



OSHA REGIONAL NOTICE

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

DIRECTIVE NUMBER: CPL 2-13-001H | **EFFECTIVE DATE:** October 1, 2018

SUBJECT: Nebraska 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 affected 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 02-00-160, Field Operations Manual; CPL 02-00-051, Exemptions and Limitations Under the Current Appropriations Act; CPL 04-00-001, Procedures for Approval of Local Emphasis Program and Experimental Programs; Purdue University, 2016 Summary of U.S. Agricultural Confined Space-Related Injuries and Fatalities; NIOSH Publication 95-109, Safe Grain and Silage Handling

Cancellation: CPL 2-13-001G

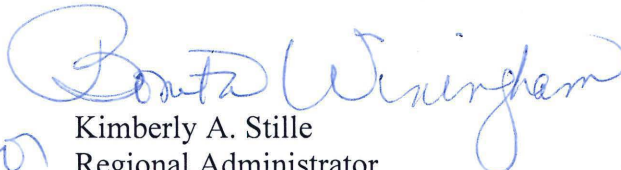
State Impact: No Impact

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:


for Kimberly A. Stille
Regional Administrator

Executive Summary

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 affected 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).

Significant Changes

This Regional Notice cancels OSHA Regional Notice CPL 2-13-001G, December 4, 2017, Region-wide LEP on Grain Handling Industry Local Emphasis Program.

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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 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), 5153/493130 (grain and field beans warehousing and storage), and any grain handling or storage related activities performed at the establishment, pursuant to the provisions contained in the Field Operations Manual (FOM).

III. 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, Exemptions and Limitations Under the Current Appropriations Act, dated April 25, 2018 Appendix A, change effective January 10, 2017 (or current 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.
- K. Purdue University, Issa, Cheng, et al., Summary of U.S. Agricultural Confined Space-Related Injuries and Fatalities, March 2016.

V. Cancellation.

This Regional Notice cancels OSHA Regional Notice CPL 2-13-001G, December 4, 2017, Region-wide LEP on Grain Handling Industry Local Emphasis Program.

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. Expiration Date.

This Notice will expire on September 30, 2019

VIII. Background.

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. 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. OSHA has canceled these programs. The Omaha Area Office has warranted a renewed OSHA enforcement presence 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. 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. Although the entrapment numbers were higher in 2016, the five-year average declined slightly, from 30.2 in 2015 to 29.4 in 2016. Among the most serious cases, 18 people died from entrapment during 2016, up from 14 the previous year. The recent high for entrapment cases and deaths was in 2010, when 31 people died and 59 incidents occurred, according to prior Purdue reports. 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 2016 the nationwide Total Case Incident Rate (TCIR) for Private Industry was 2.9. The TCIR for NAICS group 311211 (Flour Milling) was 4.1 (30% higher than all private industry). The TCIR for NAICS 2044/311212 (Rice Milling) was 3.0 (4% higher than all private industry). The TCIR for NAICS group 311119 (Other Animal Food Processing) was 4.0 (28% higher than all private industry). The TCIR for NAICS group 4221/424510 (grain and field bean merchant wholesalers) was 4.0 (28% higher than all private industry). The TCIR for NAICS group 5153/493130 (grain and field beans warehousing and storage) was 2.7 (7% lower than all private industry).

Most Nebraska industry is in agriculture, and Nebraska's primary agricultural crop is corn. Between FY 2013 and FY 2017, the Omaha Area Office investigated 11 incidents involving grain or feed storage or handling. Forty-five percent (45%) of the Omaha Area Office investigated fatalities between FY 2013 and FY 2017 (4) were in grain-handling industries. In FY 2016, the Omaha Area Office investigated three fatalities (two engulfment and one fall) in the grain industry. In FY 2017, the Omaha Area Office investigated a grain engulfment fatality that resulted in a significant case. In FY 2018, the Omaha Area Office conducted 10 inspections in the grain industry to include a sweep auger-related fatality. Thirty percent (30%) of the Omaha Area Office inspection activity in this industry was the result of reported incidents or fatalities.

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, 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, provide outreach to affected employers. An example was the Nebraska Grain Engulfment Prevention Summit in Columbus, Nebraska as part of Stand-Up for Grain Engulfment Prevention Awareness Week. The Omaha Area Office is a lead participant in a national alliance with the NGFA. The Omaha Area Office participates in quarterly Alliance updates and the Convey 18 Conference in Omaha, Nebraska. 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/tagout. 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. 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 Omaha 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 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 Omaha Area Office combined all of these listings to form the Master List.
3. This Master List will remain active until Omaha Area Office inspects all sites or a new industry profile is determined as per paragraph 2 above in subsequent renewals of this directive.
4. The Omaha Area Office will remove establishments that had a comprehensive safety or health inspection within the past thirty-six (36) months 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. The Omaha Area Office will alphabetically order each remaining establishment on the list. The Omaha Area Office will use the most current version of Microsoft Excel's Random Sample Function, i.e., RANDBETWEEN function in Microsoft Excel to select randomly a ten-establishment cycle. To prevent the generation of duplicate random numbers for multiple records each time the file opens, Omaha Area Office users will highlight, copy, and past into a blank worksheet, the entire 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 open without the possibility of changing the already assigned random numbers. The Omaha 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.
6. The Omaha Area Office will handle complaint, referral, fatality, catastrophe, and follow-up inspections according to the FOM.
7. Deferral: Many larger entities purchase small grain-handling facilities, e.g., cooperatives, which begin implementing improved safety and health programs. The Omaha 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 Omaha Area Office will handle complaint, referral, fatality, catastrophe, and follow-up inspections according to the FOM.

C. Inspection Procedures.

1. The Omaha Area Office will conduct inspections in accordance with CPL 02-00-051 Enforcement Exemptions and Limitations under the Appropriation Act, and 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 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. Area Director may allow CSHOs to conduct joint safety and health inspections simultaneously.

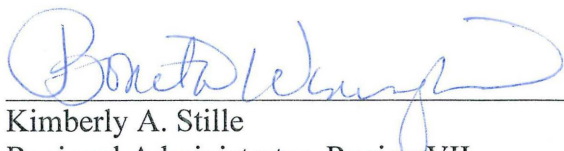
3. The Omaha Area Office will schedule for inspection any unprogrammed events such as fatalities, catastrophes, complaints, follow-up inspections, and referrals in accordance with existing procedures outlined in the FOM. When possible, CSHO's will conduct a single inspection to address the unprogrammed event as well as to conduct an inspection described in this program for establishments selected in accordance with paragraph VIII.B.
4. When the employer has refused entry and no inspection occurs, the Omaha Area Office will seek a warrant in accordance with procedures in the FOM.

IX. Recording in OIS.

- A. Inspections targeted 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. 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.

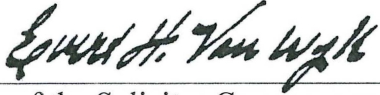
XI. Evaluation.

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

9/27/2018
Date



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

09/27/2018
Date

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