



OSHA Care Facility Inspection Policy and Employer Rights



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Cancellations.

None.

Action Offices.

- A. Responsible Office.
Directorate of Enforcement Programs (DEP), Office of Health Enforcement.
- B. Action Office.
National, Regional, Area Offices and State Plan Offices.
- C. Information Offices.
OSHA Directorate of Training and Education, Consultation Project Managers, Voluntary Protection Program (VPP) Managers, Partnership Coordinators, Compliance Assistance Coordinator, and Compliance Assistance Specialists.

Federal Program Change. Notice of Intent and Adoption Required.

This Instruction describes a Federal program change which establishes a National Emphasis Program (NEP) to reduce occupational illness and injury in nursing and residential care facilities (NAICS codes 623110, 623210 and 623311) with specific emphasis on ergonomic stressors relating to resident handling, exposure to blood and other potentially infectious materials, exposure to tuberculosis, workplace violence, and slips, trips, and falls. Because the seriousness and prevalence of the hazards in these facilities are nationwide, States are required to participate in this national emphasis effort. Targeting will focus on establishments in NAICS codes 623110, 623210, and 623311, with a DART rate at or above 10.0. The NEP contemplates at least three (3) inspections per year, per State or field office.

The State's notice of intent, due within 60 days, must indicate whether the State's emphasis program will be identical to or different from the Federal program. If a State is already implementing an emphasis program in this area, or if it adopts a new initiative in response to this Federal program change, its implementing policies and procedures are expected to be at least as effective as those in this instruction.

If a State adopts or maintains an emphasis program on nursing and residential care facilities which differs from the Federal program, the State must identify the differences and may either post its different procedures on its State Plan's website and provide the link to OSHA, or provide an electronic copy to OSHA with information on how the public may obtain a copy. If the State's emphasis program is identical to the Federal, it must provide the date of adoption to OSHA. State adoption must be accomplished within six months, with posting or submission of documentation within 60 days thereafter. OSHA will provide summary information on the State's response to this instruction on its website.

The OSHA Office of Statistical Analysis will provide targeting lists to States upon request. States may make appropriate additions and deletions to this list as discussed in Section XII but should not delete public sector establishments within their jurisdiction. States must code any inspections (programmed or unprogrammed) and related compliance assistance activity conducted under this NEP as directed in Section XVI.

Expiration.

This Instruction will expire three (3) years from the date of issuance. Upon the expiration or replacement of this Instruction, inspection cycles already underway shall be completed as provided in XII.B.3.

Significant Changes.

There are no significant changes compared to the earlier program (i.e., 2002 NEP, which concluded in 2003), except that this new NEP also addresses workplace violence.

Application.

This instruction applies to all general industry nursing and residential care facilities covered under NAICS codes 623110, 623210 and 623311.

Background.

Nursing and residential care facilities continue to have one of the highest rates of injury and illness among industries for which nationwide days away, restricted work activity and job transfer (DART) injury and illness rates were calculated for Calendar Year 2010 (CY 2010). According to data from the Bureau of Labor Statistics (BLS), the national average DART rate for private industry for CY 2010 was 1.8. Nursing and residential care facilities (i.e., employers within NAICS 6231, 6232 and 6233) experienced average

DART rates of 5.6, 3.9 and 4.7, respectively, despite the availability of feasible controls which have been identified to address hazards within this industry. The sectors within the chosen NAICS codes which ordinarily provide medical/nursing care to residents (i.e., NAICS codes 623110, 623210 and 623311) will be the establishments chosen for inspection under this NEP.

Note: BLS data for NAICS 6232 contain data for establishments within NAICS 623210, which will be a focus sector for this NEP, and for NAICS 623220 (i.e., residential mental health and substance abuse facilities; settings that do not ordinarily include medical services). The latter, NAICS 623220, will NOT be a focus of this NEP. Data separating the two sectors in NAICS 6232 are currently unavailable. Additionally, BLS data for NAICS 6233 contains data for establishments that fall within NAICS 623311, which will be a focus sector for this NEP, and also for NAICS 623312 (i.e., assisted-living facilities without on-site nursing care facilities), which will NOT be a focus of this NEP. Data separating the two sectors in NAICS 6233 are also currently unavailable.

Because of the large number of establishments in this industry that reported high rates in the OSHA Data Initiative survey, higher DART and DAFWII rates are generally used to select a limited number (e.g., 300 for the SST-11) of the highest rated establishments in this SIC Code. The Agency is initiating this NEP to supplement the annual Site Specific Targeting (SST) inspections in an effort to identify and address hazards in additional facilities within this industry. In so doing, OSHA will be able to initiate inspections in nursing and residential care settings at sites that have elevated DART and DAFWII rates but do not meet the strict criteria applied for eligibility in the selection under the SST. Section XII.A of this instruction offers additional information.

This NEP will focus primarily on the hazards which are prevalent in nursing and residential care facilities, specifically, ergonomic stressors relating to resident handling; exposure to blood and other potentially infectious materials; exposure to tuberculosis; workplace violence; and slips, trips, and falls. As detailed in the FOM, when additional hazards come to the attention of the CSHO, the scope of the inspection may be expanded to include those hazards. Calendar Year (CY) 2010 data from the BLS indicate that an overwhelming proportion of the injuries within this industry were attributed to overexertion-related incidents. As an example, 48% of all reported injuries in nursing care facilities for CY 2010 were due to overexertion. Injuries from slips, trips, and falls were also very commonly reported among the nonfatal occupational injury and illness cases reported in nursing and residential care facilities. Taken together, overexertion and slips, trips, and falls accounted for 51.4% of all reported cases with days away from work within this industry for CY 2010.

OSHA enforcement data from the IMIS/OIS indicate that the most frequently cited standard in nursing and residential care facilities is 29 CFR 1910.1030, the Bloodborne Pathogens Standard. Additionally, employees working in nursing and residential care facilities have been identified by the Centers for Disease Control and Prevention (CDC) as being among the occupational groups with the highest risk for exposure to tuberculosis

(TB) due to the case rate of disease among persons ≥ 65 years of age. In CY 2009, for example, the CDC reported an overall TB case rate of 3.8 per 100,000 population across all age groups. The corresponding case rate for persons ≥ 65 years of age was 5.8 per 100,000 in 2009. [1, CDC]

Workplace violence (WPV) is a recognized hazard in nursing and residential care facilities. The National Institute for Occupational Safety and Health (NIOSH) defines WPV as violent acts (including physical assaults and threats of assaults) directed toward persons at work or on duty. [10, CDC] In 2010, BLS data reported approximately 2,130 assaults by persons in nursing and residential care facilities. OSHA Instruction [CPL 02-01-052](#), *Enforcement Procedures for Investigating or Inspecting Workplace Violence Incidents*, directs OSHA officials [e.g., Compliance Safety and Health Officers (CSHOs)] who conduct inspections in response to programmed inspections at worksites that are in industries with high incidence of workplace violence (e.g., health care) to include investigation of incidents related to workplace violence.

This NEP addresses only enforcement-related procedures. Voluntary guidelines published by OSHA will not be used as a basis for citations issued under this NEP. The efforts set forth herein are designed to meet the Department of Labor's Strategic Plan goals (2011-2016) in addressing the requirements of safe and healthy workplaces, in high-risk industries and as identified in OSHA's Strategic Plan goal 2.1, to improve workplace safety and health through the enforcement of occupational safety and health regulations and standards.

Hazards other than those selected as the target of this Instruction are likely to exist in nursing and residential care facilities. For example, a commonly recognized hazard in these settings is the exposure to multi-drug resistant organisms (MDROs) such as methicillin-resistant *Staphylococcus aureus* (MRSA). The CDC has identified residents of nursing care facilities among those at increased risk for colonization with MRSA and recommends that employers institute standard precautions and contact precautions to protect workers who must provide care and services to residents colonized with MRSA or other MDROs. [10, CDC] Employee exposures to hazardous chemicals, such as sanitizers, disinfectants and hazardous drugs are also among the other hazards that are commonly encountered in nursing and residential care facilities.

As detailed in the FOM (OSHA Instruction [CPL 02-00-150](#)), when additional hazards come to the attention of the compliance officer, the scope of the inspection may be expanded to include those hazards. As such, unprotected exposures to hazardous chemicals or MDROs such as MRSA should be addressed if these become known during the course of an inspection conducted under this NEP.

Outreach and training efforts in these settings should include information on commonly recognized hazards (e.g., WPV and MDRO exposures) for the purpose of advancing awareness of those hazards (See Section XIV of this NEP for some additional information).

