



# OSHA REGIONAL INSTRUCTION

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

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**DIRECTIVE NUMBER:** CPL 2-13-001I

**EFFECTIVE DATE:** October 1, 2019

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

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**REGIONAL IDENTIFIER:** Region VII

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## ABSTRACT

**Purpose:** This Instruction continues a local emphasis program for conducting programmed inspections at grain handling facilities within Omaha Area Office's jurisdiction in an effort to reduce injuries, illnesses, and death.

**Scope:** This Instruction applies to the Omaha 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 2-13-001H, Nebraska Grain Handling Industry Local Emphasis Program (LEP), October 1, 2018.

**State Plan Impact:** None

**Action Offices:** Omaha Area Office

**Originating Office:** Kansas City Regional Office

Contact: Assistant Regional Administrator for Enforcement Programs  
2300 Main Street, Suite 1010  
Kansas City, Missouri 64108  
(816) 283-8745

By and Under the Authority of:

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Kimberly A. Stille  
Regional Administrator, VII

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## **Executive Summary**

This Instruction continues the Local Emphasis Program (LEP) for conducting programmed inspections of grain handling facilities within Omaha Area Office's jurisdiction in an effort to reduce injuries, illnesses, and deaths.

The intent is to encourage 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 Omaha Area Office in North American Industry Classification System (NAICS) codes:

| NAICS  | Description                               |
|--------|---|
| 311211 | Flour Milling                             |
| 311212 | Rice Milling                              |
| 311119 | Other Animal Food Manufacturing           |
| 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 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 System for Programmed Inspections, January 4, 1995.
  - C. OSHA Instruction CPL 04-00-002, Procedures for 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 dated December 18, 2018 (Appendix A), 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 2-13-001H, Nebraska Grain Handling Industry Local Emphasis Program (LEP), October 1, 2018.
- VII. Action Offices.** Omaha Area Office
- VIII. Background.** Grain silos continue to be hazardous places to work with the number of grain entrapment cases and fatalities increasing in 2016, according to Purdue University's annual survey of grain handling accidents. There was a 21% increase in entrapment-related incidents in 2016 versus 2015. Among the most serious cases, 18 people died from entrapment during 2016, up from 14 the previous year. In addition to the entrapment cases, Purdue found for 2016 another 42 grain-related incidents leading to deaths of 22 people from such causes as entanglement with machinery, asphyxiation, and falls.

According to the latest available U.S. Department of Labor Bureau of Labor Statistics, in 2017 the nationwide Total Case Incident Rate (TCIR) for Private Industry was 2.8. The TCIR for NAICS group 311211 (Flour Milling) was 3.1 (10% higher than all private industry). The TCIR for NAICS 311212 (Rice Milling) was 4.2 (33% higher than all private industry). The TCIR for NAICS group 311119 (Other Animal Food Processing) was 5.3 (47% higher than all private industry). BLS did not list the 2017 TCIR for NAICS 424510 (grain and field bean merchant wholesalers). The TCIR for NAICS group 493130 (grain and field beans warehousing and storage) has a new title of (Farm Product Warehousing and Storage) which was 2.7 (7% lower than all private industry).

Most Nebraska industry is agricultural, and Nebraska's primary agricultural crop is corn. Between FY 2014 and FY 2019, the Omaha Area Office investigated three (3) fatal incidents and nine (9) injury incidents at grain or feed storage or handling facilities received through complaints and media referrals. Five and a half percent (5.5%) of the Omaha Area Office investigated fatalities between FY 2014 and FY 2019 (3) were in grain-handling industries. In FY 2016, the Omaha Area Office investigated two fatalities (one engulfment and one exposure to an unguarded auger in a sump hole) in the grain industry. In FY 2017, the Omaha Area Office investigated a grain engulfment fatality that resulted in a significant case. In FY 2019, the Omaha Area Office investigated a fatality involving a sweep auger. In FY 2019, the Omaha Area Office conducted seven (7) inspections in the grain industry. The seven grain-industry inspections yielded 18 violations. 88.9% of the violations were Serious, Willful, or Repeat. From FY 14 through FY 19, the Omaha Area Office conducted 60 grain-industry inspections. These inspections yielded a Serious, Repeat, or Willful Violation Rate of 71.7%, with an average 4.81 violations issued per inspection. There have been no occurrences of employers reporting Severe Injuries as part of OSHA's requirement to notify the local area office within 24 hours of an in-patient hospitalization, amputation, or loss of an eye.

The hazards associated with grain handling facilities are well recognized. The following hazards are present in this industry: fires, explosions, falls, auger entanglements, combustible dust, grain bin entry, engulfment, confined spaces, electrical, struck-by, and rail car operations. Nationally, OSHA has determined a renewed focus on grain industries is necessary. The Omaha 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.** The Area Office will follow the procedures and the site randomization protocols outlined in the November 12, 2014, OSHA Memorandum: Establishment – Targeting Lists for Emphasis Programs.

- A. 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(farm product warehousing and storage).
  - 2. OSHA’s Office of Statistics provided a listing of establishments within the above NAICS codes based on Dun & Bradstreet information for the office’s area of jurisdiction. The OSHA National Office mailing list included grain facilities. In addition, the Cooperative Council of Nebraska provided a listing for some of their members, which the Area Office used to update the information contained in the Dun & Bradstreet listing. Also, the following documents were used to identify grain handling locations in Nebraska: Burlington Northern Santa Fe Grain Elevator Directory; 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 NAICS codes and those sites added to the Master List. The Area Office will search the Internet for company names on the Master List. If the company had a website with location listings, the 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. The Area Office shall schedule as unprogrammed safety and/or health inspection and initiate an inspection in accordance with the applicable provisions of the FOM, all reports of imminent danger, fatality/catastrophe, complaints, and referrals.
- 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. Randomization. The Area Office will alphabetically order each remaining establishment on the list and follow procedures and the site randomization protocols outlined in the November 12, 2014, OSHA Memorandum: Establishment – Targeting Lists for Emphasis Programs.
- D. Cycles. 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.

E. 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.
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.

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 Field Operations Manual.

A. Inspection Scope: This LEP will not include Federal Agency establishments. 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, as per CPL 02-00-051 (Reference D.), this safety health hazard-targeting program will include establishments with ten or fewer employees.



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

- 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.** The Area Office, in conjunction with the Nebraska Grain and Feed Association (NeGFA), the National Grain and Feed Association (NGFA), National Safety Council Omaha Chapter, the Nebraska AG Co-Op Safety Directors, and Nebraska Workforce Development 21(d) OSHA Consultation Project, has provided outreach to

affected employers. An example was the Nebraska Emergency Action Planning – High Angle Rescue Event at the Stone Creek Event Center in McCool Junction, Nebraska. The Area Office is a lead participant in a national alliance with the NGFA. The Area Offices participates in quarterly Alliance updates. The Alliance serves as a conduit for information exchange between NGFA members and OSHA staff specifically related to safety and health hazards associated with grain bin entry, machine guarding, respiratory protection, falls, heat, combustible dust, struck-by and lockout/tag out. The Area Office will continue outreach through newsletter articles, e-mail updates, presentations, and other sources identified throughout the year. The 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

- 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.