



OSHA REGIONAL INSTRUCTION

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

DIRECTIVE NUMBER: CPL 02-11-03J

EFFECTIVE DATE: October 1, 2019

SUBJECT: Kansas Local Emphasis Program (LEP) for Grain Handling Facilities

REGIONAL IDENTIFIER: Region VII

ABSTRACT

Purpose: This Instruction continues a local emphasis program for conducting programmed inspections at grain handling facilities in the State of Kansas in an effort to reduce injuries, illnesses, and deaths.

Scope: This Instruction applies to the Wichita Area Office.

References: OSHA Instruction CPL 02-00-163, Field Operations Manual (FOM), September 13, 2019, or the most current version at the time of the inspection opening conference
OSHA Instruction CPL 02-00-025 Scheduling Systems for Programmed Inspections, January 4, 1995
OSHA Instruction CPL 02-00-051, Enforcement Exemptions and Limitations Under the Appropriations Act, May 28, 1998, or successor guidance
OSHA Instruction CPL 02-01-004, Inspection of Grain Handling Facilities, November 8, 1996.

Cancellations: This Instruction cancels CPL 02-11-03I, Local Emphasis Program (LEP) for Grain Handling Facilities, October 1, 2018.

State Plan Impact: None

Action Office: Wichita Area Office

Originating Office: Kansas City Regional Office

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By and Under the Authority

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Executive Summary

This Instruction continues a Local Emphasis Program (LEP) for conducting programmed inspections at grain handling facilities in the State of Kansas in an effort to reduce injuries, illnesses, and deaths.

The intent is encouraging employers to take steps to address hazards, evaluate facilities to determine compliance with all relevant OSHA requirements, and help employers correct hazards, thereby reducing potential injuries, illnesses, and death for their workers.

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- I. Purpose.** This Instruction 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 Instruction applies to general industry establishments covered by 29 CFR 1910.272 within the jurisdictional boundaries of the Wichita Area Office in North American Industry Classification System (NAICS) codes:

NAICS	Description
311119	Other Animal Food Manufacturing
311211	Flour Milling
311212	Rice Milling
424510	Grain and Field Bean Merchant Wholesalers
493130	Farm Product Warehousing and Storage

This Instruction also covers any Operations controlled by grain elevators, grain storage, milling operations, fertilizer, feed, chemical, farm machinery & equipment repair or maintenance, and grain handling or storage related activities performed at the establishment, pursuant to the provisions contained in the Field Operations Manual (FOM).

- III. Expiration.** This Instruction will expire on September 30, 2024.
- IV. Action.** OSHA compliance personnel shall follow the procedures contained in this instruction when conducting outreach and enforcement activities.
- V. References.**
- A. OSHA instruction CPL 02-00-163, Field Operations Manual (FOM), September 13, 2019, or the most current version at the time of the inspection opening conference.
 - B. OSHA Instruction CPL 02-00-025, Scheduling Systems for Programmed Inspections, January 4, 1995.
 - C. OSHA Instruction CPL 04-00-002, Procedures for the Approval of Local Emphasis Programs (LEPs), November 13, 2018.
 - D. OSHA Instruction CPL 02-00-051, Enforcement Exemptions and Limitations under the Appropriations Act, May 28, 1998 and Change (Appendix A) dated April 25, 2018, or most current version.

E. OSHA Instruction CPL 02-01-004 Inspection of Grain Handling Facilities, 29 CFR 1910.272, November 8, 1996.

F. OSHA Memorandum from Francis Yebesi to Regional Administrators, Establishment-Targeting Lists for Emphasis Programs, November 12, 2014.

VI. Cancellation. This Instruction cancels CPL 2-11-03I, Local Emphasis Program (LEP) for Grain Handling Facilities, October 1, 2018.

VII. Action Offices. Wichita Area Office

VIII. Background. The U. S. Department of Labor and specifically OSHA recognize the need to focus enforcement efforts on facilities where fatalities, injuries, and illnesses occur at higher rates. From January 1, 2015 to April 29, 2019, the Wichita Area Office received an annual or yearly average of 45 employer-reported referrals/severe injury reports (SIR) in the grain handling industry NAICS codes 311211, 311212, 311119, 493130, and 424510. Reported hazards exposed employees to amputation injuries and/or in-patient hospitalizations. During this period, the Wichita Area Office received an average of 11.25 severe injury reports in NAICS codes applicable to this instruction. The figure below shows the trend line for SIRs received in these NAICS codes by the Wichita Area Office during this period:

The Wichita Area Office received 45 severe injury reports. Fifteen incidents (33%) resulted in an amputation. The remaining 30 incidents (66%) resulted in in-patient hospitalizations.