Definitions.

A. Data Initiative.

The OSHA Data Initiative is a nationwide collection of establishment-specific injury and illness data from approximately 80,000 establishments. It collects data from establishments by using the "OSHA Occupational Injury and Illness Data Collection Form." The Data Initiative is OSHA's Annual Survey Form that is referred to in 29 CFR 1904.41.

Note: The 2010 injury and illness data collected by the 2011 Data Initiative will be used in this NEP.

B. Days Away, Restricted, or Transferred (DART) Rate.

To calculate the DART, use the formula $(N \div EH) \times (200,000)$ where N is the number of cases involving days away and/or restricted work activity, and/or job transfer; EH is the total number of hours worked by all employees during the calendar year; and 200,000 is the base number of hours for 100 full-time equivalent employees.

For example: Employees of an establishment (XYZ Company) worked 645,089 hours at this XYZ company. There were 22 injury and illness cases involving days away and/or restricted work activity and/or job transfer from the OSHA-300 Log (total of column H plus column I). The DART rate would be $(22 \div 645,089) \times (200,000) = 6.8$.

C. Establishment.

An establishment is a single physical location where business is conducted or where services are performed.

For a more detailed definition of Establishment see Chapter 2, paragraph VII.B. of [CPL 02-00-135](#), *Recordkeeping Policies and Procedures Manual*.

Program Procedures.

A. Site Selection - Targeting Source.

Establishments in NAICS 623110, 623210 and 623311 (formerly SIC codes 8051-Skilled Nursing Care Facilities, 8052-Intermediate Care Facilities, and 8059-Nursing and Residential Care Facilities, Not Elsewhere Classified) with a DART rate at or above 10.0 as indicated by CY 2010 OSHA Data Initiative (ODI) data will be the targeting source. This DART rate cut-off was used to select at

least 700 sites in the pool of facilities eligible for inspection. A list of establishments in NAICS codes 623110, 623210 and 623311 (i.e., an NEP-Specific Inspection List) will be provided by the Office of Statistical Analysis (OSA). See Section XII.B.1 below.

1. Although a list of nursing and personal care establishments may have been selected on an Area Office's (AO) Site Specific Targeting (SST) Primary Inspection list, AOs will be expected to select sites for inspection under this NEP from the Nursing Home NEP-Specific Inspection list. Residential nursing care facilities (SIC code 805) that have been randomly selected on an AO's SST-11 Primary Inspection List use a DART rate at or above 16.0, whereas the sites selected under this NEP will use a rate at or above 10.0.

The inspection procedures outlined in the SST directive [e.g., OSHA Notice 11-03 (CPL 02) established inspection procedures for SST-11] must be followed when initiating inspections of residential nursing facilities selected from the SST list. However, if a health referral is made or a combined safety and health inspections is done at a site that was initially selected from the SST list, and the items on the referral (or combined safety and health inspection) are related to hazards targeted under this NEP (e.g., ergonomics), then the health portion of the inspection should follow the inspection procedures outlined in this NEP. Please refer to sections XIII.A.1-5 of OSHA Notice 11-03 (CPL 02) for further instructions on inspections done under SST-11.

2. Verify the SIC/NAICS codes of any site selected for inspection under this NEP. As needed, establish what activities occur at the worksite before determining the appropriate SIC/NAICS code.

Note: Please note that in accordance with existing OSHA policy, where work performed at Federally operated worksites are similar to what is covered under this NEP and criteria for this NEP are met, an inspection must be conducted.

B. Inspection Scheduling.

Inspections conducted under this NEP will focus on establishments classified in the following sectors within the selected NAICS codes 623110, 623210 and 623311. Settings in these specific NAICS codes ordinarily provide medical/nursing care to residents.

1. Using the most recently available ODI data, the OSA will prepare an NEP-Specific Inspection List of establishments in the NAICS codes

623110, 623210 and 623311. The OSA will then provide to each AO a list of establishments within the Area Office's geographical jurisdiction. Each establishment on the resulting establishment list will be assigned a random number by the OSA. The National Office (NO) will make the list available on the Directorate of Enforcement Program's (DEP's) Intranet website.

2. Each AO shall inspect at least three (3) facilities each year under this NEP, unless there are fewer facilities in its jurisdiction. Inspections will be scheduled in the order called for by the random number assigned.
3. If an AO initiates an unprogrammed inspection (e.g., complaint or referral) in a facility within the covered NAICS codes, and the inspection criteria of this Instruction are met (i.e., the DART rate for 2009, 2010, or 2011 is at or above 10), then the procedures set forth in this Instruction must be followed and the inspection may be coded under this NEP.
4. Although an AO will be permitted to use the nursing home NEP code on certain inspections initiated as unprogrammed or SST activities, the Area Office would still be responsible for conducting at least 3 inspections from the list provided by the OSA.

C. Inspection Priority.

Normally, the first inspection priority for Area Offices is to conduct unprogrammed inspections, and the inspection priorities as described in the FOM (OSHA Instruction [CPL 02-00-150](#)) will be followed, with the following additional guidance:

1. Each AO shall inspect at least three (3) residential nursing care establishments each year from the nursing home NEP-Specific Inspection List unless, in view of resource considerations, the Regional Administrator has received special approval (generally in advance) from the Deputy Assistant Secretary to conduct a smaller number of inspections, or this NEP is replaced before all the establishments on the list are inspected. Approval will normally require the AO to complete all inspections in the current cycle.
2. Inspections conducted under this NEP have the same priority as inspections conducted under SST. Other than as specified in section XII.A.1 of this instruction (i.e., regarding inspections generated from SST lists), when possible, inspections conducted under this NEP will be combined with other programmed and unprogrammed inspections. This NEP may be combined with other existing initiatives, such as Local Emphasis Programs which identify targets on a different basis.

3. AO will continue to conduct other programmed inspections under national emphasis programs, or under local emphasis/initiative programs as the AO and Regional goals dictate.

D. Deletions.

1. Area Offices will be responsible for making appropriate deletions from the inspection list in accordance with [CPL 02-00-025](#) at B.1.b.(1)(b)6.d.**Deletions**, except that the criteria for H# and S# (*note: H = health; S = safety; and # = digit of the fiscal year*) have been modified by this NEP. The coding originally was defined to determine deletion from an inspection list if the establishment had a substantially complete or focused health (H) or safety (S) inspection conducted within the previous five (5) fiscal years. This NEP provides that an establishment is deleted from the inspection list if it has received a comprehensive safety and/or health inspection within the two (2) years prior to the effective date of this NEP.
2. Additionally, establishments will be deleted if:
 - a. The establishment is known to be out of business, or it is determined to not be applicable to this NEP (e.g., wrong NAICS code, address cannot be confirmed, etc.). Before deleting any establishment, the AO must perform a reasonably diligent search of local business directories, the internet, or other sources). The AO should document the basis for such determinations.
 - b. The establishment has received a comprehensive inspection (safety and/or health) within the two (2) years prior to the effective date of this NEP, provided either that no citations were issued for hazards covered by this NEP or that a citation(s) was issued but a follow-up inspection documented tangible appropriate and effective efforts to abate the serious hazards cited or OSHA received abatement verification that the hazards have been abated. An establishment with a pending contest of a citation related to the hazards will not be deleted, but the inspection will be deferred during the contest.
 - c. The establishment is a public sector employer (i.e., State or local government) in a Federal OSHA state. Note: State Plan States may not automatically delete public sector facilities.

Inspection Procedures.

A. NAICS Verification.

At the opening conference the compliance safety and health officer (CSHO) will verify the establishment's NAICS code. As needed, determine the activities which occur at the workplace before determining the appropriate NAICS code. If the establishment does not fall within NAICS 623110, 623210 or 623311, the inspection will be terminated as part of this NEP.

B. Ownership.

1. Determine the corporate name of the employer as well as the name being used by the company for the local facility.
2. If the establishment chosen from the NEP-specific inspection list has changed ownership since December 31, 2009, and has been under new ownership for more than six months, recalculate the rate for the period of new ownership. If the recalculated DART rate is below 10.0, do not continue with the inspection. If it is at or above 10.0, continue with the inspection.

When calculating the DART rate for the period of the new ownership, which may be less than a year, be sure both the number of incidents and the employee work hours are for the new ownership period.

