



# OSHA REGIONAL INSTRUCTION

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

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**DIRECTIVE NUMBER:** KCM-CPL-04-00-001

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**SUBJECT:** Regional Emphasis Program (REP) for Grain Handling Facilities

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**REGION:** Kansas City (KCM)

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**SIGNATURE DATE:** September 27, 2024

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**EFFECTIVE DATE:** October 1, 2024

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## ABSTRACT

- Purpose:** This Instruction establishes a regional emphasis program for conducting programmed inspections at grain handling facilities in Kansas, Nebraska, and Missouri to reduce injuries, illnesses, and deaths.
- Scope:** This Notice applies to Kansas City Region Federal Area Offices.
- References:** CPL 02-00-164, Field Operations Manual (FOM); CPL 04-00-002, Procedures for the Approval of Local Emphasis Programs (LEPs); CPL 02-00-025, Scheduling System for Programmed Inspections; CPL 02-00-051, Enforcement Exemptions and Limitations Under the Appropriations Act; and CPL 02-01-004, Inspection of Grain Handling Facilities.
- Cancelations:** OSHA Instruction CPL 02-11-03J, Kansas Local Emphasis Program (LEP) for Grain Handling Facilities; CPL 02-13-001I, Nebraska Grain Handling Industry Local Emphasis Program (LEP)
- State Impact:** No Impact
- Action Offices:** Kansas City Region Area Offices
- Originating Office:** Kansas City Regional Office – Enforcement Programs
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By and Under the Authority of:

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Regional Administrator

## **Executive Summary**

This regional instruction implements a Regional Emphasis Program (REP) for conducting programmed inspections at grain handling facilities in Region VII in the States of Kansas, Nebraska, and Missouri.

## **Significant Changes**

This Notice cancels OSHA Regional Notice CPL 2-03J, Kansas Local Emphasis Program (LEP) for Grain Handling Facilities, and OSHA Regional Notice CPL 2-13-001I, Nebraska Grain Industry Local Emphasis Program (LEP).

## Table of Contents

I.	Purpose.....	1
II.	Scope.....	1
III.	References.....	1
IV.	Cancellations .....	1
V.	Action Offices .....	2
VI.	Federal Program Change.....	2
VII.	Action.....	2
VIII.	Expiration Date .....	2
IX.	Background.....	2
X.	Inspection Scheduling/Site Selection .....	3
	A. Establishment List .....	4
	B. Master List .....	4
	C. Cycles .....	4
	D. Deletion Criteria .....	4
XI.	Inspection Procedures.....	4
	A. Comprehensive .....	5
	B. Joint Inspections .....	5
	C. Walkaround .....	5
	D. Unprogrammed Inspections .....	5
	E. Evaluation of Temporary Workers .....	5
XII.	CSHO Protection.....	6
XIII.	OIS Coding.....	6
XIV.	Outreach .....	7
XV.	Program Evaluation.....	7

## I. Purpose

This regional instruction implements a Regional Emphasis Program (REP) for programmed inspections at grain handling facilities in Region VII.

## II. Scope

This instruction applies to all Kanas City Region Federal offices. Offices will identify workplaces in the North American Industry Classification System (NAICS) codes 311119, 311211, 311212, 424510, and 493130. Establishments that primarily have grain elevators; grain storage; milling operations; animal feed manufacturing; and farm machinery and equipment repair or maintenance are included in inspection activity.

## III. References

- A. OSHA Instruction CPL 02-00-170, [Enforcement Exemptions and Limitations under the Annual Appropriations Act](https://www.osha.gov/sites/default/files/enforcement/directives/cpl-02-00-170.pdf), July 18, 2024, or successor guidance; <https://www.osha.gov/sites/default/files/enforcement/directives/cpl-02-00-170.pdf>
- B. OSHA Instruction CPL 02-00-164, [Field Operations Manual](https://www.osha.gov/enforcement/directives/cpl-02-00-164), April 14, 2020, or successor guidance; <https://www.osha.gov/enforcement/directives/cpl-02-00-164>
- C. Memorandum from Thomas Galassi to Regional Administrators, [Procedures for Local and Regional Emphasis Programs](https://www.osha.gov/memos/2014-12-03/procedures-local-and-regional-emphasis-programs), December 3, 2014; <https://www.osha.gov/memos/2014-12-03/procedures-local-and-regional-emphasis-programs>
- D. OSHA Memorandum from Francis Yebesi to Regional Administrators, [Establishment-Targeting Lists for Emphasis Programs](https://www.osha.gov/memos/2014-11-12/establishment-targeting-lists-emphasis-programs), November 12, 2014; <https://www.osha.gov/memos/2014-11-12/establishment-targeting-lists-emphasis-programs>
- E. OSHA Instruction CPL 02-01-004, [Inspection of Grain Handling Facilities](https://www.osha.gov/enforcement/directives/cpl-02-01-004), 29 CFR 1910.272, November 8, 1996; <https://www.osha.gov/enforcement/directives/cpl-02-01-004>
- F. OSHA Instruction CPL 02-00-025, [Scheduling Systems for Programmed Inspections](https://www.osha.gov/enforcement/directives/cpl-02-00-025), January 4, 1995; <https://www.osha.gov/enforcement/directives/cpl-02-00-025>
- G. OSHA Instruction CPL 04-00-002, [Procedures for Approval of Local Emphasis Procedures for Approval of Local Emphasis Programs \(LEPs\)](/default/files/enforcement/directives/CPL_04-00-002_0.pdf), [/default/files/enforcement/directives/CPL\\_04-00-002\\_0.pdf](/default/files/enforcement/directives/CPL_04-00-002_0.pdf)