The Wichita Area Office initiated forty-six safety and/or health inspections because of these referrals. The inspections resulted in the issuance of 120 violations with 85% (102/120) Serious or Repeat-Serious violation classification.

From January 1, 2015 to April 29, 2019, the Wichita Area Office conducted one-hundred thirty three (133) inspections, improving the working conditions for 4,193 employees in Kansas. Programmed activities accounted for fifty-one (38%) inspections.

Unprogrammed activities accounted for eighty-two (62%) inspections. From January 1, 2015 to April 29, 2019, the Wichita Area Office investigated three fatal events resulting in the death of four employees. Each of these fatal events involved grain engulfment at grain handling facilities. One of these incidents resulted in the issuance 7 Serious items, 1 Repeat-Serious item, and 3 Willful-Serious items, with a total penalty of \$507,374.

Hazards associated with grain handling facilities are well recognized. The following hazards are present in the industry: combustible dust, falls, engulfment, confined spaces, auger entanglements, electrical shock and electrocution, struck-by, and rail car operation incidents. The Wichita Area Office determined a need for renewed OSHA enforcement presence due to continuing incidences of fatalities in grain handling facilities throughout the State. Thereby, in accordance with U.S. Department of Labor's Strategic Plan, the LEP addresses OSHA Strategic Objective 2.1: "Secure safe and healthful working conditions for America's workers."

IX. Inspection Scheduling and Site Selection.

- A. The Area Office shall schedule inspections conducted under this program pursuant to the following criteria. The Area Office utilized the following list of sources to obtain information for developing a master list from which to conduct inspections.
1. The following North American Industry Classification System (NAICS) codes list the industries within the State of Nebraska that 29 CFR 1910.272 covers NAICS codes: 311211 (flour mill products), 311212 (rice milling), 311119 (prepared feed for animals and fowls), 424510 (grain and field bean merchant wholesalers) and 493130 (grain and field beans warehousing and storage).
 2. OSHA's Office of Statistics provided a listing of establishments with NAICS codes 311211, 311212, 311119, 493130, and 424510 based on Dun & Bradstreet information. Wichita Area Office consulted other sources to identify additional establishments with the above-listed NAICS codes, which may not be included in the list provided. Sources include United States Department of Agriculture (USDA) grain handling inspection locations, OSHA IMIS/OIS data for grain handling facilities, as well as private sources such as industry listings.
 3. The Wichita Area Office combined all identified establishments to make a master list.
- B. This Master List remains active until Area Office inspects all sites or a new industry profile is determined as per paragraph II. above in subsequent renewals of this directive.
- C. Cycles. This Instruction will continue use of this master list, as developed from the initial listing of establishments provided by OSHA's Office of Statistics, for cycle development. The Area Office will generate subsequent cycles in the same manner and complete each inspection cycle before generating another cycle 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.
- D. Deletion Criteria.
1. Area Offices may delete from the list, any establishment that has received a comprehensive health inspection within the previous thirty-six (36) calendar months of the current inspection cycle.
 2. Area Offices shall apply deletion criteria to the list of establishments, with the exception of deletion criteria H#, I#, S#, and T#, derived from OSHA Instruction CPL 02-00-025, Scheduling System for Programmed Inspections, Paragraph B.1.b.(1)(b)6.d. at the cycle stage as noted in E.1.
 3. In the event the Area Office does not complete a cycle on or before expiration of this Instruction, they will extend the cycle into the new fiscal year, provided this Instruction is renewed. The Area Office will complete

the outstanding cycle before selecting establishments from the new master list. If the Instruction is not renewed, the Area Office will cancel the outstanding cycle and the Area Office is not obligated to complete inspections on the remaining establishments within the cycle.

- E. Randomization. The Area Office will alphabetically order each remaining establishment on the list. The Area Office shall follow procedures set forth in paragraph A., B., C., and D. above in accordance with the site randomization protocols outlined in the November 12, 2014, OSHA Memorandum: Establishment – Targeting Lists for Emphasis Programs.
- F. Deferral: Many larger entities purchase small grain-handling facilities, e.g., cooperatives, which begin implementing improved safety and health programs. The Area Office shall defer specific-purchased locations from receiving a programmed inspection described in this directive, for establishments selected in accordance with paragraph VIII.B, if such an entity voluntarily provides the date and specific location of such a purchase. The deferral will remain in effect for a period of 90 calendar days from the date of the purchase. However, the Area Office will handle complaint, referral, fatality, catastrophe, and follow-up inspections in accordance with the FOM.