3. If the establishment has changed ownership after December 31, 2009, and has been under new ownership for less than six months, calculate the DART rate using available records. If the CSHO is unable to calculate the DART rate because the new owner does not have records from the previous owner, continue with the inspection.
4. In establishments where the ownership has changed, CSHOs can enter into the IMIS/OIS the Dun & Bradstreet DUNS number of the new owner in the appropriate field on the Establishment Detail Screen. If the new owner does not have a new DUNS number, enter the old DUNS (see XVI.D.).

C. Recalculate DART.

1. During inspections under this Instruction, the OSHA-300 logs for the previous three years will be reviewed. The CSHO will recalculate the DART rates for all three years and record them on the OSHA-1 Form. The DART rate for 2010 (recalculated by the CSHO) will be compared to the DART rate reported by the employer in the OSHA 2011 Data Initiative data collection. A recalculation will not be performed if, for any reason, the relevant records are not readily available. CSHOs will check OSHA-

301 Forms, or equivalent, as they deem appropriate to confirm the OSHA-300 Forms.

2. If records are not available for CSHOs to make this determination, proceed with the focused safety and health inspection.
3. If upon initial review of the OSHA-300 logs, it becomes apparent that the employer has over-recorded on the log cases that are not recordable, these cases shall be removed prior to calculating the DART rate.
4. If the establishment's recalculated DART rate for 2010 is below 10.0, but the DART rate for either of the other two years being reviewed is at or above 10.0, proceed with the inspection. For example, if DART rates for 2009, 2010 and 2011 are being reviewed and the recalculated DART rate for 2010 is below 10.0, but the DART rate calculated for either 2009 or 2011 is greater than 10.0, proceed with the inspection.
5. As described in the scenario above, if the establishment's recalculated DART rate using the establishment's records is less than 10.0 for 2009, 2010 and 2011, conduct a records review for 2010 only, and then recalculate the establishment's DART rate for 2010. At the CSHO's discretion, an abbreviated walk-around for the purposes of interviewing employees may be conducted to verify that the information on the OSHA 300 is accurate. In this case, the CSHO should focus interviews on those employees most likely to have an injury (e.g., certified nursing assistants and dietary staff). Classify the inspection as a "records only" inspection and end the inspection if the rate for 2010 is still below 10.0.

Note: The 2010 DART rate will be the basis for the initial NEP-Specific inspection list provided by the OSA. An updated NEP-Specific inspection list will be generated and provided for use with the corresponding DART rate as a reference point for each of the subsequent two years following initiation of this NEP. As an example, an establishment's injury and illness records for 2010, 2011, and 2012, would be reviewed during the second year of this NEP (i.e., inspections conducted in 2013). At that time, instead of the 2010 data, the 2011 injury and illness data provided by an ODI conducted in 2012 will become the reference point.

D. Privacy.

1. Residents.
 - a. Respect for residents' privacy must be a priority during any inspection.

- b. In evaluating resident handling or other hazards (e.g., BBP, tuberculosis) **DO NOT** review any resident records that include personally identifiable health information, including diagnoses, laboratory test results, etc., provided by the employer.
- c. Evaluations of workplace health and safety issues in this NEP may involve assessment of resident handling. Resident handling activities may take place in resident rooms, restrooms, shower and bathing areas or other areas where the privacy of residents could be compromised. Documenting resident handling activities by videotaping or photography requires the resident's informed, written consent. Family members or guardians may give consent for those residents who are incapable of giving informed consent (see Appendix B).

2. Employees' Records.

- a. If employee medical records are needed that are not specifically required by an OSHA standard (e.g., the results of medical examinations, laboratory tests, medical opinions, diagnoses, first aid records, reports from physicians or other health care providers), they must be obtained and kept in accordance with 29 CFR 1913.10, *Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records*, and 29 CFR 1910.1020, *Access to Employee Exposure and Medical Records*. Medical access orders must be obtained through the Office of Occupational Medicine. See OSHA Directive [CPL 02-02-072](#), *Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records*, dated August 22, 2007, for further information and inspection guidance on obtaining medical access orders.
- b. The Department of Health and Human Services' [Standards for Privacy of Individually Identifiable Health Information](#), 45 CFR 164.512 (b)(1)(i), provides that protected health information may be disclosed to a public health authority (e.g., OSHA) which has the authority to collect or receive such information for the purpose of preventing or controlling disease, injury, or to be used in public health investigations (e.g., OSHA inspection activities to determine compliance with safety and health regulations).

NOTE: Questions regarding privacy protections should be directed to the Regional Offices (consultation on these issues is available through the OSHA

Offices of Occupational Health Nursing or Occupational Medicine in the Directorate of Technical Support and Emergency Management).

E. Prior Settlement Agreements.

1. Currently, there are no corporate-wide settlement agreements in effect for facilities in the covered NAICS codes. Prior to the start of any inspection conducted under this NEP, the AO will determine if the establishment is subject to any locally established settlement agreement. If the establishment is subject to a settlement agreement, the AO will issue appropriate instructions to the CSHO.
2. The inspection of an establishment covered by a settlement agreement may be used as a monitoring inspection as the terms of the agreement dictate. The AO will contact the Regional Office for appropriate action.

F. Recordkeeping.

Recordkeeping issues must be handled in accordance with OSHA Instructions [CPL 02-00-135](#), *Recordkeeping Policies and Procedures Manual*, and [CPL 02-02-069](#), *Enforcement Procedures for the Occupational Exposure to Bloodborne Pathogens*, or other relevant field guidance. A partial walkthrough should be conducted to interview workers in order to verify the injury and illness experience. Any serious violations that are observed in the vicinity or brought to the attention of the CSHO must be investigated and may be cited.

G. Ergonomics: MSD Risk Factors Relating to Resident Handling.

This section provides guidance to OSHA personnel for conducting inspections in accordance with this NEP as it relates to risk factors for musculoskeletal disorders (MSDs) associated with resident handling. These inspections shall be conducted in accordance with the FOM, and other relevant OSHA reference documents.

1. Employers with Multiple Facilities. In some cases, inspections of a number of establishments operated by the same corporate entity will demonstrate effectiveness of an existing corporate-wide policy to address resident handling hazards. To maximize efficient allocation of agency resources, resident handling will be addressed during future NEP inspections of establishments operated by that employer by verifying that the establishment is implementing the corporate policy to address these hazards. This policy will apply when (1) OSHA has conducted NEP inspections of at least six of the corporation's establishments, (2) OSHA has not issued either a citation or a hazard alert letter because of resident handling hazards at any of these establishments, and (3) the CSHO verifies

that the subsequently inspected establishment is implementing the corporate policy to reduce resident handling hazards.

The AO will determine whether an establishment qualifies for this treatment based on information received from the NO and the Regional Ergonomic Coordinator (REC).

The NO will notify the RECs whenever a decision is made to issue an ergonomics citation to a nursing home corporation operating at multiple sites. Inspections of facilities owned by a corporation that received a citation that has become a final order may be conducted in accordance with the procedures in this NEP. If a corporation has a citation that is currently under contest, individual guidance will be provided.

2. Establishment Evaluation. Inspections of MSD risk factors will begin with an initial process designed to determine the extent of resident handling hazards and the manner in which they are addressed. This will be accomplished by an assessment of establishment incidence and severity rates, whether such rates are increasing or decreasing over a three-year period, and whether the establishment has implemented a process to address these hazards in a manner which can be expected to have a useful effect.

CSHOs should ask for the maximum census of residents permitted and the current census during the inspection. Additionally, CSHOs should inquire about the degree of ambulation of the residents, as this information may provide some indication of the level of assistance given to residents or the degree of hazards that may be present.

Note: If there is indication from injury records, or from employer or employee interviews that other sources of ergonomics-related injuries exist (e.g., MSDs related to office work, laundry, kitchen, or maintenance duties), the compliance officer must include the identified work area and affected employees in the assessment.

3. When assessing an employer's efforts to address resident handling hazards, the compliance officer should evaluate program elements, such as the following:

- a. Program Management.

Whether there is a system for hazard identification and analysis.

Who has the responsibility and authority for compliance with this system?

Whether employees have provided input in the development of the establishment's lifting, transferring, or repositioning procedures.

Whether there is a system for monitoring compliance with the establishment's policies and procedures and following up on deficiencies.

If there have been recent changes in policies/procedures and an evaluation of the effect they have had (positive or negative) on resident handling injuries and illnesses.

b. Program Implementation.

How resident mobility is determined?

The decision logic for using lift, transfer, or repositioning devices, and how often and under what circumstances manual lift, transfer, or reposition occurs.

Who decides how to lift, transfer, or reposition residents?

