



OSHA REGIONAL INSTRUCTION

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

DIRECTIVE NUMBER: CPL 04-09-2409

SUBJECT: Local Emphasis Program for Retail Facilities

REGION: IX

SIGNATURE DATE: October 1, 2023

EFFECTIVE DATE: October 1, 2023

ABSTRACT

Purpose: This instruction renews the policies and procedures for a Local Emphasis Program (LEP) within Honolulu Area Office jurisdiction for the Retail Industry focusing on Subpart E Means of Egress; Subpart N Material Handling and Storage; and Subpart S Electrical.

Scope: This instruction applies to establishments within the Honolulu Area Office jurisdiction in the general industry SIC codes listed in this directive.

References: See Paragraph III.

Cancellations: This instruction cancels Region IX Enforcement Programs Notice CPL 04-00-15, dated October 1, 2018.

Significant Changes: None.

State Impact: None.

Action Offices: Honolulu Area Office

Originating Office: Honolulu Area Office

Contact: Roger Forstner, Area Director

By and Under the Authority of:

James D. Wulff
Regional Administrator

Executive Summary

This instruction renews the policies and procedures for conducting programmed safety inspections of employers in the Retail industry with North American Classification Industry Classification System (NAICS) codes of 4481 (Clothing Stores); 4521 (Department Stores); 4529 (Other General Merchandise Stores); and 4539 (Other Miscellaneous Store Retailers). Inspections will be conducted within the jurisdiction of the Honolulu Area Office. The inspections will be comprehensive safety inspections focusing on hazards associated with Subpart E Means of Egress, Subpart N Material Handling and Storage, and Subpart S Electrical.

According to the Bureau of Labor Statistics, the retail trade industry experienced an injury and illness case rate of 3.4 per 100 full-time retail workers in 2021. Retail employees face significant risk of injury resulting from the improper handling and storage of materials, and obstruction of egress from places of employment. Violations of Subpart E Means of Egress; Subpart N Material Handling and Storage; and Subpart S Electrical; and Subpart Z Toxic and Hazardous Substances rank the highest during Federal inspections occurring at retail stores.

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I. Purpose

This instruction renews the policies and procedures for implementing a Local Emphasis Program (LEP) for programmed safety inspections of employers in the Retail industry with a North American Industry Classification System (NAICS) codes of 4481 (Clothing Stores); 4521 (Department Stores); 4529 (Other General Merchandise Stores); and 4539 (Other Miscellaneous Store Retailers). Inspections will be conducted within the jurisdiction of the Honolulu Area Office. The inspections will be comprehensive safety inspections focusing on hazards associated with Subpart E Means of Egress, Subpart N Material Handling and Storage and Subpart S Electrical.

II. Scope

This instruction applies to all Retailers within the Honolulu Area Office's jurisdiction in the NAICS codes listed in this directive.

III. References

- A. OSHA Instruction CPL 02-00-164, April 14, 2020, Field Operations Manual
- B. OSHA Instruction CPL 02-00-025, Scheduling System for Programmed Inspections, January 4, 1995.
- C. OSHA Instruction CPL 02-00-051, Enforcement Exemptions and Limitations under the Appropriations Act, May 28, 1998; (Appendix A updated annually).
- D. OSHA Instruction CPL 04-00-002, Procedures for Approval of Local Emphasis Program (LEPs), November 13, 2018.
- E. Memorandum dated December 3, 2014 on Procedures for Local and Regional Emphasis Programs.
- F. Memorandum dated November 12, 2014, on Establishment-Targeting Lists for Emphasis Programs.

IV. Expiration Date

This LEP will expire no later than five years from the date of implementation, unless renewed.

V. Action Office

Honolulu Area Office

VI. Background

According to the Bureau of Labor Statistics, the retail trade industry experienced an injury and illness case rate of 3.4 per 100 full-time retail workers in 2021. Retail employees face significant risk of injury resulting from the improper handling and storage of materials, and obstruction of egress from places of employment. Violations of Subpart E Means of Egress; Subpart N Material Handling and Storage; and Subpart S Electrical; and Subpart Z Toxic and Hazardous Substances rank the highest during Federal inspections occurring at retail stores.

VII. Inspection Scheduling

A. Selection of Sites:

1. A search of Business Directories will be used to identify all worksites in the Honolulu Area Office's jurisdiction in North American Industry Classification System (NAICS) codes of 4481 (Clothing Stores); 4521 (Department Stores); 4529 (Other General Merchandise Stores); and 4539 (Other Miscellaneous Store Retailers).
2. Separate lists of such identified establishments will be compiled, for each of the areas of Hawaii, Guam, CNMI and American Samoa, and updated annually. The master lists, all additions and deletions, the randomized lists, and scheduling cycles created for this LEP, shall be filed electronically on the regional shared drive or the regional Sharepoint site and retained for three years. The Area Office will coordinate with EP to ensure all documentation is filed at least annually.
3. The resulting establishment list for each area will be randomly ordered using the RANDBETWEEN function in Excel or an equivalent randomization tool. The AO may also send their master list to EP for randomization. All steps in the randomization process should be documented and this documentation should be maintained and filed with the master list, cycles, reasons for deferrals, and any other related information.
4. Inspection cycles will be created by selecting a number of establishments from the randomized master list. Establishments selected in a cycle can be inspected in any order, but all establishments in a cycle must be completed

before another cycle is created. Programming goals and available resources should be taken into account when setting the size of a cycle.