X. Inspection Procedures. Inspections will be conducted in accordance with this Instruction and the FOM.

- A. Inspection Scope: Inspections shall be comprehensive safety inspections and comply with guidelines established in OSHA Instruction CPL 02-01-004, Inspection of Grain Handling Facilities. Inspections shall concentrate on grain handling establishments as defined by 29 CFR 1910.272(b). All inspections will include an evaluation of hazards related to grain handling, paying special attention to falls, auger entanglement, fire and explosion hazards created by combustible dust, electrical, engulfment hazards, and struck by hazards. Other hazards addressed will include noise, confined spaces, and machine guarding.
- B. Appropriations Act: The Area Office will adhere to OSHA Instruction CPL 02-00-051, Exemptions and Limitations under the Current Appropriations Act when implementing of this Instruction. The Area Office staff will consult the appropriation riders each fiscal year for exempt employers in any given NAICS code. However, other establishments with fewer than ten employees are to be included in this program.
- C. Unprogrammed Activity: The Area Office shall schedule an unprogrammed inspection and initiate a comprehensive safety inspection in accordance with the provisions in this LEP for all reports of imminent danger, fatality/catastrophe, and formal complaints, and referrals at any grain facility with a NAICS code covered by the LEP.

1. When possible the CSHO will 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 IX.A.
 2. If a compliance safety and health officer (CSHO) identifies a health hazard, such as ammonia or noise exposure, during the inspection, the CSHO will make a health referral. When possible the CSHO will conduct a single inspection to address the unprogrammed event and will conduct an inspection described in this program for establishments selected in accordance with paragraph VIII.B. The Area Director may allow CSHOs to conduct joint safety and health inspections.
- D. When the employer refuses entry and no inspection occurs, the Area Office will seek a warrant in accordance with procedures in the FOM.

XI. OIS Coding. Inspections conducted under this LEP will be identified in the OSHA Information System (OIS). The Area Office will follow current instructions for completing the appropriate inspection classification boxes on the OIS Inspection Form:

- A. Inspections scheduled because of this LEP will have the code “GRAIN” on the Inspection tab/Inspection Type tab under Local Emphasis Program and as Programmed Planned on the same tabs under Initiating Type.
- B. CSHO referral inspections inspected during the current inspection cycle will have the code “GRAIN” on the Inspection tab/Inspection Type tab under Local Emphasis Program and as Programmed Related on the same tabs under Initiating Type.
- C. Complaint, referral by another agency, or fatality/catastrophe inspections will have the code “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. “Program related” inspections will be so indicated on the Inspection tab/Inspection Type tab.
- E. The Area Office will code all consultation activities (requests, visits, and compliance assistance) conducted at establishments in the NAICs codes, included in this LEP, with “GRAIN” in the Local Emphasis Program field on the appropriate forms.

XII. Outreach. Wichita Area Office will continue making available outreach programs supporting the LEP purpose to identify and reduce workplace hazards associated with grain handling and associated work operations. Outreach programs with employers, professional associations, and local unions may include meetings, training, education, mailings, speeches, or other activities designed to involve employee and management stakeholders in identification and elimination of hazards at grain handling establishments. In August of 2017, the Wichita Area Office signed an Alliance with the Great Plains Chapter of Grain Elevator and Processing Society (GEAPS). Since signing the alliance,

the Wichita Area Office and GEAPS Great Plains Chapter have collaborated to provide stakeholders training in safety and health management systems and grain engulfment prevention. The Wichita Area Office and GEAPS Great Plains Chapter will continue to work together to develop and participate in meetings, organize and participate in grain safety stand-up events, deliver and arrange for delivery of grain engulfment prevention training. Wichita Area OSHA Office and GEAPS Great Plains Chapter will work together to organize, publicize, and support grain engulfment prevention initiatives including but not limited to participation in conferences, local meetings, and other grain industry events.

- XIII. Program Report.** No later than midway through the life of the program and completion of the program, the Area Office will provide a program report of this LEP to the Regional Office. At a minimum, the report should respond to the requirements of CPL 04-00-02, Section VIII, E.