Whether there is an adequate quantity and variety of appropriate lift, transfer, or reposition assistive devices available and operational. Note that no single lift assist device is appropriate in all circumstances. Manual pump or crank devices may create additional hazards.

Whether there are adequate numbers of slings for lifting devices, appropriate types and sizes of slings specific for all residents, and appropriate quantities and types of the assistive devices (such as but not limited to slip sheets, transfer devices, repositioning devices) available within close proximity and maintained in a usable and sanitary condition.

Whether the policies and procedures are appropriate to eliminate or reduce exposure to the manual lifting, transferring, or repositioning hazards at the establishment.

c. Employee Training.

Whether employees (nursing and therapy) have been trained in the recognition of hazards associated with manual resident lifting, transferring, or repositioning, the early reporting of injuries, and

the establishment's process for abating those hazards.

Whether the employees (nursing and therapy) can demonstrate competency in performing the lift, transfer, or repositioning using the assistive device.

4. Occupational Health Management.

Whether there is a process to ensure that work-related disorders are identified and treated early to prevent the occurrence of more serious problems and whether this process includes restricted or accommodated work assignments.

After evaluating the facility's incidence and severity rates and the extent of the employer's program, a decision will be made about the need to continue the ergonomic portion of the inspection. Where there is a need to address these issues, the AO will follow OSHA instructions in determining whether to send an Ergonomic Hazard Alert Letter (EHAL), other communication, or issue citations. In all cases, the AO will notify the REC of the result of the inspection.

OSHA will contact all employers who receive an ergonomic hazard alert letter to determine whether the deficiencies identified in the letter have been addressed. Please refer to [CPL 02-00-144](#), *Ergonomic Hazard Alert Letter Follow-up Policy*, for the process for contacting employers who received an ergonomic hazard alert letter. During this contact, OSHA will again provide information on available consultation and compliance assistance. In appropriate cases, OSHA will consider conducting another compliance inspection.

Some states (e.g., California, Alaska, Minnesota, Washington, and Oregon) have existing regulations or codes that can be applied to ergonomics-related injuries. In these cases, State or local regulations may support the 5(a)(1) element of industry recognition.

5. Citation Guidance.

Refer to the FOM and other OSHA reference documents prior to proceeding with citation issuance. When conditions indicate that a General Duty Clause citation relating to resident handling may be warranted, the Area Office will contact the REC and collaborate with the Regional Solicitor (RSOL) on the case prior to issuing a citation. Appendix D is provided only as an example of the language that may be used in an Alleged Violation Description (AVD) for resident handling-related incidents.

H. Slip, Trips, and Falls.

This section provides general guidance related to these types of hazards when conducting inspections in a nursing and personal care facility.

1. Evaluate the general work environments (e.g., kitchens, dining rooms, hallways, laundries, shower/bathing areas, points of access and egress) and document hazards likely to cause slips, trips, and falls, such as but not limited to:
 - a. Slippery or wet floors, uneven floor surfaces, cluttered or obstructed work areas/passageways, poorly maintained walkways, broken equipment, or inadequate lighting.
 - b. Unguarded floor openings and holes.
 - c. Damaged or inadequate stairs and/or stairways.
 - d. Elevated work surfaces which do not have standard guardrails.
 - e. Inadequate aisles for moving residents.
 - f. Improper use of ladders and/or stepstools.
2. Note any policies, procedures and/or engineering controls used to deal with wet surfaces. These would include, but are not limited to, ensuring spills are reported and immediately cleaned up, posting signs/barriers alerting employees to wet floors, keeping passageways/aisles clear of clutter, and using appropriate footwear. Where appropriate, evaluate the use of no-skid waxes or other types of coated surfaces designed to enhance surface friction.
3. Citation Guidance. Where hazards are noted, the CSHO should cite the applicable standard (relevant standards can be found in subparts D and J of 29 CFR Part 1910; there are other standards related to slips, trips, and falls).

If employees are exposed to hazards from falling while performing various tasks including maintenance from elevated surfaces, then OSHA Instruction [STD 01-01-013](#), *Fall Protection in General Industry*, should be reviewed to determine the applicability of 29 CFR 1910.23(c)(1), 1910.23(c)(3) and 1910.132(a).

I. Bloodborne Pathogens.

This section describes procedures for conducting inspections and preparing citations for occupational exposure to blood and other potentially infectious materials (OPIM) in nursing and residential care facilities. This is not an exhaustive list. For further detailed guidance, CSHOs should refer to OSHA Instruction [CPL 02-02-069](#), *Enforcement Procedures for the Occupational Exposure to Bloodborne Pathogens*. In addition, outreach and educational materials are available on the Internet and other references are provided in the appendices to this document.

1. Evaluate the employer's written Exposure Control Plan (ECP) to determine if it contains all the elements required by the standard.
2. Assess the implementation of appropriate engineering and work practice controls.
 - a. Determine which procedures require the use of a sharp medical device (e.g., use of a syringe for the administration of insulin) and determine whether the employer has evaluated, selected, and is using sharps with engineered sharps injury protection (SESIPs) or needleless systems.
 - b. Confirm that all tasks involving sharps have been evaluated for the implementation of safer devices. For example, determine whether the employer has implemented a policy requiring use of safety-engineered needles for pre-filled syringes and single-use blood tube holders.
 - c. Determine whether the employer solicited feedback from non-managerial employees responsible for direct resident care who are potentially exposed to injuries from contaminated sharps in the identification, evaluation, and selection of effective engineering and work practice controls and whether the employer documented solicitation in the ECP.
3. Ensure that proper work practices and personal protective equipment are in place.
4. Assess whether containment of regulated waste is performed properly.
5. Evaluate and document the availability of handwashing facilities. If immediate access to handwashing facilities is not feasible, ascertain whether skin cleansers are used (e.g., alcohol gels).

6. Assess the use of appropriate personal protective equipment (e.g., masks, eye protection, face shields, gowns and disposable gloves, including latex-free gloves, where appropriate).
7. Ensure that a program is in place for immediate and proper clean-up of spills, and disposal of contaminated materials, specifically for spills of blood or other body fluids.
8. Ensure that the employer has chosen an appropriate EPA-approved disinfectant to clean contaminated work surfaces and that the product is being used in accordance with the manufacturer's recommendations.
9. Determine that the employer has made available to all employees with occupational exposure to blood or OPIM the hepatitis B virus (HBV) vaccination series within 10 working days of initial assignment at no cost to the employee and that any declinations are documented.
10. Ensure that healthcare workers who have contact with residents or blood and are at ongoing risk for percutaneous injuries are offered a test for antibody to the HBV surface antigen in accordance with the U.S. Public Health Service guidelines. (See [CPL 02-02-069](#), Section XIII.F.)
11. Investigate procedures implemented for post-exposure evaluation and follow-up following an exposure incident:
 - a. Determine if establishment-specific post-exposure protocols are in place (i.e., where and when to report immediately after an exposure incident).
 - b. Determine if medical attention is immediately available, including administration of a rapid HIV test, in accordance with current U.S. Public Health Service guidelines.
12. Observe whether appropriate warning labels and signs are present.
13. Determine whether employees receive training in accordance with the standard.
14. Evaluate the employer's sharps injury log. Ensure that all injuries that appear on the sharps injury log are also recorded on the OSHA-300 log. (Note: As outlined in chapter 2, paragraph II.D. of [CPL 02-00-135](#), *Recordkeeping Policies and Procedures Manual*, an employer may use the OSHA-300 as long as the type and brand of the device causing the sharps injury is entered on the log, records are maintained in a way that segregates sharps injuries from other types of work-related injuries and

illnesses, or allows sharps injuries to be easily separated, and personal identifiers are removed from the log. However, CSHOs may suggest that employers simply use a separate sharps injury log.) A sample log is available in Appendix D of [CPL 02-02-069](#).

15. Determine whether the log includes the required fields.
16. Ensure that employees' names are not on the log, but that a case or report number indicates an exposure incident.
17. Determine whether the employer uses the information on the sharps injury log when reviewing and updating its ECP. Failure to use this information is not a violation, but the CSHO should recommend that the information be used for these purposes.
18. Citation Guidance. If an employer is in violation of the Bloodborne Pathogens Standard, the employer will be cited in accordance with [CPL 02-02-069](#).

J. Tuberculosis (TB).

This section provides guidance for conducting inspections and preparing citations for the occupational exposure to tuberculosis specific to nursing and residential care facilities. This is not an exhaustive list. For further detailed guidance, CSHOs should refer to OSHA Instruction [CPL 02-00-106](#), *Enforcement Procedures and Scheduling for Occupational Exposure to Tuberculosis*.