5. Reports of imminent danger, fatality/catastrophe, complaints and referrals shall be scheduled as unprogrammed inspections and shall be inspected in accordance with the applicable provisions of the FOM. This does not, however, limit the Area Office's authority to conduct an inspection pursuant to this LEP. If an unprogrammed inspection or investigation is to be conducted at a facility that contains hazards addressed by this LEP, the Area Office may also conduct the inspections of those areas covered by this LEP.

B. Deletions:

Establishments with ten or fewer employees will not be inspected under this LEP and will be deleted from the list. Deletion Criteria as outlined in the Enforcement Exemptions and Limitations under the Appropriations Act directive CPL 01-00-051 will be followed with respect to any establishments. The Area Office will also delete facilities known to be out of business, establishments out of the Area Office's jurisdiction, and/or establishments that have received a comprehensive safety inspection, within the previous 12 months of the creation of the current inspection cycle.

VIII. Inspection Procedures

The Area Director will ensure that Compliance personnel follow the procedures contained in this instruction in scheduling and conducting inspections under the LEP.

A. Inspection Targeting and Scheduling

Inspections will be scheduled using the cycle lists. Establishments on the cycle list may be inspected in any order, so that Area Office resources are efficiently used. However, once a cycle has begun, all establishments in the cycle will be inspected before a new cycle is begun, except that carryovers will be allowed as provided for in OSHA Instruction CPL 02-00-025.

B. Programmed Inspections – Focus of Inspections

1. Although programmed inspections may be comprehensive, primary inspection efforts should be placed on significant hazards that are likely to cause death or serious injury. Typically this includes the following hazards for retail establishments:
 - a. Blocked Exits
 - b. Electrical conditions (that would lead to electrocution)

- c. Powered Industrial Trucks
- d. Material Handling and Storage

2. Minimal time will be spent on in-compliance inspections.

C. Re-Inspection

- 1. Any company at any worksite that has been inspected based on this LEP may be subject to re-inspection.
- 2. Re-inspection may be based on unprogrammed events such as fatalities, catastrophes, complaints, referrals, and follow-up inspections. Inspections in these categories will be scheduled for inspection in accordance with existing procedures outlined in the Field Operations Manual (FOM).
- 3. Re-inspection may also occur on an annual basis because the mechanism of identifying worksites/projects is repeated. Therefore, if an establishment is still active, the location may be subject to another inspection.
- 4. Re-inspection may also occur based on the need to verify abatement per the Abatement Verification Standard (29 CFR 1903.19).

IX. Outreach

The Assistant Regional Administrator for Cooperative and State Programs and the Assistant Regional Administrator for Enforcement Programs will ensure the Area Directors and all Outreach staff are familiar with this directive and actively promote the LEP when conducting outreach sessions and meetings. Hazards, work practices, and machinery associated with retail facilities and covered by this LEP will be pointed out and discussed during outreach sessions and meetings. Handouts and publications that address these hazards, which are already developed and available, will be provided at outreach sessions and meetings. A copy of this LEP will be provided to interested parties upon request.

Employers will be encouraged to contact the Honolulu Area Office, the Consultation 21(d) program, or other third party entities that can offer abatement assistance.

X. Coding

- A. On the OIS Inspection Form, inspections which are targeted pursuant to the selection criteria in Sections VII.A.1. through 3. of this LEP shall be coded as

RETAIL in the Local Emphasis Program block and as “Programmed Planned” in the Initiating Type block.

- B. On the OIS Inspection Form, unprogrammed inspections involving retail industry safety issues shall be coded as RETAIL in the Local Emphasis Program block and as the appropriate unprogrammed activity in the Initiating Type block regardless of whether they are listed on a cycle list.
- C. The RETAIL code shall be used as the primary emphasis code for all inspections scheduled under this LEP, and for all unprogrammed inspections addressing this industry. Any other applicable LEP or NEP code may be entered as a non-primary code.
- D. Unprogrammed inspections or inspections conducted under other scheduling systems which also meet the criteria specified in the LEP shall have the RETAIL code entered as a non-primary LEP code.

XI. Program Evaluation

- A. At the midpoint of the effective period of this REP (two and a half years from the implementation date) and at the end of the effective period, evaluation reports will be completed that shall include the following elements:
 - 1. The goal of the program.
 - 2. A determination of how effective the program was in meeting its goal.
 - 3. Data and information to support the conclusions stated in the goal, including enforcement statistics, as required in CPL 04-00-002, Procedures for the Approval of Local Emphasis Programs.
 - 4. Statement of whether the program should be continued, accompanied by a brief rationale.
 - 5. Description of any legal issues that arose which would necessitate a review by the Solicitor before renewal of the program could be approved.
 - 6. Any other comments or recommendations, including findings which might have an impact on how OSHA or the industry does business.
- B. This evaluation shall be submitted to the Regional Administrator for review, at which time a decision will be made to continue, amend, renew or discontinue the LEP.