

OSHA CPL 03-00-021
(PSM Covered Chemical Facilities National Emphasis Program)
ABS Group Summary and Comments

Highlights

- OSHA issued CPL 03-00-021 (*PSM Covered Chemical Facilities National Emphasis Program*) effective 1/17/2017, replacing CPL 03-00-014, which had the same title. (Go to https://www.osha.gov/OshDoc/Directive_pdf/CPL_03-00-021.pdf for a copy.)
- This compliance directive (CPL) now covers both chemical facilities and petroleum refineries (which were covered by a separate OSHA instruction previously). Chemical National Emphasis Program (CNEP) inspections will be conducted in the same manner for all covered facilities.
- States with State Plans are asked to adopt this NEP.
- Additional inspection resource tools have been added to assist compliance safety and health officers (CSHOs).
- EPA RMP Program 1 and 2 processes are now included in the “inspection targeting” process, and the CPL clarifies that targeting of “explosive manufacturing” includes pyrotechnic manufacturing facilities.
- OSHA’s justification for this “new” CNEP includes (a) 69 significant CNEP enforcement cases since 2010 and (b) 24 significant refinery enforcement cases since 2010 (summaries of 11 process safety-related refinery incidents are included).
- As in the previous CPL, this CPL states that “Any violation of the PSM standard is a condition that is likely to cause death or serious physical harm,” so most CNEP citations will be classified as “Serious,” for which OSHA can now fine companies \$12,675 each. [Of course, the actual impact and costs of citations are much higher.]

Summary of Changes and ABS Group Comments A.

Programmed Inspections – Site Selection:

1. OSHA’s National Office (NO) will follow a detailed procedure to create the National PSM Covered Chemical/Refining Targeting List.
 - i. Their “Targeting Sources” list has been expanded to include EPA RMP Program 1, 2, and 3 submittals (i.e., RMPlans).
 - ii. Note: OSHA’s focus is likely to be on any RMP-reportable accidents and the off-site consequence analysis.
2. The Directorate of Enforcement Programs will sort this list into 4 lists:
 - Category 1 – Facilities with NAICS codes likely to have ammonia for refrigeration as the only highly hazardous chemical
 - Category 2 – NAICS 32411 or 324110, Petroleum Refineries
 - Category 3 – NAICS 325, Chemical Manufacturing
 - Category 4 – NAICS codes for facilities that are likely PSM covered, but not in Category 1, 2, or 3
 - Note: This seems hard to do based solely on looking at NAICS codes, which is what OSHA says they will use.
3. The Office of Statistical Analysis (OSA) will provide an initial master list for each Region, which they will review, update, and return. Facilities that are in OSHA’s VPP or SHARP programs, or which had a CNEP inspection within three years prior to this “new” CPL will be removed from the list of potential inspections.

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4. The National Office will provide each Region with four final master lists, sorted by Area Office and in random number order. The NO will also provide the Regions with the required number of inspections for each category.
 5. The Regions will assign inspections from each category among the Area Offices, and they are to select the facilities for CNEP inspections from the master lists in the random order provided.
- B. Inspection Scheduling – To appropriately allocate inspections across all hazardous processes, the National Office will apportion them to the 4 categories as follows:
1. Category 1 – Ammonia refrigeration – About 25% of non-refinery, programmed inspections (in each region)
 2. Category 2 – Refineries
 - i. OSHA intends to set a national goal for the number of refinery inspections each year, which will be distributed across the regional offices according to the percentage of the total refineries in their region.
 3. Category 3 – Chemical manufacturing – 45% of non-refinery, programmed inspections
 4. Category 4 – PSM, but not likely RMP facilities – 30% of non-refinery, programmed inspections
- C. Unprogrammed Inspections – The guidance on unprogrammed inspections (i.e., due to a complaint/referral or accident/catastrophe) is basically the same as the previous CPL.
- D. Inspection Resources:
1. Extensive “notes” on the importance of training and PSM inspection experience, particularly for Level 1 CSHOs leading CNEP inspections.
 2. Level 1 CSHOs must now have had specified training and participated in at least 6 previous OSHA PSM inspections, at least 2 of which were on an ammonia refrigeration process if inspecting such.
 3. Level 2 CSHOs must now have had specified training and participated in at least 3 previous OSHA PSM inspections.
 4. There is a new “Note” indicating that team members with specialized expertise and/or extensive industry experience may be able to provide valuable technical advice. They may serve as Level 3 team members and are allowed to advise the inspection team on all matters related to PSM.
- E. EPA RMP Facility Information:
1. About one page of “new” information on this subject has been added to this CPL.
 2. CSHOs are encouraged to access RMPPlans (through EPA’s database) prior to opening a programmed inspection, and early during unprogrammed inspections.
 3. The information goes on to describe the facility-specific information which can be gleaned from the RMPPlans.
- F. Guidance on using “Industry Reference Materials” is greatly expanded:
1. OSHA now has a *References for Chemical and Process Safety* Intranet Web site.
 2. They indicate they will use specific checklists for ammonia refrigeration and other industries.
 - i. For example, the International Institute of Ammonia Refrigeration (IIAR) standards are very specific, and probably can be converted to good checklists.
- G. Inspection Process:
1. The inspection questions will continue to be selected from a dynamic (periodically changed) list, available only to OSHA personnel.