1. Determine whether the establishment has had a suspected or confirmed TB case among residents within the previous 6 months prior to the date of the opening conference: if not, do not proceed with this section of the inspection. If a case has been documented or suspected, proceed with the inspection according to the guidance document, [CPL 02-00-106](#), referenced above.
2. Determine whether the establishment has procedures in place to promptly isolate and manage the care of a resident with suspected or confirmed TB, including an isolation room and other abatement procedures.
3. Determine whether the establishment offers tuberculin skin tests for employees responsible for resident care, specifically those described in [CPL 02-00-106](#), referenced above.
4. Citation Guidance. The CSHO should refer to [CPL 02-00-106](#), for enforcement procedures including citation guidance for:

- a. Respiratory Protection (Note: All respiratory protection citations must be cited under 29 CFR 1910.134 - Respiratory Protection).
- b. Accident prevention signs and tags, 29 CFR 1910.145.
- c. Access to employee exposure and medical records, 29 CFR 1910.1020.
- d. Recordkeeping, 29 CFR Part 1904.

K. Workplace Violence.

Workplace violence (WPV) is a recognized hazard in nursing and residential care facilities. NIOSH defines workplace violence as violent acts (including physical assaults and threats of assaults) directed toward persons at work or on duty. [10, CDC] *Enforcement Procedures for Investigating or Inspecting Workplace Violence Incidents*, [CPL 02-01-052](#), establishes agency enforcement policies and provides uniform procedures which apply when conducting inspections in response to incidents of workplace violence. OSHA Instruction, [CPL 02-01-052](#), directs CSHOs, who conduct programmed inspections at worksites that are in industries with high incidence of workplace violence such as health and residential care facilities, to investigate for the potential or existence of this hazard.

Citation Guidance. In accordance with the FOM's general guidance on 5(a)(1) citations (see [CPL 02-00-150](#), starting on page 4-14), and specific guidance in [CPL 02-01-052](#), citations should focus on the specific hazard employees are exposed to, not the events that caused the incident or the lack of a particular abatement method. The workplace violence directive also contains sample language for hazard alert letters.

Some states have existing regulations or codes on workplace violence, for example, New Jersey, Rhode Island, Minnesota, Washington, and New York public sector. In these cases, State or local regulations may support the 5(a)(1) element of industry recognition.

If it is determined that the hazard may not be cited under Section 5(a)(1), but there is a State or local code that addresses this hazard and a local agency actively enforces the code, the RA shall refer this to the local enforcement agency.

L. Other Hazards.

As detailed in the [CPL 02-00-150](#), when additional hazards come to the attention of the compliance officer, the scope of the inspection may be expanded to include those hazards. Although unprotected occupational exposures to MRSA and other

multi-drug resistant organisms or exposure to hazardous chemicals (i.e., hazard communication) are not included in the target hazards under this NEP, if these or other hazards become known during the course of an inspection conducted under this NEP, they should be investigated.

1. Methicillin-resistant *Staphylococcus aureus* (MRSA) and other multi-drug resistant organisms (MDROs).

Nursing and residential care facilities are among the settings at increased risk of potential transmission of MRSA and other MDROs. Compliance officers are expected to investigate situations where it is determined during inspections conducted under this NEP that employees are not protected from potential transmission of MDROs such as MRSA.

Refer to the FOM and other OSHA reference documents prior to proceeding with citation issuance. Recommendations for standard precautions and contact precautions to reduce or eliminate exposure to MRSA and other MDROs are outlined in CDC guidelines, including the *Guidelines for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings, 2007*. [11, CDC] Appendix E contains information that is provided only as an example of language that may be used in an Alleged Violation Description (AVD) for unprotected occupational exposure to MRSA specific to nursing and residential care facilities.

Note: Violations of applicable OSHA standards (e.g., PPE standards) must be documented in accordance with the FOM. In General Duty Clause citations the recognized hazard must be described in terms of the danger to which employees are exposed, e.g. the danger of being infected by MRSA, not the lack of a particular abatement method. Feasible abatement methods that are available and likely to correct the hazard must be identified.

2. Hazard Communication.

Employee exposures to hazardous chemicals, such as sanitizers, disinfectants, and hazardous drugs may be encountered in nursing and residential care facilities. Employers are required to implement a written program that meets the requirements of the Hazard Communication standard (HCS) to provide worker training, warning labels and access to Material Safety Data Sheets (MSDSs).

NOTE: Inspection and citation guidance are contained in OSHA Instruction, [CPL 02-02-038](#), Inspection Procedures for the Hazard Communication Standard.

Outreach.

Each AO/Region/State Consultation Program Office is encouraged to develop outreach programs that will support the efforts of the Agency in meeting the Strategic Plan goals outlined in this NEP. Such programs could include letters to employers, professional associations, local unions, local safety councils, apprenticeship programs, local hospitals and occupational health clinics, and/or other industry employer organizations. OSHA Regional and Area Offices can work with Alliance Program and other OSHA cooperative program participants to provide outreach.

A. Rollout Campaign.

Speeches, training sessions, and/or news releases through the local newspapers, safety councils and/or industrial hygiene organizations can provide another avenue for dissemination of information. A news release will be prepared by the NO and made available to each Region. Additionally, the Directorate of Training and Education (DTE) has prepared training materials which will be of assistance in this outreach effort.

B. Components of Training.

For the purpose of advancing awareness and abatement of these hazards outreach and training efforts should include information on commonly recognized hazards, like patient handling, WPV, occupational exposures to bloodborne pathogens, TB, and MDROs such as MRSA. The OSHA Nursing Home eTool is designed to assist employers and employees in identifying and controlling the hazards associated with nursing homes and residential care facilities. The OSHA Hospital eTool contains information on occupational exposures to MDROs at <http://www.osha.gov/SLTC/etools/hospital/hazards/mro/mro.html>. *Enforcement Procedures for Investigating or Inspecting Workplace Violence Incidents*, [CPL 02-01-052](#), establishes agency enforcement policies and provides uniform procedures which apply when conducting inspections in response to incidents of WPV. OSHA's Nursing Homes and Personal Care Facilities Safety and Health Topics webpage has numerous links, including reference materials related to workplace violence, and is located at <http://www.osha.gov/SLTC/nursinghome/index.html>. Additional useful references and web links are listed in Appendix C of this Instruction.

C. Additional Information.

For information on participation in or resources available from OSHA's cooperative programs [including Alliance Program, Strategic Partnership Program, VPP, OSHA On-site Consultation or Safety and Health Achievement Recognition Program (SHARP)], please visit OSHA's Cooperative Program web site at http://www.osha.gov/dcsp/compliance_assistance/index_programs.html or

contact the Directorate of Cooperative and State Programs (DCSP) at 200 Constitution Avenue, NW, Room N3700, Washington, DC 20210, (202) 693-2200.

Relationship to Other Programs.

A. Unprogrammed Inspections.

Unprogrammed inspections will be conducted according to the FOM [CPL 02-00-150](#) or other guidance documents. If the occasion for an unprogrammed (e.g., complaint, fatality) inspection arises with respect to an establishment that is also in the current inspection cycle to receive a programmed inspection under this NEP, the two inspections may be conducted either concurrently or separately. See Section XVI.B. below.

B. Partnerships.

If an OSHA Strategic Partnership verification inspection is scheduled close (in time) to an inspection under this NEP, the two inspections may be conducted concurrently or separately; refer to [CSP 03-02-002](#).

Recording and Tracking.

A. Coding Inspection Under this NEP.

1. The OSHA-1 forms must be marked as “programmed planned” in Item 24. The “NEP” box is to be checked and the value “NURSING” recorded in Item 25d. Select ‘Strategic Plan Activity’ and then select the value “NURSING” in Item 25f.
2. Issuance of a 5(a)(1) citation alleging ergonomic hazards or an Ergonomic Hazard Alert Letter (note: this does not include letters which are written in recognition of an employer’s efforts) must be recorded in Optional Information, Item 42, using the following format:

- 5(a)(1) Citations:

<u>TYPE - ID</u>	<u>VALUE</u>
N - 03	ERGO-CIT

- Hazard Alert Letters:

<u>TYPE - ID</u>	<u>VALUE</u>
N - 03	ERGO-LTR

B. Combined with Unprogrammed Inspections.

For all unprogrammed inspections conducted in conjunction with a nursing and residential care facilities NEP inspection, the OSHA-1 forms must be marked as “unprogrammed” in Item 24 with the appropriate unprogrammed activity identified. In addition, the “NEP” box is to be checked and the value

“NURSING” recorded in item 25d. Select ‘Strategic Plan Activity’ and then select the value “NURSING” in Item 25f.

