



# OSHA INSTRUCTION

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

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**DIRECTIVE NUMBER:**CPL 02-00-051

**EFFECTIVE DATE:** May 28, 1998

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

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## ABSTRACT

**Purpose:** Explains the limits on inspection activities under the Appropriations Act.

**Scope:** OSHA-wide.

**References:** CPL 2.103 -Field Inspection Reference Manual,  
CPL 2.115 -Complaint Policy and Procedures,  
STP 2.22A -State Plan Policies and Procedures Manual.

**Cancellations:** CPL 2-0.51I, Dated October 15, 1997.

**State Impact:** See Paragraph VI.

**Action Offices:** National, Regional, and Area Offices.

**Originating Office:** Directorate of Compliance Programs.

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**Special Notice:** Appendix A contains time sensitive information. OSHA will automatically update the information in Appendix A after it is received from the Bureau of Labor Statistics.

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

Change effective 01-15-99 Appendix A Change  
effective 02-07-00 Appendix A Change effective  
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- I. Purpose. This instruction explains the limits (exemptions and limitations) for the Occupational Safety and Health Administration's (OSHA) enforcement activity under the Appropriations Act. This funding measure's riders and this instruction focus on limiting the inspection of those employers who employ ten or fewer employees.
- II. Scope. This instruction applies OSHA-wide and where applicable, to those Employment Standards Administration (ESA) offices enforcing OSHA's Field Sanitation and Temporary Labor Camp standards in agricultural settings. The restrictions to OSHA's enforcement activity apply to places of employment (farms and establishments who's Standard Industrial Classification code is listed in Appendix A) who employ 10 or fewer employees.
- III. References.
  - A. OSHA Instruction STP 2.22A, May 14, 1986, the State Plan Policies and Procedures Manual
  - B. OSHA Instruction CPL 2.103, September 26, 1994, the Field Inspection Reference Manual (FIRM)
  - C. Secretary's Orders 5-96 and 6-96, December 27, 1996, Delegation of Authority and Assignment of Responsibility to the Assistant Secretary for Employment Standards and Other Officials in the Employment Standards Administration and the Assistant Secretary for Occupational Safety and Health.
  - D. OSHA Instruction CPL 2.115, June 14, 1996, Complaint Policies and Procedures
- IV. Cancellation. OSHA Instruction CPL 2.51I, October 15, 1997, is canceled.
- V. Action. OSHA Regional Administrators and Area Directors are to ensure that they schedule and conduct enforcement activities following the guidelines set forth in this instruction. They shall insure distribution of these guidelines to Employment Standards Administration, Wage and Hour Division District offices who are responsible for enforcing the OSHA field sanitation and temporary labor camp standards pursuant to Secretary's Orders 5-96 and 6-96. These guidelines are in effect until superseded or amended.
- The Directorate of Administrative Programs will ensure that the updated Appendix A appears on the OSHA Internet site as soon as possible after receiving it from the Directorate of Compliance Programs. The version of Appendix A which appears on OSHA's Internet Web Page is the one currently being applied. The date Appendix A is updated will be noted on the Abstract.
- VI. Federal Program Change. This instruction describes a Federal program change which affects State programs. Under OSHA's Appropriations Act, States cannot be reimbursed for any share of funds expended for activities prohibited by these exemptions and limitations and must be able to demonstrate that no Federal funds have been used for prohibited activities. The States shall respond via the two-way memorandum to the Regional Office as soon as the State's intention regarding the enforcement activity limitations and exemptions is known, but no later than 60 calendar days after the date of

transmittal from the Directorate of Federal-State Operations. If a State plans to fund the prohibited activities, it shall provide a brief description of its alternative funding approach in the Comment Section of the two-way memorandum and maintain appropriate accounting procedures for assuring that no 23(c) funds are expended for these activities.

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

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

A "**farming operation**" means any operation involved in the growing or harvesting of crops, the raising of livestock or poultry, or related activities conducted by a farmer on sites such as farms, ranches, orchards, dairy farms or similar farming operations. These are employers engaged in businesses that have a two digit Standard Industrial Classification (SIC) of 01 (Agricultural Production - Crops), 02 (Agricultural Production - Livestock and Animal Specialties), and four digit SIC 0711 (Soil Preparation Services), 0721 (Crop Planting, Cultivating, and Protecting), 0722 (Crop Harvesting, Primarily by Machine), 0761 (Farm Labor Contractors and Crew Leaders), and 0762 Farm Management Services).

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

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

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

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

**Table 1**  
(Exceptions and Limitations)

OSHA Activity	Farm with 10 or fewer EES <b>and</b> no TLC activity within 12 mo.	Farm with more than 10 EES <b>or</b> a farm with an active TLC within 12 Mo.	Non-farm ERS with 10 or fewer EES in a SIC listed in Appendix A
TLC = Temporary Labor Camp	EES = Employees	ERS = Employer	

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 limits on Citations and Penalties)
FAT/CAT and Accidents	Not Permitted	Can Inspect	Can Inspect
Imminent Danger	Not Permitted	Can Inspect	Can Inspect
11C	Not Permitted	Can Inspect	Can Inspect
Consultation & Technical Assistance	Not Permitted	Permitted	Permitted
Education and Training	Not permitted	Permitted	Permitted
Conduct Surveys & Studies	Not Permitted	Permitted	Permitted

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

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

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

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

B. A farming operation with 10 or fewer employees that maintains a temporary labor camp or has maintained a temporary labor camp within the last twelve months is not exempt from inspection. For OSHA, the inspection may include all working conditions covered by OSHA standards except for Field Sanitation, 29 CFR 1928.110, and except as noted, Temporary Labor Camps, 29 CFR 1910.142, which are being enforced by the Wage and Hour Division under Secretary of Labor Order 6-96.

1. OSHA, however, retains inspection responsibility for those camps of employees engaged in eggs or poultry production (SIC 025) or red meat production (SIC 021) or engaged in the post-harvest processing of agricultural or horticultural commodities. Generally, post-harvest processing can be thought of as changing the character of the product (canning, making cider or sauces, etc.) or a higher degree of packaging (washing, bundling and bagging carrots) versus field sorting in a shed for size.

C. The Wage and Hour Division, ESA, will also exercise responsibility for enforcement in agriculture of OSHA field sanitation and temporary labor camp standards, except as noted in "b" above, in nine States operating OSHA-approved State plans which have elected to follow the jurisdictional transfer of authority as effected by Secretary's Orders 5-96 and 6-96. These States are: Alaska, Indiana, Iowa, Kentucky, Minnesota, South Carolina, Utah, Virgin Islands, and Wyoming.

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

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

A. No programmed safety inspections are permitted of a small employer if:

1. It employs 10 or fewer employees currently and at all times during the last 12 months; and
2. The lost workday case rate for its primary SIC work activity is below the all-industry national average. (See Appendix A for listings.)

B. The Appropriations Act allows several OSHA activities in establishments of small (10 or fewer employees) low-hazard rate employers that are exempt from programmed safety inspections. All OSHA Offices are allowed to:

1. Provide consultation and technical assistance as well as educational and training services. It can also conduct surveys and studies authorized by the OSHA.
2. Investigate or schedule inspections in response to an employee complaint in accordance with current complaint procedures in CPL 2.115. The only complaint inspections which are permitted under the rider are those from current employees.
  - a. Citations may be issued for any violation found during a complaint inspection whether or not the violative condition is a subject of the

complaint. But:

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

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

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

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

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

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

- A. If already issued, but not yet contested, any such citation or proposed penalty shall be withdrawn.

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

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