

OSHA ADVISORY

OSHA Opts for COVID-19 National Emphasis Program Rather Than Emergency Temporary Standard



March 15, 2021

On March 12, 2021, the Occupational Safety and Health Administration (OSHA) rolled out a National Emphasis Program (NEP) to address the ongoing COVID-19 pandemic. NEPs are tools utilized by the Agency, on a temporary basis, to address certain hazards in high-risk industries.

The new [NEP](#) has been launched in response to President Biden's recent Executive Order directing the Agency to, among other things, come up with a national program to focus on COVID-19 enforcement. Its goal is "to significantly reduce or eliminate worker exposures to [COVID-19] by targeting industries and worksites where employees may have a high frequency of close contact exposures and therefore, controlling the health hazards associated with such exposures." Inspections related to COVID-19, which OSHA hopes to comprise at least 5% of all inspections, are set to be focused in these certain critical industries "until further notice." However, unprogrammed COVID-19 inspections may still take place at any worksite where there are high rates of exposure.

In order to identify establishments subject to inspection under the NEP, OSHA has created two "Master Lists." The first Master List will comprise all establishments in certain NAICS codes that OSHA has either identified as having high rates of exposure or where there are likely to be frequent exposures related to on-site activity. The second Master List will contain the establishments in those same NAICS codes that also have elevated illness rates as indicated by OSHA 300A data. Not surprisingly, many of the NAICS codes that are covered are in healthcare (e.g., physician offices, dental offices, home health care services, nursing care facilities, among others). Notable industries outside of healthcare that are covered are:

- Meat Processed from Carcasses (NAICS Code 311612)
- Animal (Except Poultry) Slaughtering (NAICS Code 311611)
- Poultry Processing (NAICS Code 311615)
- Supermarkets and Other Grocery (Except Convenience) Stores (NAICS Code 445110)



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- Discount Department Stores (NAICS Code 452112)
- General Warehousing and Storage (NAICS Code 493110)
- Temporary Help Services (NAICS Code 561320)
- Full-Service Restaurants (NAICS Code 722511)
- Limited-Service Restaurants (NAICS Code 722513)

It is noteworthy that OSHA is also including certain industries to “supplement” those noted above in generating the Master Lists for NEP targeting. Among these are¹:

- Agriculture, Forestry, Fishing and Hunting (NAICS Codes beginning with 11)
- Construction of Buildings (NAICS Codes beginning with 236)
- Heavy and Civil Engineering Construction (NAICS Codes beginning with 237)
- Specialty Trade Contractors (NAICS Codes beginning with 238)
- Food Manufacturing (NAICS Codes beginning with 311)
- Beverage Manufacturing (NAICS Codes beginning with 3121)
- Fabricated Metal Product Manufacturing (NAICS Codes beginning with 332)
- Industrial Machinery Manufacturing (NAICS Codes beginning with 333)

The NEP directs each OSHA Area Office to use either or both Master Lists to “meet their inspection goals.” This is to be accomplished by the Area Offices utilizing a “Targeting List-Generation System” to identify covered industries within their jurisdiction. Area Offices may add to their lists any other establishments based upon information from local sources, such as health departments and other agencies. While OSHA will continue to prioritize fatality COVID-19 inspections, employers in the covered industries should be prepared for a programmed inspection.

What is of note about this NEP is what it does *not* do. It does not establish a federal OSHA standard to address COVID-19 hazards. Though President Biden's Executive Order required the Agency to examine whether such an Emergency Temporary Standard is appropriate, the deadline for the issuance of any such standard was March 15, 2021. Because no such standard has been issued, OSHA clearly has decided to rely on the NEP instead. Therefore, COVID-19 enforcement will continue to be handled largely under Section 5(a)(1) of the Occupational Safety and Health Act (the General Duty Clause), along with any other existing standards that may apply, such as respiratory protection or personal protective equipment requirements. Therefore, employers should ensure that their establishments follow all federal, state, and local mandates and recommendations related to COVID-19. For OSHA's guidance, please go to www.osha.gov. Guidance from the Centers for Disease Control may be found at www.cdc.gov.

The NEP is scheduled to be in effect for 12 months, and states that run their own OSHA programs are required, within 60 days, to submit a notice to OSHA stating whether they intend to adopt similar policies and procedures, already have them in place, or do not intend to adopt OSHA's NEP. Employers in state-plan states are advised to check whether their respective agencies have adopted, or will adopt, anything similar.

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¹ For a complete list of these industries, please review the Appendices to the NEP.