C. Combined with SST, other NEP, or LEP Inspections.

For all programmed inspections pursuant to other NEPs and LEPs conducted in conjunction with a nursing and residential care facilities inspection, the OSHA-1 forms must be marked as “programmed planned” in item 24. In addition, the “NEP” box is to be checked and the value “NURSING” recorded in Item 25d along with all SST, NEP and LEP IMIS/OIS codes applicable to the inspection. Select ‘Strategic Plan Activity’ and then select the value “NURSING” in Item 25f.

Note: When a health referral is made or a combined safety and health inspection is performed at a residential nursing care site that was initiated from the SST list, and the items on the referral are related to hazards targeted under this NEP (e.g., ergonomics), the health portion of the inspection should follow the inspection procedures outlined in this NEP and only such SST-related inspections should have the combined SST coding along with the coding under this NEP. Residential nursing care facilities selected from the SST lists and are considered to be safety-related inspections should include SST coding, but should not be considered an inspection under this NEP. The NEP coding will only apply to health-related inspections.

D. DUNS Number.

The Dun & Bradstreet Data Universal Numbering System (DUNS) number, which is a required entry for all nursing and residential care facilities inspections, must be recorded in the appropriate field on the Establishment Detail Screen. In establishments where ownership has changed, enter the DUNS number for the new owner. If, however, the new owner does not have a new DUNS number, enter the old DUNS. Since the DUNS number is site-sensitive the old number will give some useful data. The field on the Establishment Detail Screen can be accessed by pressing F5 in Item 8 to access establishment processing. Once establishment processing is completed, the DUNS number will appear in Item 9b.

Program Evaluation.

AOs will collect data and information relevant to the effectiveness of this NEP and submit it to the Regional Office. Data and information on effectiveness includes, but is not limited to: reductions in the DART rate, safety and health programs implemented, employees trained, and outreach activities.

At the end of each fiscal year (September 30), after summarizing the data and information, the Regional Office will forward the Nursing and Residential Care Facilities

Appendix A

Compliance Safety and Health Officer Quick Reference for Data Collection

1. Confirm that facility employs more than 10 employees and that it is required to keep injury and illness records under 29 CFR 1904.
2. Determine duration of current ownership and proceed accordingly (See Ownership: Section XIII.B. of this Instruction).
3. Verify DART rate from OSHA-300 logs, recalculate for 2009, 2010, and 2011 (See Recalculate DART: Section XIII.C of this Instruction).
4.
$$\text{DART Rate} = (N \div \text{EH}) \times (200,000)$$

N = The number of incidents which result in a lost or restricted workday

EH = Total number of employee work hours

200,000 = Base for 100 full-time workers, working 40 hours per week, 50 weeks per year

5. Review OSHA-301s and supporting documents where appropriate (See Recalculate DART: Section XIII.C of this Instruction).
6. Input appropriate IMIS/OIS information.
7. Record DUNS Number (See Sections XIII.B. and XVI.D. of this Instruction).
8. Enter valid inspection type, classification, and industry code.

Appendix B

Release and Consent

I hereby consent and release to the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA), the right to use my picture and sound being videotaped or photographed during an OSHA inspection of _____ (name of facility) commenced on _____ (date). I understand that this videotape or photograph will be used solely to document employee safety and health conditions at the facility, and may be used as evidence in legal proceedings related to those conditions.

Signature of Resident

Date

In the event that there has been a medical or legal determination that a resident cannot give informed consent to be videotaped or photographed, the following shall be used:

On behalf of _____ (name of resident), I hereby grant to the U.S. Department of Labor, Occupational Safety and Health Administration, the right stated above.

Signature of person authorized to give informed consent on resident's behalf

Date

Relationship to resident (spouse, child, etc.)

Signature of Witness

Date

Appendix D

Sample 5(a)(1) AVD for Resident Handling Hazards

NOTE: Refer to the FOM and other OSHA reference documents prior to proceeding with citation issuance. The following is provided ONLY as an example of the language that may be used in an Alleged Violation Description (AVD) for resident handling-related incidents.

The General Duty Clause.

Section 5(a)(1) of the Occupational Safety and Health Act of 1970: The employer did not furnish employment and a place of employment which were free from recognized hazards that were causing or likely to cause serious physical harm to employees, in that employees were required to perform lifting tasks resulting in stressors that have caused or were likely to cause musculoskeletal disorders (MSDs):

a). Location – Address:

On or about *Date* employees were exposed to _____ hazards which were causing or likely to cause _____. Employees were required to transfer non-weight bearing and partial weight bearing residents manually by lifting or partially lifting them, exposing employees to lifting-related hazards resulting in injuries and disorders such as lumbar or back strain/sprain/pain, herniated/ruptured disk, injury to the L5/S1 disc, and various shoulder injuries.

Abatement.

Feasible means of abatement include but are not limited to implementing a safe patient handling and movement policy for transferring and lifting of non-weight bearing and partial weight bearing residents. This necessitates the use of mechanical lift assist and transfer devices. *Note: AVD must be adapted to the specific circumstances noted in each inspection. The AVD above is an example that will be appropriate in some circumstances.*

Appendix E

Sample 5(a)(1) AVD for MRSA Exposure

NOTE: Refer to the FOM and other OSHA reference documents prior to proceeding with citation issuance. The following is provided ONLY as an example of the language that may be used in an Alleged Violation Description (AVD) for unprotected MRSA exposure.

General duty clause, Section 5(a)(1) – refer to the CDC guidelines: *Guidelines for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings, 2007*, which recommends standard precautions and contact precautions to reduce or eliminate exposure to MRSA. Abatement would include handwashing, cohorting of patients/residents, device and laundry handling.

The General Duty Clause.

Section 5(a)(1) of the Occupational Safety and Health Act of 1970: The employer did not furnish employment and a place of employment which were free from recognized hazards that were causing or likely to cause death or serious physical harm to employees in that employees were exposed to communicable diseases:

a). Location – Address:

On or about *Date* employees were exposed to drug-resistant infections while providing care to residents with infections such as, but not limited to, Methicillin-Resistant *Staphylococcus aureus* (MRSA).

Abatement.

Feasible means of abatement include, but are not limited to: a) providing training on all routes of transmission of infections, the proper personal protective equipment to be used, and infection control practices to be utilized; b) notifying employees about status of any resident with infection prior to beginning care assignments for every shift; c) cohorting patients/residents; and d) using administrative controls, such as limiting access to patients/residents with MRSA infections by non-essential personnel.

After a Federal OSHA Inspection

This pamphlet contains important information regarding employer rights and responsibilities following a Federal Occupational Safety and Health Administration (OSHA) inspection under the Occupational Safety and Health Act of 1970 (OSH Act), as amended. Under the OSH Act, employers have the responsibility to provide a safe workplace.

An OSHA compliance safety and health officer (CSHO) conducts an inspection of your workplace, in accordance with the OSH Act. After the inspection, the CSHO reports the findings to the OSHA area director who evaluates them. If a violation exists, OSHA will issue you a **Citation and Notification of Penalty** detailing the exact nature of the violation(s) and any associated penalties. A citation informs you of the alleged violation, sets a proposed time period within which to correct the violation, and proposes the appropriate dollar penalties.

The information in this booklet can and should be used as a discussion guide during your closing conference with the CSHO. For each apparent violation found during the inspection, the compliance officer has discussed or will discuss the following with you:

- Nature of the violation;
- Possible abatement measures you may take to correct the violative condition;
- Possible abatement dates you may be required to meet; and
- Any penalties that the area director may issue.

The CSHO is a highly trained professional who can help you recognize and evaluate hazards as well as suggest appropriate methods of correcting violations. To minimize employee exposure to possible hazardous conditions, abatement efforts should always begin as soon as possible.

Types of Violations

The following general information defines the types of violations and explains the actions you may take if you receive a citation as the result of an inspection.

In settling a penalty, OSHA has a policy of reducing penalties for small employers and those acting in good faith.

Willful: A willful violation exists under the OSH Act where an employer has demonstrated either an intentional disregard for the requirements of the OSH Act or a plain indifference to employee safety and health. Penalties range from \$5,000 to \$70,000 per willful violation.

