



OSHA REGIONAL NOTICE

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

DIRECTIVE NUMBER: CPL 2-12-01

EFFECTIVE DATE: December 14, 2011

SUBJECT: Local Emphasis Program – Commercial and Residential Construction

REGIONAL IDENTIFIER: Region VII

ABSTRACT

Purpose: This Notice implements a local emphasis program to target commercial and residential construction worksites.

Scope: This Notice applies to construction worksites throughout the Omaha Area Office jurisdiction.

References: OSHA Instructions: CPL 04-00-001, CPL 02-00-025, CPL 02-00-051, CPL 02-00-150, CPL 02-00-069, CPL 03-00-009, CPL 03-00-007, STD 03-11-002, CPL 98-020, OSHA memorandum, Subject: Guidance to Compliance Officers for Focused Inspections in the Construction Industry, and Populations of Nebraska Cities as certified by the Nebraska Department of Revenue.

Expiration: September 30, 2012

Action Offices: Omaha Area Office

Originating Office: Kansas City Regional Office

Contact: Enforcement Programs (816) 283-8745

By and Under the Authority of:

Charles E. Adkins, CIH
Regional Administrator

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- I. Purpose. This Notice describes policies and procedures for implementing a Local Emphasis Program (LEP) for programmed safety and health inspections of Nebraska construction worksites.
- II. Scope. This Notice applies to construction worksites within the jurisdictional boundaries of the Omaha Area Office.
- III. Action. The Regional Administrator and the Area Director for the Omaha Area Office shall ensure that the procedures established in this instruction are adhered to in the scheduling of programmed inspections.
- IV. Expiration. The Notice will expire on September 30, 2012.
- V. References.
 - A. OSHA Instruction CPL 04-00-001 (CPL 2-0.102A), Procedure for Approval of Local Emphasis Programs (LEPs), November 10, 1999
 - B. OSHA Instruction CPL 02-00-025 (CPL 2.25I), Scheduling System for Programmed Inspections, January 4, 1995
 - C. OSHA Instruction CPL 02-00-051 (CPL 2-0.51J) Enforcement Exemptions and Limitations Under the Appropriations Act, May 28, 1998
 - D. OSHA Instruction CPL 02-00-150 Field Operations Manual (FOM), April 22, 2011
 - E. OSHA Instruction CPL 02-00-069 (CPL 2.69) Trenching and Excavation, September 19, 1985
 - F. OSHA Instruction CPL 03-00-009, Lead, August 14, 2008
 - G. OSHA Instruction CPL 03-00-007 Crystalline Silica, January 24, 2008.
 - H. OSHA Instruction STD 03-11-002, Compliance Guidance for Residential Construction, June 16, 2011
 - I. OSHA Regional Notice CPL 98-020 Region-wide Problem Solving Initiative on Falls, Scaffolds, and Electrocutions from Overhead Power Lines in Construction, October 7, 2011
 - J. OSHA memorandum, Subject: Guidance to Compliance Officers for Focused Inspections in the Construction Industry, August 22, 1994, (Rev. (2) 9/20/95)

K. Populations of Nebraska Cities as certified by the Nebraska Department of Revenue as of 12/18/2009.

VI. Background. Successful construction inspection targeting has always been challenging. Currently, construction safety and health inspections conducted by the Omaha Area Office have been based primarily on the following triggers:

- Unprogrammed activity, such as fatalities, complaints, and Compliance Safety & Health Officer (CSHO) self-referrals
- Falls/OHPL/Scaffolding (CPL 98-02M Region-wide Problem Solving Initiative on Falls, Scaffolds, and Electrocutions from Overhead Power Lines in Construction)
- Inspection lists provided by the Construction Industry Research & Policy Center of the University of Tennessee (hereinafter "University of Tennessee")

Except for the relatively few programmed inspections, the major triggers for inspection rely on a hazardous condition to occur and be observed by or reported to OSHA, or else for an accident to occur and be reported to OSHA. The only programmed (not response initiated) inspections (i.e. those supplied by the University of Tennessee) are subject to institutional drawbacks. These include reliance on bids, permits, and other filings to initiate tracking by the University of Tennessee. Many of the construction projects within the Omaha Area Office's jurisdiction do not appear on the University of Tennessee lists. These are primarily smaller projects, often done without permits, and frequently conducted by small employers. Many of these projects are of short duration. These projects also tend to employ many immigrant workers, who historically are less likely to file complaints with OSHA. All of these factors are associated with a higher risk of construction injuries and fatalities and hamper traditional targeting methods.

This directive is intended to provide a targeting scheme with a broader range of coverage of inspection sites throughout the state of Nebraska and is intended to focus OSHA's enforcement resources on construction sites in geographical areas where these resources have not been frequently focused.