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2. In this CPL, OSHA is pretty vague in terms of where they will place their emphasis (in terms of the four categories of facilities), what sorts of questions they might ask, the amount of time they might spend at a facility, etc. However, based on instructions to CHSOs regarding document requests, there appears to be increased emphasis on the Contractors element. See item J below.
3. As in the previous CPL, CSHOs may “expand” inspections with the approval of the Area Director. In such cases, they may use, but are not limited to (a) prior CNEP dynamic lists, (b) the questions from the Refinery NEP (CPL 03-00-010), (c) actions/questions from CPL 02-02-045, (d) questions found in Appendix B of *Guidelines for Hazard Evaluation Procedures, 3rd Edition* (CCPS)

H. Inspection Procedures:

1. A new step, to see if an employer is exempt from programmed inspections per CPL 02-00-051, has been added. [They must have no more than 10 employees and their lost workday rate must be below the all industry national average.]
2. The previous CPL included a table indicating that OSHA would select 10-15 questions from the dynamic list, but that has been removed. Instead, CSHO’s are to use *CSHO Instructions for the Dynamic Lists* on OSHA’s Intranet to determine (a) which sets of questions to utilize for the process being inspected and (b) how many questions should be addressed during the inspection.

I. Documentation to be Requested:

1. Tables 1 and 2 regarding “Document Requests” [before and after the Selected Unit(s) are identified] repeat all the items from the previous CPL, except for safe upper and lower operating limits for the Selected Unit(s).
2. One addition is the facility Emergency Action Plan.
3. Several contractor-related documents have also been added (see the next section).

J. Increased Contractor Emphasis:

1. Tables 1 and 2 include several “new” documents relating to Contractor Safety:
 - i. The host employer’s program for evaluating contractors’ safety information (presumably to evaluate the information supplied by contractors as part of the qualification process).
 - ii. The host employer’s program for controlling entrance/exit/work of contractors in PSM-covered areas.
 - iii. The host employer’s program for periodically evaluating contractors’ performance.
 - iv. Contractors’ safety information and programs.
 - v. Contract employer’s documentation of contract workers’ training.
2. Also, in the “Inspection of Contractors and Temporary Workers” section on pp. 29-30, they talk about contractors and temporary workers, and they seem to indicate that simply using a temporary worker in a covered unit is a violation (or at least if they are exposed to a “violative condition,” that both the facility and the contract employer may be cited).
3. Finally, if the selected unit at a facility does not have any contractors working in the unit or nearby, the OSHA team leader is to “choose an additional PSM-covered process where contractors are known to be working, and inspect those contractors.”

K. The guidance to the inspection team on “PSM Overview,” “PPE and Camera/Video Use,” “Initial Walkaround,” “Compliance Guidelines,” “Review Inspection History and Abatement,” and “Citations” is basically unchanged from the previous CPL.

L. The guidance on “Selection of Unit” is the same as the previous CPL, except for an initial step regarding selection if there has been a prior CNEP inspection.

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- M. The guidance on “Program Evaluation” and “Outreach” has changed, but related to OSHA’s internal procedures, including inspection coding, for which a detailed flow chart has been added.
- N. If you want to understand both the regulatory requirements and good practices in preparing for a CNEP inspection, ABS Group can help. Consider:**
 - **Attending one of our public Webinars on OSHA’s revised CNEP (check the dates and register at: <http://www.abs-group.com/Knowledge-Center/Webinars/>)**
 - **Contacting Bill Bradshaw at 865-671-5829 or wbradshaw@abs-group.com.**