Serious: Section 17(k) of the OSH Act provides that “a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.” OSHA may propose a penalty of up to \$7,000 for each violation.

Other-Than-Serious: This type of violation is cited in situations where the accident/incident or illness that would be most likely to result from a hazardous condition would probably not cause death or serious physical harm, but would have a direct and immediate relationship to the safety and health of employees. OSHA may impose a penalty of up to \$7,000 for each violation.

De Minimis: De minimis conditions are those where an employer has implemented a measure different from one specified in a standard, that has no direct or immediate relationship to safety or health. These conditions do not result in citations or penalties.

Failure to Abate: A failure to abate violation exists when a previously cited hazardous condition, practice or non-complying equipment has not been brought into compliance since the prior inspection (i.e., the violation remains continuously uncorrected) and is discovered at a later inspection. If, however, the violation was corrected, but later reoccurs, the subsequent occurrence is a repeated violation. OSHA may impose a penalty of up to \$7,000 per day for each violation.

Repeated: An employer may be cited for a repeated violation if that employer has been cited previously, within the last five years, for the same or a substantially similar condition or hazard and the citation has become a final order of the Occupational Safety and Health Review Commission (OSHRC). A citation may become a final order by operation of law when an employer does not contest the citation, or pursuant to court decision or settlement. Repeated violations can bring a civil penalty of up to \$70,000 for each violation.

Posting Requirements

When you receive a Citation and Notification of Penalty, you must post the citation (or a copy of it) at or near the place where each violation occurred to make employees aware of the hazards to which they may be exposed. The citation must remain posted in a place where employees can see it, for three working days or until the violation is corrected, whichever is longer. (Saturdays, Sundays, and Federal holidays are not counted as working days.) **You must comply with these posting requirements even if you contest the citation.**

The abatement certification documents – such as abatement certifications, abatement plans and progress reports – also must be posted at or near the place where the violation occurred. For moveable equipment found to be in violation and where the posting of violations would be difficult or impractical, the employer has the option to identify the equipment with a “Warning” tag specified in the abatement verification regulation, Title 29 Code of Federal Regulations (CFR) 1903.19(i).

Employer Options

As an employer who has been cited, you may take either of the following courses of action:

- If you agree to the Citation and Notification of Penalty, you must correct the condition by the date set in the citation and pay the penalty, if one is proposed.

- If you do not agree, you have 15 working days from the date you receive the citation to contest in writing any or all of the following:
 - Citation;
 - Proposed penalty; and/or
 - Abatement date.

Before deciding to contest the citation, you may request an informal conference with the OSHA area director within the 15 working day period to discuss any issues related to the Citation and Notification of Penalty. (See the following section on Informal Conference and Settlement).

OSHA will inform the affected employee representatives of the informal conference or contest

Informal Conference and Settlement

Before deciding whether to file a **Notice of Intent to Contest**, you may request an informal conference with the OSHA area director to discuss the Citation and Notification of Penalty. You may use this opportunity to do any of the following:

- Obtain a better explanation of the violations cited;
- Obtain a more complete understanding of the specific standards that apply;
- Negotiate and enter into an informal settlement agreement;
- Discuss ways to correct violations;
- Discuss issues concerning proposed penalties;
- Discuss proposed abatement dates;
- Resolve disputed citations and penalties, (thereby eliminating the need for the more formal procedures associated with litigation before the Occupational Safety and Health Review Commission); and
- Obtain answers to any other questions you may have.

OSHA encourages you to take advantage of the opportunity to have an informal conference if you foresee any difficulties in complying with any part of the citation. **Please note, however, that an informal conference must be held within the 15-working-day Notice of Intent to Contest period and will neither extend the 15-working-day contest period nor take the place of the filing of a written notice if you desire to contest.** Employee representative(s) have the right to participate in any informal conference or negotiations between the regional administrator or area director and the employer.

If you agree that the cited violations exist, but you have a valid reason for wishing to extend the abatement date(s), you may discuss this with the area director in an informal conference. He or she may issue an amended citation that changes the abatement date prior to the expiration of the 15- working-day period without your filing a Notice of Intent to Contest.

If you do not contest within 15 working days, your citation will become a final order not subject to review by any court or agency. After this occurs, the OSHA area director may continue to provide you with information and assistance on how to abate the hazards cited in your citation, but may not amend or change any citation or penalty which has become a final order. The area director may only advise you

on abatement methods or extend the time you need to abate the violation. (**See Petition for Modification of Abatement**).

Whenever the employer, an affected employee, or employee representative requests an informal conference, **all** the parties shall be afforded the opportunity to participate fully. If either party chooses not to participate in the informal conference, that party forfeits the right to be consulted before decisions are made that affect the citations. If the requesting party objects to the attendance of the other party, OSHA may hold separate informal conferences. During a joint informal conference, separate or private discussions will be permitted if either party requests them. Informal conferences may be held by any means practical.

How to Comply

For violations you do not contest, you must:

- (1) promptly notify the OSHA area director by letter, signed by a member of management, that you have taken the appropriate corrective action within the time set forth in the citation, and
- (2) pay any penalties itemized.

The notification you send the area director is referred to as **Abatement Certification**. For Other-Than-Serious violations, this may be a signed letter identifying the inspection number and the citation item number and noting that you corrected the violation by the date specified on the citation. For more serious violations (such as Serious, Willful, Repeated, or Failure to Abate), abatement certification requires more detailed proof.

If the employer has abatement questions after the inspection, the area director must ensure that additional information, if available, is provided to the employer as soon as possible.

Employers also can find guidance on abatement verification on OSHA's website at www.osha.gov/Publications/Abate/abate.html.

When the citation permits an extended time for abatement, you must ensure that employees are adequately protected during this time. For example, the citation may require the immediate use of personal protective equipment by employees while engineering controls are being installed. When indicated on the citation, you must also provide OSHA with an abatement plan (steps you will take to protect employees and correct the hazards) and periodic progress reports on your actions.

The penalties itemized on the Citation and Notification of Penalty are payable within 15 working days of receipt of the penalty notice. If, however, you contest the citation or penalty in good faith, OSHA will suspend abatement and payment of penalties for those items contested until the Occupational Safety and Health Review Commission (OSHRC), or a higher court, issues a final order or decision. The OSHRC is an independent agency and is not a part of the U.S. Department of Labor. The final order of OSHRC will either uphold, modify, or eliminate the citations and/or penalties. Penalties for items not contested, however, are still due within 15 working days. (For further details, see the following section on **How to Contest Citations**.)

Payment should be made by check or money order payable to DOL-OSHA. Please indicate on your payment the OSHA number from the upper right-hand corner of your citation **and send it to the OSHA area office listed on the Citation and Notification of Penalty.**

How to Contest Citations

If you wish to contest any portion of your citation, you must submit a Notice of Intent to Contest in writing to the OSHA area office within 15 working days after receipt of the Citation and Notification of Penalty. This applies even if you have stated your disagreement with a citation, penalty, or abatement date during a telephone conversation or an informal conference.

The Notice of Intent to Contest must clearly state what is being contested – the citation, the penalty, the abatement date, or any combination of these factors. In addition, the notice must state whether all the violations on the citation, or just specific violations, are being contested. (For example, "I wish to contest the citation and penalty proposed for items 3 and 4 of the citation issued June 27, 2011").

Your contest must be made in good faith. OSHA will not consider a contest filed solely to avoid your responsibilities for abatement or payment of penalties.

A proper contest of any item suspends your legal obligation to abate and pay until the item contested has been resolved. If you contest only the dates indicated on the citation or if you contest only some items on the citation, you must correct the other items by the abatement date and pay the corresponding penalties within 15 days of notification.

After you file a Notice of Intent to Contest, your case is officially in litigation. If you wish to settle the case, you may contact the OSHA area director who will give you the name of the attorney handling your case for OSHA. All settlements of contested cases are negotiated between you and the attorney according to the rules of procedure of the OSHRC.

The Contest Process

If you file the written Notice of Intent to Contest within the required 15 working days, the OSHA area director forwards your case to the OSHRC. The OSHRC hears employer contests of OSHA citations. They are an independent agency separate from the Department of Labor. The OSHRC assigns the case to an administrative law judge who usually will schedule a hearing in a public place close to your workplace. Both employers and employees have the right to participate in this hearing, which contains all the elements of a trial, including examination and cross-examination of witnesses. You may choose to represent yourself or have an attorney represent you. The administrative law judge may affirm, modify, or eliminate any contested items of the citation or penalty.