VII. Scheduling. Selection of construction sites for programmed inspections.

- A. The Omaha Area Office will use the Populations of Nebraska Cities as certified by the Nebraska Department of Revenue as of 12/18/2009 (<http://www.revenue.ne.gov/research/CertPop200912.html>) to create a list of towns/cities with a population of 5,000 people and greater. (OSHA believes that population centers of this size are more likely to have active construction sites than smaller towns/cities.) Since the counties of Douglas and Sarpy received sufficient focus of enforcement resources under CPL 98-02M Region-wide Problem Solving Initiative on Falls, Scaffolds, and Electrocutions from

Overhead Power Lines in Construction, any town or city in those counties will be removed from the master list.

- B. Each town or city remaining on the list shall be placed in alphabetical order and assigned a sequential number. The table of random numbers found in OSHA Instruction CPL 02-00-025 shall be applied to identify individual towns or cities to be inspected. The towns or cities with the first three random numbers listed will be assigned to the first inspection cycle. All subsequent inspection cycles will be developed in the same manner, using cycles of three, in accordance with OSHA Instruction CPL 02-00-025, Paragraph B.1.b.(1)(c).

VIII. Inspection Procedures.

- A. This LEP will focus on both commercial and residential work sites. When a CSHO is assigned a town or city for inspection, the CSHO will drive the major roads of that town or city searching for active construction sites. For purposes of this LEP, major roads are defined as roads and streets that contain commercial business activity and may also have mixed commercial and residential sections. The Agency's interpretation of "residential construction" for purposes of 1926.501(b)(13) combines two elements – both of which must be satisfied for a project to fall under that provision: (1) the end-use of the structure being built must be as a home, i.e., a dwelling; and (2) the structure being built must be constructed using traditional wood frame construction materials and methods (although the limited use of structural steel in a predominantly wood-framed home, such as a steel I-beam to help support wood framing, does not disqualify a structure from being considered residential construction). Reference OSHA Instruction STD 03-11-002, *Compliance Guidance for Residential Construction*.
- B. When the CSHO finds an active construction site, the CSHO will enter the site and determine if the site meets the inspection criteria of any national emphasis program (NEP), such as CPL 02-00-069, CPL 03-00-007, CPL 03-00-009, or any local emphasis program (LEP), such as CPL 98-020, or hazards are observed. If any inspection criteria listed herein is met, the CSHO will conduct the inspection according to the Field Operations Manual (hereinafter "FOM").
- C. The scope of all inspections conducted under this LEP will be comprehensive safety. Procedures outlined in the OSHA memorandum, Subject: Guidance to Compliance Officers for Focused Inspections in the Construction Industry, August 22, 1994, (Rev. (2) 9/20/95), will be followed as applicable. The CSHO will document all hazardous work exposures as well as review safety and health programs, training records, air monitoring surveys, noise surveys, etc., as applicable. If health hazards are identified (such

as noise, silica, hexavalent chromium, etc.) and cannot be adequately addressed by the inspecting CSHO, a referral will be made to adequately address the health hazards identified.

- D. If adequate programs exist and no hazards are identified by the CSHO, the inspection will be considered in compliance.
- E. When the town or city is completed, it will be removed from the list.

IX. Deletion Criteria. Inspections at selected jobsites, or, as to C., below, of specific employers on selected jobsites, will not commence if one of the following conditions exists:

- A. The jobsite has had a University of Tennessee programmed inspection within the last trimester (4 months).
- B. The jobsite has had a comprehensive safety inspection within the last trimester (4 months).
- C. An employer on a jobsite is currently an active partner in one of the currently active OSHA Partnerships and has received and passed a partnership verification inspection, unless a serious hazard or imminent danger relative to that employer is observed.
- D. The jobsite is a construction site where all work is being performed inside the dwelling on the premises of an occupied residence. (Note: Worksites such as re-roofing, guttering, trenching and other outside construction projects that are viewed from public access will be inspected. These sites may require entry onto the owner's property but not inside their residence).

X. Recording in IMIS. Forms for all enforcement activities (inspections, complaints, and referrals) and compliance assistance conducted under this LEP must be coded with the LEP code, for example as follows:

- A. The OSHA-1 for all inspections conducted under this LEP shall be marked "Planned" (Item 24) and "Local Emphasis Program" (Item 25c). Record "CITYCON" in space 25c.

XI. Evaluation. No later than November 15 of each year this program remains in effect, the Omaha Area Office will prepare a formal written evaluation of this LEP in the format specified by OSHA Instruction CPL 04-00-001, Appendix A.

Charles E. Adkins, CIH
Regional Administrator, Region VII

Date

Office of the Solicitor Concurrence

Date

Distribution:

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