



OSHA REGIONAL NOTICE

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

DIRECTIVE NUMBER: *CPL 2-13-001G* | **EFFECTIVE DATE:** *December 4, 2017*

SUBJECT: *Grain Handling Industry Local Emphasis Program (LEP)*

REGIONAL IDENTIFIER: *Region VII*

ABSTRACT

Purpose: This Notice continues the Local Emphasis Program (LEP) policies and procedures for conducting inspections of grain handling facilities within the Omaha Area Office jurisdiction. The targeted employers are in the grain handling industry (Standard Industry Code (SIC) codes 2041, 2044, 2048, 4221, and 5153) and North American Industry Classification System (NAICS) 311211, 311212, 311119, 424510 and 493130).

Scope: This Notice applies to the State of Nebraska.

References: OSHA Instructions: CPL 02-01-004, CPL 04-00-001, CPL 02-00-160, CPL 02-00-025, CPL 02-00-051; NIOSH Publications: 83-126, 88-102 and 95-109.

State Impact: None

Cancellation: CPL 2-13-001F

Action Offices: Omaha Area Office - Region VII

Originating Office: Kansas City Regional Office – Enforcement Programs

Contact: Assistant Regional Administrator for Enforcement Programs
(816) 283-8745

By and Under the Authority of:

Kimberly A. Stille
Regional Administrator

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- I. Purpose. This Notice continues a Local Emphasis Program (LEP) designed to reduce injury, illness, and death rates in the grain handling industry by increasing employers' knowledge in safety and health and by promoting safety and health programs through a combination of outreach and enforcement activities.
- II. Scope. This Notice applies to general industry establishments that are covered by 29 CFR 1910.272 within the jurisdictional boundaries of the Omaha Area Office. This LEP establishes OSHA's procedure for programmed comprehensive safety inspections of establishments in Standard Industrial Classification (SIC)/North American Industry Classification System (NAICS) codes 2041/311211 (flour mill products), 2044/311212 (rice milling), 2048/311119 (prepared feed for animals and fowls), 4221/424510 (grain and field bean merchant wholesalers), and 5153/493130 (grain and field beans warehousing and storage), for any grain handling or storage related activities performed at the establishment, pursuant to the provisions contained in the Field Operations Manual (FOM).
- III. Cancellation. This Regional Notice cancels OSHA Regional Notice CPL 2-13-001F, October 1, 2017, Region-wide LEP on Grain Handling Industry Local Emphasis Program.
- IV. References.
 - A. OSHA Instruction CPL 04-00-001, November 10, 1999, Procedures for Approval of Local Emphasis Program (LEPs) and Experimental Programs.
 - B. OSHA Instruction 02-00-160, August 2, 2016, Field Operations Manual (FOM).
 - C. OSHA Instruction CPL 02-00-025, January 4, 1995, Scheduling System for Programmed Inspections.
 - D. OSHA Instruction CPL 02-01-004, November 8, 1996, Inspection of Grain Handling Facilities, 29 CFR 1910.272.
 - E. OSHA Instruction CPL 02-00-051, May 28, 1998, Enforcement Exemptions and Limitations under the Appropriations Act, Appendix A, dated January 10, 2017, or most recent version.
 - F. National Institute of Occupational Safety and Health (NIOSH) Publication No. 83-126, Occupational Safety in Grain Elevators and Feed Mills (1983).
 - G. NIOSH Publication 88-102, Preventing Entrapment and Suffocation Caused by the Unstable Surfaces of Stored Grain and Other Materials (1987).
 - H. NIOSH Publication 95-109, Safe Grain and Silage Handling (1995).

- I. Memorandum from Thomas Galassi to Regional Administrators, Procedures for Local and Regional Emphasis Programs, December 3, 2014.
 - J. Memorandum from Francis Yebesi to Regional Administrators, Establishment-Targeting Lists for Emphasis Programs, November 12, 2014.
- V. Expiration Date. This Notice will expire on September 30, 2018.
- VI. Action. The Regional Administrator, through the Assistant Regional Administrator for Enforcement Programs, and the Omaha Area Director ensure adherence to the procedures outlined in this Notice in the scheduling of programmed inspections of grain handling facilities.
- VII. Background.

