident.

5. **Imminent Danger Situations.**

The Appropriations Act permits OSHA to take any action authorized by the Act with respect to imminent dangers. The agency must schedule and conduct all imminent danger inspections as expeditiously as possible. Each imminent danger situation must be evaluated on a case-by-case basis in accordance with the [FOM, Chapter 11 – Imminent Danger, Fatality, Catastrophe, and Emergency Response](#). As necessary, OSHA should collaborate with the appropriate Regional Solicitor office for assistance.

**6. 11(c) Investigations.**

The Appropriation Act allows OSHA to take any action authorized by the Act with respect to complaints of discrimination against employees for exercising rights under the Act. Consequently, OSHA may investigate any complaints of employer retaliation against employees for exercising rights guaranteed under the OSH Act, complaints should be handled in a manner that is consistent with the [OSHA's Whistleblower Investigation Manual](#).

**NOTE:** The Appropriations Act applies only to Section 11(c) of the OSH Act and does not apply any limitations to other whistleblower statutes administered by OSHA.

**7. Other Outreach.**

The Appropriations Act permits OSHA to provide consultation, technical assistance, educational services, and training services and conduct surveys and studies for small employers, in accordance with established agency policies and procedure.

**XIV. Late Discovery of Applicability of Appropriations Act Limitation or Exemption.**

If it becomes clear after an inspection that an employer was exempt from inspection or other OSHA activity under the applicable Appropriations Act limitations or exemptions at the time of the inspection, OSHA should ensure that no citations are issued or penalties are proposed.

If citations have already been issued and OSHA becomes aware that an Appropriations Act limitation or exemption may have applied, the Area Director should notify the Regional Administrator or designee promptly, the Regional Solicitor should be consulted on matters concerning such late discoveries, and prompt, collaborative steps should be taken to address and, if appropriate, rescind any erroneously issued citations under such circumstances.

**XV. OSHA Information System (OIS).**

If OSHA determines not to conduct an inspection or other enforcement activity, or the scope of an inspection has been limited, based on the applicability of an Appropriations Act exemption or limitation discussed in this Instruction, OSHA should ensure the information is documented in OIS.

**A. Farm with 10 or fewer employees and no TLC activity within the previous 12 months.**

These inspections should be completely documented in OIS ensuring the “Inspection Data-Inspection Details” section information notes:

1. “Scope of Inspection” should be selected as “No Inspection”.
2. “Reason No Inspection” should be selected as “Employer Exempted By Appropriation Act”.
3. If necessary, use the “Narrative” section to expand on why no inspection was conducted.

**B. Employer with 10 or fewer employees and listed on [Low-Hazard Industries Table](#) found in the link in Section XIII of this instruction.**

1. If an exception to the Appropriations Act permits OSHA to conduct inspections, the case should be completely documented in OIS.
2. If the Appropriations Act limits OSHA from issuing penalties for a citation, this should be noted in violations worksheet.
3. If the employer is scheduled for a programmed safety inspection and is currently listed on the [Low-Hazard Industries Table](#), this inspection should be completely documented in OIS ensuring the “Inspection Data-Inspection Details” section information notes:
  - a. “Scope of Inspection” should be selected as “No Inspection”.
  - b. “Reason No Inspection” should be selected as “Employer Exempted By Appropriation Act”.
  - c. If necessary, use the “Narrative” section to expand on why no inspection was conducted.

**Appendix A**  
**At-A-Glance Reference Exemptions and Limitations Table**

<b>OSHA Activity</b>	<b>Farm with 10 or fewer employees and no TLC activity within the previous 12 months</b>	<b>Farm with more than 10 employees or an active TLC within the previous 12 months</b>	<b>Non-farm employer with 10 or fewer employees and listed on Low-Hazard Industries Table.</b>
<b>Programmed Safety Inspections</b>	Not Permitted	Can Inspect	Cannot Inspect
<b>Programmed Health Inspections</b>	Not Permitted	Can Inspect	Can Inspect
<b>Employee Complaint</b>	Not Permitted	Can Inspect	Can Inspect (see limitations on Citations and Penalties in Section XII.C of this Instruction)
<b>Referrals<sup>1</sup></b>	Not Permitted	Can Inspect	Can Inspect (fatalities, imminent danger, hospitalization of two or more employees, and health hazards)
<b>Fatalities, Catastrophes, and Accidents</b>	Not Permitted	Can Inspect	Can Inspect
<b>Imminent Danger</b>	Not Permitted	Can Inspect	Can Inspect
<b>11(c) Investigations</b>	Not Permitted <sup>2</sup>	Can Inspect	Can Inspect
<b>Consultation and Technical Assistance</b>	Not Permitted	Permitted	Permitted
<b>Education and Training</b>	Not Permitted	Permitted	Permitted
<b>Conduct Surveys and Studies</b>	Not Permitted	Permitted	Permitted

<sup>1</sup> Referral related to non-farming employers with 10 or fewer employees can be inspected if the reported condition falls into other permissible activities described in section XIII.C.

