

AUGUST 10, 2022 | NATIONAL, REGIONAL & LOCAL EMPHASIS PROGRAMS (LEPS)

# Regional Emphasis Program for Warehousing Operations

On August 3, 2022, OSHA announced a new [Regional Emphasis Program](#) (“REP”) focused on warehousing and inside or outside storage and distribution yards in Pennsylvania, Delaware, Maryland, Virginia, West Virginia, and the District of Columbia, including those located at federal agencies, and federal installations in Region III’s jurisdiction. Covered employers in these states would be well-advised to dust off their copy of [Conn Maciel Carey LLP’s OSHA Inspection Toolkit](#) and take the necessary steps to ensure they are ready for the inspections that will begin before the end of the year. 

## Why Is OSHA Targeting Warehousing Operations?

In the REP and accompanying press release, OSHA explains it is seeking to reduce injury/illness rates in the warehousing industry by conducting comprehensive inspections to address hazards that may include those associated with powered industrial trucks, lockout tagout, life safety, means of egress, and fire suppression. OSHA further explains in the REP that while the rate of total recordable case rate for all private industry was 2.7 cases per 100 full-time workers, the rates for the industries included in this REP were 3.5 for beverage manufacturing; 4.8 for warehousing and storage; 4.0 for food and beverage stores; 4.3 for grocery wholesalers; and 5.5 for beer, wine, and alcoholic beverage wholesalers.

The REP calls out the potentially serious hazards involved in the operation of powered industrial trucks, noting that tens of thousands of forklift-related injuries occur in U.S. workplaces each year. The types of injuries that commonly occur at warehousing worksites, according to the REP, involve employees struck by lift trucks and falling while standing or working from elevated pallets and tines. Employees have also been injured when lift trucks are driven off loading docks or when the lift falls between a dock and an un-chocked trailer. Emphasizing the potential for fatal accidents, OSHA notes in the REP that employees have died as a result of an under-ride hazard when a horizontal rack beam (crossbar) or similar obstruction enters the operator’s compartment, as well as when employees are performing maintenance activities on powered industrial trucks and conveyor equipment without utilizing lockout tagout procedures. Given that OSHA believes many employee injuries and deaths can be attributed to lack of procedures, lack of or inadequate training, and lack of safety-rule enforcement, it should come as no surprise that the agency has decided to launch an REP so that it can proactively inspect covered worksites and identify such shortcomings before a serious incident occurs.

## Which Employers Will Be Targeted?

This REP for Warehousing Operations will apply to worksites in the following NAICS Codes:

**Manufacturing: Bottled and Canned Soft Drinks and Water – 312111 and 312112**

**Manufacturing: Fluid Milk Manufacturing – 311511**

**Transportation: Refrigerated Warehousing and Storage – 493120**

**Transportation: General Warehousing and Storage – 493110**

**Retail Trade: Groceries – 445110**

**Wholesale Trade: General Line Grocers – 424410**

**Wholesale Trade: Meat and Meat Products – 424470**

**Wholesale Trade: Groceries and Related Products – 424490**

**Wholesale Trade: Beer & Ale – 424810**

#### **Why Should I Be Concerned About OSHA Emphasis Programs?**

While most employers understand that OSHA can inspect their workplace in response to an employee complaint, a referral, or a self-reported serious incident such as a fatality, amputation, or in-patient hospitalization, programmed inspections enable the agency to randomly select employers based simply on their NAICS Code. In other words, you can be selected for an inspection even if you have a spotless safety record and zero recordables simply because you operate in a certain industry.

Also, emphasis program inspections such as this are typically combined with other inspections to broaden the areas into which OSHA will look at your operations. As such, inspections prompted by complaints, referrals or incidents about other hazards will likely be expanded to cover the areas of focus included in this REP. Likewise, if OSHA arrives at your facility to conduct an inspection under this REP and it determines that you are also on the

list for another programmed inspection such as the National Emphasis Program (NEP) on amputations, the Heat Illness NEP, or OSHA's Site-Specific Targeting Program, your warehousing operations inspection will likely expand even further.

### **What Can Employers Expect During an Inspection Under This REP?**

The scope of these inspections will be quite broad. Under the program directive, the compliance officer(s) conducting the inspection will be expected to:

- Obtain the necessary information regarding the presence and/or use of temporary workers. If temporary workers are present or utilized at the establishment, the compliance officer shall obtain all the necessary documentation and information required to evaluate the safety and health program relating to temp workers and determine compliance with OSHA regulations in providing a safe and healthful workplace for these workers.
- Evaluate compliance with the powered industrial truck standard 29 CFR 1910.178. Evaluation will include items such as, but not limited to, powered industrial truck operations and practices, training, safety rule enforcement, maintenance of vehicles, proper fueling/charging procedures, and any unique hazards in the workplace such as the potential for under-ride hazards. Additional information on under-ride hazards can be found in the OSHA Safety and Health Information Bulletin Standup Forklift Under-ride Hazards.
- Review the hazards of storage rack systems such as, but not limited to, the capacity/structural integrity of the racks, and the safe/stable storage of items.
- Review hazards associated with means of egress and fire suppression. For additional guidance reference NFPA 101-2009, Life Safety Code, 2009 edition which is incorporated by reference and IBR approved for §§1910.34, 1910.35, 1910.36, and 1910.37.
- Evaluate compliance with 29 CFR §1910.147 (Lockout/Tagout). The review of the records shall include attention to injuries related to servicing and maintenance operations.

The compliance officer will also review the site's injury and illness records for compliance with 29 CFR 1904 including, where appropriate, compliance with electronic reporting of injury and illness information (29 CFR 1904.41). Be mindful that the fact that certain injuries or illnesses are recorded on your log does not necessarily justify expanding the scope of an inspection, so do not hesitate to ask questions and consider reaching out to counsel to discuss whether OSHA is entitled to broaden its inspection.

### **Will OSHA Be Engaging in Outreach Before Inspections Begin?**

Yes. Under the REP, the Assistant Regional Administrator for Cooperative and State Programs and the Assistant Regional Administrator for Enforcement Programs will "ensure the Area Directors and all staff performing outreach are familiar with this directive and actively promote the REP when conducting outreach sessions, presentations, and meetings as appropriate."

### **When Will Inspections Begin?**

According to the REP, inspections can begin no sooner than 3 months from the effective date of the program, August 3, 2022. That means inspections will likely begin as early as the first week of November 2022, so be

sure to begin preparations for the inevitable programmed inspection of your covered facilities and let us know how we can help you get ready.

### **What Should You Do Now?**

Covered employers should act quickly and take a proactive approach by taking steps such as (1) evaluating their use (particularly training) of temporary workers; (2) reviewing select elements of their PIT program to focus on the most frequently cited sections of that standard; (3) taking stock of their rack inspection program, if any, and ensuring they have documented plans to find and fix damaged sections; (4) reviewing and correcting the errors we commonly find in their 300 logs; and (5) assessing compliance with those elements of the LOTO standard that most commonly trip up employers in this industry (as opposed to manufacturing employers).

These are just a few of the questions you should be asking as you prepare for a possible inspection under this REP. While self-audits can be helpful, you may want to consider bringing in a professional safety consultant with expertise in these areas. If you are at all concerned about what the audit will reveal, consider retaining counsel to manage the audit process. We at Conn Maciel Carey LLP are here to help, so please do not hesitate to [reach out with questions](#).