The hazards associated with grain handling facilities are well recognized. Employees are exposed to the potential of fires and explosions, and other significant hazards such as falls, grain bin entry, and rail car handling operations. In the late 1970s and early 1980s, OSHA implemented National Emphasis Programs covering grain handling facilities in order to focus its resources on these hazards. These programs have since been canceled. The Omaha Area Office determined a renewed OSHA enforcement presence is warranted due to continuing fatality and injury incidence in these facilities.

According to the National Institute for Occupational Safety and Health (NIOSH, 1995), suffocation under silage or grain was the leading cause of grain-handling fatalities between 1985 and 1989. Grain handling machinery is the second largest cause of farm machinery-related deaths and often causes severe disfiguring injuries and amputations (NIOSH, 1995). Falls from machinery and structures were the second most common cause of grain and silage handling fatalities between 1985 and 1989 (NIOSH, 1995). The grain handling industry also has confined spaces (entry into bins, silos, tanks, and other storage structures) and toxic atmospheres created by the decomposition of stored grain.

Nationally, OSHA has determined a renewed focus on grain industries is necessary. Due to the hazardous nature of the grain industry and the fatalities that occurred during 2009, the Assistant Secretary for OSHA mailed letters to grain handling facilities in the United States warning employers not to allow workers to enter grain storage facilities without proper equipment, precautions, and training. In 2010, at least 26 U.S. workers were killed in grain engulfments, the highest number on record.

According to the latest available U.S. Department of Labor Bureau of Labor Statistics, in 2015 the nationwide Total Case Incident Rate (TCIR) for Private Industry was 3.0. The TCIR for NAICS group 311211 (Flour Milling) was 4.5 (50% higher than all private industry). The TCIR for NAICS 2044/311212 (Rice Milling) was 3.5 (17% higher than all private industry). The TCIR for NAICS group 311119 (Other Animal Food Processing) was 4.4 (47% higher than all private industry). The TCIR for NAICS group 4221/424510 (grain and field bean merchant wholesalers) was 4.3 (43% higher than all

private industry). The TCIR for NAICS group 5153/493130 (grain and field beans warehousing and storage) was 2.2 (27% lower than all private industry).

Most Nebraska industry is in agriculture, and Nebraska's primary agricultural crop is corn. Between FY 2004 and FY 2015, the Omaha Area Office investigated at least 28 accidents involving grain or feed storage or handling. Nineteen (19) of these incidents resulted in death. About 18% of the Omaha Area Office investigated fatalities between FY 2004 and FY 2015 (106) were in grain-handling industries. In FY 2015, two separate millwright companies experienced the death of an employee during work at a grain-handling facility in Nebraska. In FY 2016, the Omaha Area Office investigated three fatalities in the grain industry that occurred in Nebraska, two were engulfment incidents, and one was a fall incident. In May 2017, the Omaha Area Office investigated a grain engulfment fatality.

This LEP increases the probability of inspecting such establishments, within the jurisdiction of the Omaha Area Office. In accordance with the Department of Labor's Strategic Plan, this LEP addresses OSHA Strategic Objective 2.1: "Secure safe and healthful working conditions for America's workers." As per CPL 02-00-051 (Reference E.), this safety health hazard-targeting program will include establishments with ten or fewer employees. This LEP will not include Federal Agency establishments.