<sup>2</sup> The Appropriations Act applies only to Section 11(c) of the OSH Act and does not apply to any limitations to other whistleblower statutes administered by OSHA.

## **Appendix B Appropriations Frequently Asked Questions (FAQs)**

This Appendix includes FAQs and answers related to OSHA's Appropriations Act Exemptions and Limitations.

Please note that OSHA requirements are set by statute, standards, and regulations. These FAQs explain these requirements and how they apply to particular circumstances but do not create additional employer obligations. These responses constitute OSHA's interpretations only of the questions as phrased and may be affected by changes to OSHA regulations. In addition, from time to time the agency updates guidance in response to new information. To keep apprised of such developments, you can consult OSHA's website at <http://www.osha.gov>.

### **General Questions**

#### **Question 1 – Who calculates and sets the national private sector average for industries with Days Away, Restricted, or Transferred (DART) occupational injury and illness rate?**

Answer: The U.S. Bureau of Labor Statistics (BLS) Injuries, Illnesses, and Fatalities (IIF) program produces a wide range of information about workplace injuries and illnesses, including industry incidence rates and DART. Incidence rates (including DART) can be used to show the relative level of injuries and illnesses among different industries, firms, or operations within a single firm. Because a common base and a specific period are involved, these rates can help determine both problem areas and progress in preventing work-related injuries and illnesses.

#### **Question 2 – Why is the national private sector average DART rate used to limit enforcement activity for small employers?**

Answer: Congress expressly limits OSHA's enforcement activity for such employers by including this limitation in annual Appropriations Act legislation. Specifically, the Appropriations Act limitations apply to "...any employer of 10 or fewer employees who is included within a category having a Days Away, Restricted, or Transferred ("DART") occupational injury and illness rate, at the most precise industrial classification code for which such data are published, less than the national average rate...". Each year OSHA publishes a Table that includes the list of industries with DART rates that are less than the national average, based on BLS data, and the current Table is linked to this Instruction.

#### **Question 3 – How can OSHA determine which NAICS industry classification applies to an employer?**

Answer: OSHA should follow [29 CFR 1904.2\(b\)\(2\)](#) in determining the employer's primary NAICS industry classification.

#### **Question 4 – If OSHA conducts an inspection and later discovers the employer is covered by the small employer low-hazard Appropriations Act limitation with 10 or fewer employees, but several safety hazards were identified, can the area office issue a Hazard Alert letter, letter of significant findings, or similar type letter to address the safety hazards?**

Answer: No. The Appropriations Act limitation prohibits the use of any appropriated funds “...to administer or enforce any standard, rule, regulation, or order under the [OSH] Act with respect to any employer of 10 or fewer employees” in this scenario.

**Question 5 – If OSHA receives a referral alleging a potential workplace hazard or violation for an employer that is exempt under the Appropriations Act small farm operation exemption, or that meets small employer low-hazard industry limitation, can OSHA conduct an inspection and/or inquiry?**

Answer: For an employer that is exempt under the Appropriations Act small farm operation exemption: no appropriated funds can be used to respond to the referral.

For a small employer in exempted low-hazard industries (i.e., those industries listed on the [Low-Hazard Industries Table](#)): OSHA cannot conduct enforcement action in response to a referral alleging safety hazards. However, OSHA is not precluded from using appropriated funds if one of the exceptions to the Appropriations Act limitation applies. For example, OSHA can take certain specified actions related to fatalities, imminent danger, hospitalization of two or more employees, and health hazards. See discussion in Section XIII of this Instruction.

**Question 6 – When determining whether an employer has 10 or fewer employees, should CSHOs count Temporary Agricultural Workers (H-2A Visa) as employees?**

Answer: Yes.

**Enforcement Guidance for all Farming Operations**

**Question 8 – If farming operations has grain storage structures involved in postharvest crop activities, can OSHA inspect the postharvest activities, even if the employer has 10 or fewer employees?**

Answer: 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.” 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 small farm would not become subject to OSHA enforcement simply because, for example, it stores its 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.

**Question 9 – If farming operations that are exempt from OSHA enforcement activities under the Appropriations Act small farming operations exemption grows grain, and stores and grinds the grain to feed their livestock, is this considered postharvest activity?**

Answer: No. As discussed in the previous question, onsite storage of grain grown on the farm would constitute a related activity under OSHA’s interpretation of farming operation. Such grain storage and processing would generally be exempt from OSHA enforcement under the Appropriations Act small farming operations exemption.

**Question 10 – If farming operations are exempt from OSHA enforcement activities, would all buildings located within the boundaries of the farm be considered a part of the farming operations?**

Answer: Each building should be evaluated on a case-by-case basis to determine if the activities being performed are related to farming operations. Note that OSHA would consider any postharvest activities non-farming and thus subject to enforcement in accordance with the FOM.