As with any other legal procedure, there is an appeals process. Once the administrative law judge has ruled, any party to the case may request a further review by the full OSHRC. In addition, any of the three commissioners may, on his or her own motion, bring the case before the entire OSHRC for review. The OSHRC's ruling, in turn, may be appealed to the Federal circuit court in which the case arose or for the Federal circuit where the employer has his or her principal office.

Petition for Modification of Abatement

OSHA assigns abatement dates on the basis of the best information available when issuing the citation. If you are unable to meet an abatement date because of uncontrollable events or other circumstances, and the 15-working-day contest period has expired, you may file a **Petition for Modification of Abatement** (PMA) with the OSHA area director.

The petition must be in writing and must be submitted as soon as possible, but no later than one working day after the abatement date. To show clearly that you have made a good-faith effort to comply, the PMA must include all of the following information before OSHA considers it:

- Steps you have taken to achieve compliance, and dates they were taken;
- Additional time you need to comply;
- Why you need additional time;
- Interim steps you are taking to safeguard your employees against the cited hazard(s) until the abatement; and
- A certification that the petition has been posted, the date of posting and, when appropriate, a statement that the petition has been furnished to an authorized representative of the affected employees. The petition must remain posted for 10 working days, during which employees may file an objection.

The OSHA area director may grant or oppose a PMA. If it is opposed, it automatically becomes a contested case before the OSHRC. If a PMA is granted, OSHA may conduct a monitoring inspection to ensure that conditions are as they have been described and that adequate progress has been made toward abatement. The OSHA area office may provide additional information on PMAs.

What Employees Can Do

Employees or their authorized representatives may contest any or all of the abatement dates set for violations if they believe them to be unreasonable. A written Notice of Intent to Contest must be filed with the OSHA area director within 15 working days after the employer receives the citation.

The filing of an employee contest does not suspend the employer's obligation to abate.

Employees also have the right to object to a PMA. Such objections must be in writing and must be sent to the area office within 10 days of service or posting. OSHA will not make a decision regarding the PMA until the Review Commission resolves the issue.

Follow-up Inspections and Failure to Abate

If you receive a citation, a follow-up inspection may be conducted to verify that you have done the following:

- Posted the citation as required,
- Corrected the violations as required in the citation, and/or
- Protected employees adequately and made appropriate progress in correcting hazards during multistep or lengthy abatement periods.

In addition to providing for penalties for failure-to post citations and failure-to-abate violations, the OSH Act clearly states that you have a **continuing responsibility** to comply with the OSH Act and assure your

employees safe and healthful working conditions. OSHA will cite any new violations discovered during a follow-up inspection.

Employer Responsibilities

Employers have the responsibility to provide a safe workplace. Employers **MUST** provide their employees with a workplace that does not have serious hazards and must follow all OSHA safety and health standards. Employers must find and correct safety and health problems.

Employers **MUST** also:

- Inform employees about hazards through training, labels, alarms, color-coded systems, chemical information sheets and other methods.
- Train employees in a language and vocabulary they can understand.
- Keep accurate records of work-related injuries and illnesses.
- Perform tests in the workplace, such as air sampling, required by some OSHA standards.
- Provide hearing exams or other medical tests required by OSHA standards.
- Post OSHA citations and injury and illness data where workers can see them.
- Notify OSHA within eight hours of a workplace fatality or when three or more workers are hospitalized. Prominently display the official OSHA poster that describes rights and responsibilities under the OSH Act.

Employee Discrimination

Section 11(c) of the OSH Act prohibits employers from discharging or otherwise discriminating against an employee who has exercised any right under this law, including the right to make safety and health complaints or to request an OSHA inspection. OSHA will investigate complaints from employees who believe they have been discriminated against. If the investigation discloses probable violations of employee rights, court action may follow.

Employees who believe they have been discriminated against must file their complaints within **30 days** of the alleged act of discrimination. For more information, contact OSHA at www.osha.gov or call 1-800-321-OSHA (6742). In states with OSHA approved state programs, an employee who believes he/she has been discriminated against under Section 11(c) of the OSH Act is entitled to file a complaint alleging discrimination under both state and federal procedures.

Providing False Information

All information employers report to OSHA must be accurate and truthful. Providing false information on efforts to abate cited conditions or in required records is punishable under the OSH Act.

OSHA Assistance, Services and Programs

OSHA can provide extensive help through a variety of programs, including free workplace consultations, compliance assistance, voluntary protection programs, strategic partnerships, alliances, and training and education. For more information on any of the programs listed below, visit OSHA's website at www.osha.gov or call 1-800-321-OSHA (6742).

Establishing an Injury and Illness Prevention Program

The key to a safe and healthful work environment is a comprehensive injury and illness prevention program.

Injury and illness prevention programs, known by a variety of names, are universal interventions that can substantially reduce the number and severity of workplace injuries and alleviate the associated financial burdens on U.S. workplaces. Many states have requirements or voluntary guidelines for workplace injury and illness prevention programs. Also, numerous employers in the United States already manage safety using injury and illness prevention programs, and we believe that all employers can and should do the same. Most successful injury and illness prevention programs are based on a common set of key elements. These include management leadership, worker participation, hazard identification, hazard prevention and control, education and training, and program evaluation and improvement. Visit OSHA's website at <http://www.osha.gov/dsg/topics/safetyhealth/index.html> for more information and guidance on establishing effective injury and illness prevention programs in the workplace.

Compliance Assistance Specialists

OSHA has compliance assistance specialists throughout the nation who can provide information and assistance to employers and workers. There is generally at least one compliance assistance specialist in each area office in states under Federal OSHA jurisdiction. They respond to requests for help from a variety of groups including small businesses, trade associations, local unions, and community and faith-based organizations. Compliance assistance specialists provide technical assistance, information on OSHA standards, seminars or workshops, and information on OSHA's educational and training resources. Contact your local OSHA office for more information.

OSHA's Free On-site Consultation Service for Small Employers

OSHA's On-site Consultation Program offers free and confidential advice to small and medium sized businesses in all states across the country, with priority given to high-hazard worksites.

On-site Consultation services are separate from enforcement and do not result in penalties or citations. Consultants from state agencies or universities work with employers to identify workplace hazards, provide advice on compliance with OSHA standards, and assist in establishing injury and illness prevention programs.

In FY 2010, responding to requests from small employers looking to create or improve their injury and illness prevention programs, OSHA's On-site Consultation Program conducted over 30,000 visits to small business worksites covering over 1.5 million workers across the nation.

To request such services, an employer can phone or write to the OSHA Consultation Program. See the Small Business section of OSHA's website for contact information for the consultation offices in every state (www.osha.gov/dcsp/smallbusiness/index.html) or call 1-800-321-OSHA (6742).

- **Safety and Health Achievement Recognition Program**
Under the consultation program, certain exemplary employers may request participation in OSHA's Safety and Health Achievement Recognition Program (SHARP). Eligibility for participation includes, but is not limited to, receiving a full-service, comprehensive consultation visit, correcting all identified hazards, and developing an effective injury and illness prevention program.

Cooperative Programs

OSHA offers cooperative programs to help prevent fatalities, injuries and illnesses in the workplace.

- **Alliance Program**
Through the Alliance Program, OSHA works with groups committed to worker safety and health to prevent workplace fatalities, injuries and illnesses. These groups include businesses, trade or professional organizations, unions, consulates, faith- and community-based organizations, and educational institutions. OSHA and the groups work together to develop compliance assistance tools and resources, share information with workers and employers, and educate workers and employers about their rights and responsibilities.
- **Challenge Program**
This program helps employers and workers improve their safety and health management systems and implement an effective system to prevent fatalities, injuries and illnesses.
- **OSHA Strategic Partnership Program (OSPP)**
Partnerships are formalized through tailored agreements designed to encourage, assist and recognize partner efforts to eliminate serious hazards and achieve model workplace safety and health practices.
- **Voluntary Protection Programs (VPP)**
The VPP recognize employers and workers in private industry and federal agencies who have implemented effective safety and health management systems and maintain injury and illness rates below national Bureau of Labor Statistics averages for their respective industries. In VPP, management, labor and OSHA work cooperatively and proactively to prevent fatalities, injuries and illnesses.

OSHA Training Institute Education Centers

The OSHA Training Institute (OTI) Education Centers are a national network of nonprofit organizations authorized by OSHA to conduct occupational safety and health training to private sector workers, supervisors and employers.

Susan Harwood Training and Education Grants

OSHA provides grants to nonprofit organizations to provide worker education and training on serious job hazards and avoidance/prevention strategies.



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