



OSHA INSTRUCTION

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

DIRECTIVE NUMBER: CPL 02-00-170

SUBJECT: Enforcement Exemptions and Limitations under the Annual Appropriations Act

DIRECTORATE: Directorate of Enforcement Programs

SIGNATURE DATE: July 18, 2024

EFFECTIVE DATE: July 18, 2024

ABSTRACT

- Purpose:** 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.
- Scope:** 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.
- References:** See section III for references.
- Cancellations:** OSHA Instruction CPL 2-0.51J, May 28, 1998, its supplemental memoranda.
- State Plan Impact:** Notice of Intent required. See section VI for State Plan Impact.
- Action Offices:** OSHA Regional and Area Offices, On-Site Consultation Programs, and State Plans.
- Originating Office:** Directorate of Enforcement Programs, Office of General Industry and Agriculture Enforcement.
- Contact:** Directorate of Enforcement Programs
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By and Under the Authority of

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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.

Table of Contents

I. Purpose.....	1
II. Scope.....	1
III. References.....	1
IV. Cancellations.....	1
V. Action Offices.....	1
A. Responsible Office.....	1
B. Action Office.....	2
C. Information Offices.....	2
VI. Federal Program Change.....	2
VII. Expiration.....	2
VIII. Significant Changes.....	2
IX. Background.....	2
X. Key Terms and Definitions.....	4
A. Farm Employer (also referred to as Agricultural Employer or Farmer).....	4
B. Farming Operation.....	4
C. Immediate Family Member.....	4
D. Imminent Danger.....	4
E. Low-Hazard Industry.....	5
F. Low-Hazard Industries Table.....	5
G. North American Industry Classification System (NAICS).....	5
H. Post-Harvesting Processing.....	5
I. Small Employer.....	5
K. Temporary Labor Camp.....	5
XI. General Appropriations Act Guidance.....	6
A. Farming Operations.....	6
B. Small Employers in Low-Hazard Industries.....	7
XII. Enforcement Guidance for Farming Operations.....	7
A. Inspection Guidance.....	7
B. State Plans.....	9
XIII. Enforcement Guidance for Small Employers in Low-Hazard Industries.....	9
A. Construction Activities.....	10

B.	Programmed Safety Inspections.	10
C.	Permissible Activities.	10
XIV.	Late Discovery of Applicability of Appropriations Act Limitation or Exemption.	12
XV.	OSHA Information System (OIS).	12
A.	Farm with 10 or fewer employees and no TLC activity within previous 12 months.	12
B.	Employer with 10 or fewer employees and listed on Low-Hazard Industries Table found in the link in Section XIII of this instruction.	13
Appendix A	At-A-Glance Reference Exemptions and Limitations Table	A1
Appendix B	Appropriations Frequently Asked Questions (FAQs)	B1

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 NAICS¹ 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.**

¹ 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

OSHA Activity	Farm with 10 or fewer employees and no TLC activity within the previous 12 months	Farm with more than 10 employees or an active TLC within the previous 12 months	Non-farm employer with 10 or fewer employees and listed on Low-Hazard Industries Table.
Programmed Safety Inspections	Not Permitted	Can Inspect	Cannot Inspect
Programmed Health Inspections	Not Permitted	Can Inspect	Can Inspect
Employee Complaint	Not Permitted	Can Inspect	Can Inspect (see limitations on Citations and Penalties in Section XII.C of this Instruction)
Referrals¹	Not Permitted	Can Inspect	Can Inspect (fatalities, imminent danger, hospitalization of two or more employees, and health hazards)
Fatalities, Catastrophes, and Accidents	Not Permitted	Can Inspect	Can Inspect
Imminent Danger	Not Permitted	Can Inspect	Can Inspect
11(c) Investigations	Not Permitted ²	Can Inspect	Can Inspect
Consultation and Technical Assistance	Not Permitted	Permitted	Permitted
Education and Training	Not Permitted	Permitted	Permitted
Conduct Surveys and Studies	Not Permitted	Permitted	Permitted

¹ 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.

² 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.