- VIII. Procedures. The Omaha Area Office will utilize the following procedures to notify affected employers about the program and to implement enforcement activity.
- A. Outreach. The Omaha Area Office has worked with the Nebraska Grain and Feed Association (NGFA) and Nebraska Workforce Development 21(d) OSHA Consultation Project to provide outreach to affected employers. The Omaha Area Office will continue outreach through newsletter articles, e-mail updates, presentations, and other sources identified throughout the year. The Omaha Area Office has used the OSHA National Office mailing list to notify employers within the state of the LEP and provide resources to assist with the elimination of known hazards in the grain industry.
 - B. Targeting/Selection. Inspections conducted under this program shall be scheduled and conducted pursuant to the following criteria. Inspections shall concentrate on grain handling establishments as defined by 29 CFR 1910.272(b). The Omaha Area Office utilized the following list of sources to obtain information for developing a Master List from which to conduct inspections.
 - 1. The following SIC/NAICS codes list the industries within the State of Nebraska that are covered by 29 CFR 1910.272: Standard Industrial Classification (SIC)/North American Industry Classification System (NAICS) codes 2041/311211 (flour mill products), 2044/311212 (rice milling), 2048/311119 (prepared feed for animals and fowls), 4221/424510 (grain and field bean merchant wholesalers), and 5153/493130 (grain and field beans warehousing and storage).

2. OSHA's Office of Statistics provided a listing of establishments within the above SIC/NAICS codes based on Dun & Bradstreet information for the office's area of jurisdiction. Establishments included on the OSHA National Office mailing list for grain facilities were added to the listing of establishments. In addition, the Cooperative Council of Nebraska provided a listing for some of their members, which was used to update the information contained in the Dun & Bradstreet listing. Additionally, the following documents were used to identify grain handling locations in Nebraska: Burlington Northern Santa Fe Grain Elevator Directory (2010); Union Pacific Grain Elevator Directory (Individual sites updated as they change); and the EPA Enforcement & Compliance History Online (ECHO) have been searched for the specific SIC/NAICS codes and those sites added to the Master List. The Omaha Area Office will search the Internet for company names on the Master List. If the company had a website with location listings, the Omaha Area Office used the website to add any additional sites listed on the company website. The Area Office combined all of these listings to form the Master List.
3. This Master List will remain active until all sites have been inspected or a new industry profile is determined as per paragraph 2 above in subsequent renewals of this directive.
4. Establishments that had a comprehensive safety or health inspection within the past thirty-six (36) months were removed from the Master List prior to initiating inspections in inspection cycles. Deletion criteria in OSHA Instruction CPL 02-00-025, Scheduling System for Programmed Inspections, Paragraph B.1.b.(1)(b)6.d., was applied to the list of establishments with the exception of deletion criteria H#, S# and T#.

NOTE: Small employers with fewer than ten employees in SIC/NAICS codes that are listed in OSHA Instruction CPL 02-00-051 as exempt from programmed OSHA safety inspections will not be inspected. Area Office staff will consult the appropriation riders each fiscal year for exempt employers in any given SIC/NAICS code. However, other establishments with fewer than ten employees are to be included in this program.

5. Each establishment remaining on the list was placed in alphabetical order. A cycle consisting of ten establishments will be randomly selected by using the most current version of Microsoft Excel's Random Sample Function, i.e., RANDBETWEEN function in Microsoft Excel. To prevent duplicate random numbers from being generated for multiple records each time the file is opened, the entire worksheet is highlighted, copied, and pasted into a blank worksheet as "Values (V)". The new worksheet will have each random number saved as a value not a formula, which will allow the worksheet to be opened without the possibility of changing the

already assigned random numbers. Subsequent cycles shall be generated in the same manner. Each inspection cycle must be completed before another cycle is generated from that list. An establishment may be carried over to another cycle for any of the reasons set forth in CPL 02-00-025, paragraph B.1.b.(1)(e).1.

6. All compliance personnel shall also be instructed to be on the lookout for grain handling worksites. Every observation of such operations shall be handled as follows:
 - a. Regardless of whether or not a violation is observed, whenever a CSHO sights or receives any other notice of a grain handling worksite (including non-formal complaints, other government agency referrals, and reports from members of the public) the CSHO shall:
 - (1) Make note of the state and condition of the work operation insofar as it is known, including any apparent serious hazards. A hazard is determined by OSHA to be serious if there is substantial probability that death or serious harm could result from an existing condition, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use.
 - (2) Note the company name and address or location of the worksite, if known.
 - (3) Contact the Area Office supervisor for a decision as to whether an inspection is required.
 - b. All grain handling worksites brought to the attention of the Area Office shall be inspected as follows:
 - (1) If the worksite has been inspected within the last three years, no inspection is necessary unless the current observations of the CSHO indicate serious hazard(s).
 - (2) If the worksite has not been inspected within the last three years, an inspection shall be conducted.
 - c. Complaint, referral, fatality, catastrophe, and follow-up inspections will be handled according to the FOM. Unprogrammed inspections of establishments identified in Paragraph VII.B. above will be expanded to include the issues addressed by this program. An inspection scheduled under this LEP does not necessarily need

to be inspected by the compliance personnel making the original observation.

