OSHA REGIONAL NOTICE

U.S. DEPARTMENT OF LABOR — Occupational Safety and Health Administration

DIRECTIVE NUMBER: 2016-06 (CPL 2) | **EFFECTIVE DATE**: October 1, 2015

SUBJECT: Local Emphasis Program – Construction Worksites – Local Targeting Region II

ABSTRACT

Purpose: This regional notice implements a Local Emphasis Program (LEP) for programmed safety and health inspections of local construction projects.

References: CPL 02-00-150, Field Operations Manual (FOM), April 22, 2011.
CPL 04-00-001, Procedures for Approval of Local Emphasis Programs (LEPs), 11/10/1999.
CPL 02-00-0025, Scheduling System for Programmed Inspections, 01/04/1995.
CPL 02-00-051, Enforcement Exemptions and Limitations under the Appropriations Act, 5/28/1998.

Expiration: This notice expires September 30, 2016.
EXCEPTION: Any inspection begun prior to September 30, 2016 may continue until its conclusion.

State Impact: None

Action Offices: All Region II Area Offices

Originating Office: Office of Regional Administrator

Contact: Office of Regional Administrator
201 Varick Street, Room 670
New York, NY 10014

By and Under the Authority of

Robert D. Kulick
Regional Administrator

I. Purpose.

This regional notice implements a Local Emphasis Program (LEP) for programmed safety and health inspections of local construction projects. The LEP will be conducted in accordance with the Field Operations Manual (FOM), CPL 02-00-150, dated April 22, 2011.

II. Scope. This instruction applies to all Region II Area Offices.

III. Expiration. This notice expires on September 30, 2016.

EXCEPTION: Any inspection begun prior to September 30, 2016 may continue until its conclusion.

IV. Background.

Successful construction inspection targeting has always been challenging. Urban and suburban environments add their unique set of confounders to these challenges. Currently, construction safety and health inspections conducted by each respective Area Office are based primarily on the following triggers:

- Fall LEP (Regional)
- Heavy Highway and Bridge (Regional)
- Gut-rehab LEP (Regional)
- Unprogrammed activity, such as CSHO self-referrals, complaints, and accidents

Additionally, each Area Office conducts a small amount of programmed inspections based on lists provided by the Construction Inspection Targeting System (c-targeting).

Except for the relatively few programmed inspections, the major triggers for inspection rely on some hazardous condition to occur and either be observed by OSHA (Fall LEP, Gut-rehab LEP, self-referrals), be reported to OSHA (referrals and complaints), or else for an accident to occur and be reported to OSHA. The only truly random preventative inspections (i.e., those supplied by the Construction Inspection Targeting System) suffer from certain institutional drawbacks. These include reliance on bids, permits, and other filings to initiate tracking. Unfortunately, many of the construction projects within our office's jurisdiction do not appear on the Construction Inspection Targeting System lists. These are primarily smaller projects, often without permits, and usually conducted by small employers. Many of these projects are of a short duration. These projects also tend to employ many immigrant workers, who are traditionally reluctant to file formal complaints. All of these factors are associated with a higher risk of construction injuries and fatalities and hamper traditional targeting methods.

The Bureau of Labor Statistics reports for NAICS Code 23, establishments primarily engaged in the construction of buildings or engineering projects in 2013 there was a final report of 824 fatalities and a total recordable case rate of 3.8 per 100 full time workers. In the area of jurisdiction covered by Region II, for 2015, there were 51 work related fatalities in the construction industry.

V. Action.The Area Director shall ensure that the procedures outlined in the notice are followed during the effective period of this notice. This notice is not to conflict with the inspection priorities as established in the Field Operations Manual (FOM). When an inspection is not conducted because the employer has refused entry, a warrant shall be sought in accordance with the current procedures for handling such refusals.

VI. Procedures.

A. The Area Director shall be responsible for developing a list of establishments for inspections. The establishment list will be generated as follows. Based on historical and statistical data, as well as local knowledge, the Area Director will select a distinct geographic area within each respective Area Offices jurisdiction. The boundaries of the area will be defined based on the Postal ZIP code, police precinct, political district or neighborhood, or significant geographic features (e.g., bodies of water, main thoroughfares, etc.).

B. An OSHA employee will be assigned to travel throughout the selected geographic area. All ongoing construction projects observed will be listed by the OSHA staffer. This includes both active and inactive projects, whether or not hazards are observed. Cues for ongoing projects include actual construction work, scaffolding, sidewalk sheds, construction barricades and fencing, posted building permits, demolition dumpsters, and the presence cranes and heavy equipment. If possible, the entire selected geographic area will be surveyed the same business day.