**Question 11 – If farming operations are exempt from OSHA enforcement activities, but the farm maintains a processing facility for selling processed items, is the processing facility exempt?**

Answer: If an employer performs activities on a farm that are not related to farming operations (see definition in section X of this Instruction) and are not necessary to gain economic value from products produced on the farm, these activities are not covered by the Appropriations Act small farming operations exemption and thus are not exempt from OSHA enforcement. Please see the [Policy Clarification on OSHA’s Enforcement Authority at Small Farms](#) memorandum.

**Question 12 – Are aquaculture operations covered by the OSHA standards for agriculture?**

Answer: Yes. If the employer is engaged in controlled growing and harvesting of fish, shellfish, and aquaculture plants and has the appropriate NAICS code, 112 – Animal Production and Aquaculture, then OSHA standards for agriculture would apply.

**Enforcement Guidance for Small Employers in Low-Hazard Industries (i.e., those industries listed on the [Low-Hazard Industries Table](#)).**

**Question 13 – If a CSHO is conducting a programmed safety inspection of a non-exempt contractor and it is noted that a subcontractor on-site that has 10 or fewer employees, and whose industry is listed on the Low-Hazard Industry Table has:**

**A. Apparent health hazards, can the OSHA open an inspection?**

Answer: Yes, the Appropriations Act limitation for low-hazard industries allows OSHA to inspect, issue citations, assess, and collect penalties for any health hazards.

**B. Observed an imminent danger situation, can OSHA open an inspection?**

Answer: Yes, the Appropriations Act limitation for low-hazard industries allows OSHA to inspect, issue citations, assess and collect penalties for any imminent danger situation in the same manner as if the limitation did not apply. See XIII.C of this Instruction.

**Question 14 – Can OSHA expand the scope of a low-hazard industry inspection, if other hazards are observed during the inspection?**

Answer: No. OSHA can only expand the scope, of a low-hazard industry inspection, if one of the exceptions to the Appropriations Act limitation applies. For example, OSHA can address when health hazards or imminent danger situations are observed.

**Question 15 – Can OSHA conduct inquiries (phone/faxes) if an employer with 10 or fewer employees' industry is listed on the [Low-Hazard Industry Table](#)?**

Answer: If OSHA receives a complaint from an employee, OSHA can conduct an inquiry in response to this complaint, consistent with procedures in the FOM, in the same manner as if the limitation did not apply. OSHA could also conduct an inquiry in response to a health hazard complaint if the inquiry is also narrowly limited to the health complaint.

However, if the complaint concerns a safety hazard and is not from an employee, OSHA is prohibited by the Appropriations Act low-hazard limitation from using any appropriated funding to provide an enforcement response to the complaint, including a phone/fax inquiry, unless one of the other exceptions to the Appropriations Act limitation applies. See XIII.C of this Instruction.

**Question 16 – Can OSHA conduct a Rapid Response Investigation (RRI) if an employer with 10 or fewer employees' industry is listed on the [Low-Hazard Industry Table](#)?**

Answer: A Rapid Response Investigation (RRI) is defined in OSHA's FOM as "OSHA's offsite investigation conducted in response to an employer's report of a severe injury (SIR)." OSHA would generally be prohibited by the small employer/low-hazard Appropriations Act limitation from conducting an RRI in response to an employer's report of a single severe injury but may be able to conduct an inspection or other enforcement activities if one of the exceptions to the Appropriations Act limitation applies. For example, OSHA can take any action authorized by the OSH Act with respect to health hazards, imminent dangers, and reports of an employment accident which is fatal to one or more employees or which results in hospitalization of two or more employees. See additional discussion in section XI of this Instruction.

**Question 17 – Is the employer required to report fatalities, in-patient hospitalizations, loss of eye, or amputation, if the employer has 10 or fewer employees and its primary industry is listed in the [Low-Hazard Industry Table](#)?**



Answer: Yes, [29 CFR 1904.39\(a\)\(3\)](#) requires all employers covered by the OSH Act to report to OSHA any work-related incident that results in a fatality, in-patient hospitalization, employee amputation, or employee loss of an eye. OSHA then determines if an inspection or investigation will be conducted.

**Questions 18 – If an employer with 10 or fewer employees with NAICS code listed on OSHA’s current [Low-Hazard Industry Table](#) is performing work that fall under a different NAICS code, can OSHA conduct a programmed safety inspection?**

Answer: No. The Appropriations Act limitation for small employers in low-hazard industries provides a limitation to safety inspections based on the employer’s industry, not based on a specific limited task an employer may be performing that is unrelated to the employer’s primary industry.

However, OSHA can conduct other enforcement activities with respect to such employers if one of the exceptions to the Appropriations Act limitation applies. For example, OSHA can still take any action authorized by the OSH Act with respect to health hazards and imminent dangers and it can take certain actions in response to employee complaints.