7. Deferral: Many small grain handling facilities, e.g., cooperatives, are purchased by larger entities, which begin implementing improved safety and health programs. If such an entity voluntarily provides the Omaha Area Office with the date and specific location of such a purchase, that specific-purchased location will be deferred from receiving a programmed inspection described in this directive for establishments selected in accordance with paragraph VIII.B. The deferral will remain in effect for a period of 90 calendar days from the date of the purchase. However, complaint, referral, fatality, catastrophe, and follow-up inspections will continue to be handled according to the FOM.

C. Inspection Procedures.

1. Inspections will be conducted in accordance with CPL 02-00-051, Enforcement Exemptions and Limitations under the Appropriation Act, and shall be conducted in accordance with provisions of the FOM.
2. All programmed inspections will be comprehensive safety inspections and will comply with guidelines established in OSHA Instruction CPL 02-01-004, Inspection of Grain Handling Facilities. All inspections will include an evaluation of hazards related to grain handling, paying special attention to fall, auger entanglement, combustible dust explosion/fire, electrical, engulfment, and struck by hazards. If a safety CSHO identifies a health hazard, such as ammonia or noise exposure, during the inspection, a health referral will be made, and when possible conduct a single inspection to address the unprogrammed event as well as to conduct an inspection described in this program for establishments selected in accordance with paragraph VIII.B. Area Director may allow joint safety and health inspections to be conducted simultaneously.
3. Unprogrammed events such as fatalities, catastrophes, complaints, follow-up inspections, and referrals shall be scheduled for inspection in accordance with existing procedures outlined in the FOM. When possible, a single inspection will be conducted to address the unprogrammed event as well as to conduct an inspection described in this program for establishments selected in accordance with paragraph VIII.B.
4. When an inspection is not conducted because the employer has refused entry, a warrant shall be sought in accordance with procedures in the FOM.

IX. Recording in OIS.

- A. Inspections that are targeted as a result of this LEP will be coded as “GRAIN” on the Inspection tab/Inspection Type tab under Local Emphasis Program and as Programmed Planned on the same tabs under Initiating Type.
- B. Inspections that are conducted as a CSHO referral and inspected during the current inspection cycle will be coded as “GRAIN” on the Inspection tab/Inspection Type tab under Local Emphasis Program and as Programmed Related on the same tabs under Initiating Type.
- C. Inspections that are conducted as a result of a complaint, referral by another agency, or fatality/catastrophe will be coded as “GRAIN” on the Inspection tab/Inspection Type tab under Local Emphasis Program and the appropriate unprogrammed activity on the same tabs under Initiating Type.
- D. Where “program related” inspections are conducted, they will be so indicated on the Inspection tab/Inspection Type tab.
- E. All consultation activities (requests, visits, and compliance assistance) conducted at establishments in the SIC/NAICs codes, included in this LEP will be coded with “GRAIN” in the Local Emphasis Program field on the appropriate forms.

- X. Evaluation. The Omaha Area Office shall collect data relevant to the effectiveness of this program and submit it to the Regional Office at the end of each fiscal year (no later than October 30). At a minimum, the evaluation should respond to the requirements of OSHA Instruction CPL 04-00-001, Procedure for Approval of Local Emphasis Programs and Experimental Programs, Paragraph G.4., Evaluations.

Kimberly A. Stille
Regional Administrator, Region VII

Date

Office of the Solicitor Concurrence
U.S Department of Labor
Office of the Solicitor, Region VII

Date

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