C. The OSHA staffer will list each observed ongoing project according to street address, type of construction activity, and any other cues observed. If possible, the identity of the employer will also be listed. If hazards are observed, they shall be noted as well. The establishments will be listed sequentially in the order in which they are observed.

D. If hazards were observed by the OSHA staffer, they shall be reported to the AAD-Safety. If imminent danger conditions are observed, an inspection shall be initiated following appropriate protocols as described in the current Field Operations Manual.

E. When performing programmed inspections under this LEP, each Area Office shall

develop an inspection master list of establishments. The National Office Policy on List Generation and Randomization shall be followed in accordance with the national Office memorandum to Regional Administrators dated November 12, 2014, *Establishment Targeting Lists for Emphasis Programs.* Deletions and scheduling must be completed in accordance with CPL 02-00-155, *Inspection Scheduling for construction.*

F. If the Area Director determines that the list is no longer representative of the status of work in the defined area, or that sufficient inspection resources have been devoted to the selected geographic area, a new field survey shall be conducted using the same criteria defined above, and a new list will be generated. This new survey may be of the same geographic area or of any new one.

G. The scope of these inspections shall include both safety and health hazards, as well as a review of all applicable documentation and programs. Attention will be paid to hazards covered by OSHA's Strategic Management Plan and applicable emphasis programs. If hazards are observed in the opposite discipline (safety or health), a referral shall be made.

H. The Area Director will explore the feasibility of using the Construction Inspection Targeting System capabilities to enhance this Local Construction Targeting LEP. This includes using key-word searches throughout their databases, or selecting geographic areas based on the volume and type of construction.

I. Region II will develop an outreach plan which will implement programs that will support the efforts of the Agency in meeting the Strategic Plan/Operating Plan goals. Such programs could include speeches, training sessions, or news releases to our constituents such as unions, professional organizations, and community groups. Inspections may be initiated independent of any outreach being conducted.

J. Establishments for inspection may fall within the scope of the current Appropriations Act. If so, inspection activities must be done and completed in accordance with the directive, CPL02-00-051, *Enforcement Exemptions and Limitations under the Appropriations Act.*

VII. Recording in OIS. Current instructions for completing the appropriate inspection classification boxes on the OSHA Inspection form, as found in the OIS manual shall be applied when recording inspections conducted under the LEP, as follows:

A. The OSHA Inspection form for any programmed inspection covered under this Local Emphasis Program for Local Construction Targeting shall be marked "Program Planned" in the Initiating Type field and the value "LOCALTARG" shall be recorded in the Local Emphasis Program field.

B. LEP Combined with Unprogrammed Inspections. For all unprogrammed inspections conducted in conjunction with this LEP inspection under this initiative, the OSHA Inspection form must be marked with the appropriate unprogrammed activity in the Initiating Type field. The value "LOCALTARG" shall be recorded in the Local Emphasis Program field.

C. LEP Combined with other Emphasis Program Inspections. For all programmed inspections such as other NEPs/LEPs conducted in conjunction with an LEP inspection under this initiative, the OSHA Inspection form must be marked as "Program Planned" in the initiating Type field. In addition, the value "LOCALTARG" shall be recorded in the Local Emphasis Program field along with all NEP and LEP OIS codes applicable to the inspection.

VIII. Outreach

Region II will develop an outreach plan which will implement programs that will support the efforts of the Agency in meeting the Strategic Plan/Operating Plan goals. Such programs could include speeches, training sessions, or news releases to our constituents such as unions, professional organizations, and community groups. Inspections may be initiated independent of any outreach being onducted.

IX. Evaluation.

A. Abatement documentation/verification will be submitted to or otherwise collected by the Area Office for all violations. The abatement information must be included in the case file in a timely manner.

B. Each Region II Office participating in the LEP will prepare a written evaluation of this LEP in the format specified by OSHA Instruction CPL 04-00-001.The evaluation must respond to the questions outlined in Appendix A of the Instruction. Evaluations will be submitted to FEO no later than September 15, 2016. The evaluation will include a recommendation for the continuation or elimination of this program. In addition, the evaluation will include the following evaluation factors:

1. The goal of the program and the Area Office's opinion of how effective the program was in meeting its goals.

2. Data and information used to support the conclusions stated above such as enforcement statistics, serious hazards eliminated, any impact on covered, non-inspected employers, and the number of employees affected by enforcement activities covered by the LEP. Data to be evaluated may also include:

a. Number and percentage of serious, repeat, 5(a)(1) and willful violations cited
b. Number and type of violations issued directly related to hazards targeted by the LEP
c. Number of fatality inspections
d. Number of visits coded as "No Inspection"
e. Number and type of referrals made to other agencies
f. Number of outreach activities conducted
g. Number of employers contacted through outreach
h. Number of individuals affected through outreach