## IV. Cancellations

This Notice cancels OSHA Regional Notice CPL 2-11-03J, Local Emphasis Program (LEP) for Grain Handling Facilities and OSHA Regional Notice CPL 02-13-001I, Nebraska Grain Handling Industry Local Emphasis Program (LEP).

**V. Action Offices**

OSHA Compliance personnel shall follow the procedures contained in this instruction when conducting outreach and enforcement activities.

- A. Responsible Office. The Omaha, Wichita, Kansas City, and St. Louis Area Offices are responsible for the functions covered by this Instruction.
- B. Action Office. The Kansas City Region is affected by this Instruction and is expected to act.
- C. Information Offices. The Kansas City Region Area Offices need to be notified of the issuance of this directive.

**VI. Federal Program Change.**

This instruction has no impact on State Plans. However, they are encouraged to adopt a similar program.

**VII. Action**

The Area Directors shall ensure that the procedures outlined in the instruction are followed during the effective period of this instruction. This instruction is not to conflict with inspection priorities as established in the Field Operations Manual (FOM).

When an inspection is not conducted because the employer has refused entry, the Compliance Safety and Health Officer (CSHO) shall document the reason for this refusal, Region VII Enforcement Programs (EP) shall be contacted immediately, and a warrant shall be sought following the current procedures for handling such refusals.

**VIII. Expiration Date**

This Notice expires on September 30, 2029.

EXCEPTION: Any inspection begun before September 30, 2029, may continue until its conclusion.

**IX. Background**

Region VII determined the need for region-wide OSHA enforcement presence due to the continuing incidence of hazards and injuries in grain handling facilities throughout the region. The hazards associated with grain handling facilities are well recognized and include combustible dust-related fire and explosion, falls, engulfment, confined spaces, auger entanglements, electrical shock, electrocution, struck-by, and hazards related to rail car operations.

The serious hazards in the grain industry are illustrated through the incidents investigated by OSHA and the results of these incident investigations, along with the hazards documented within these inspections throughout the Kansas City Region. For example, in 2020, four separate grain handling facility explosions were reported in Nebraska, two from combustible dust accumulation and two from gas accumulation, with one incident resulting in an employee hospitalization. Inspections following these four incidents cumulatively found deficiencies with preventative maintenance, machine

guarding, electrical, and grain bin entry. That same year, a Missouri grain handling facility experienced an explosion resulting in the hospitalization of one employee. An inspection of the facility documented hazards related to fire and explosion from dust accumulation, electrical, and employee exposure to falling from railcars. In addition, an employee at a Kansas grain handling facility was engulfed in grain up to his neck due to documented engulfment hazards. The following year, in 2021, three employees died through workplace violence at a Nebraska grain handling facility. In 2022, another employee died when engulfed by grain at a Nebraska facility, where the resulting inspection found employees exposed to numerous hazards. Then in 2023, another Nebraska grain handling facility experienced a fire, and the resulting inspection documented employee exposure to fire, explosion, and fall hazards.

Between October 1, 2020, and September 30, 2023, in the states of Kansas, Missouri, and Nebraska, there were 13 reported amputations, 3 fatalities, and 36 hospitalizations in grain handling facilities covered by these NAICS. Region VII received approximately 131 unprogrammed complaints or referrals in that period. Approximately 55.7% (73/131) of the unprogrammed activities (UPA) were referrals, 42% (55/131) were employer-reported referrals, and the remaining 18 were “other” referrals. Approximately 44.3% (58/131) of all reported UPA in the covered NAICS were complaints. Referrals and complaints received led to 57 inspections, approximately 54.8% (57/104) of all inspections conducted in facilities with covered NAICS. Programmed inspections accounted for 51% (53/104) of the inspections. There was one follow-up and three fatality inspections.

Between October 1, 2020, and September 30, 2023, in the covered NAICS, 104 inspections were conducted (68 in Kansas, 28 in Nebraska, and 8 in Missouri). Approximately 51% (53/104) of the inspections conducted were coded for the Kansas or Nebraska Grain LEPs, 27.9% (29/104) were coded as referral-based, 17.3% (18/104) were coded as compliant-based, three were coded as fatalities, and one a follow-up. Of the three inspections coded as a fatality: one was related to workplace violence, one due to natural causes, and one related to a grain engulfment and asphyxiation fatality. These inspections resulted in 209 violations, or 2.01 (209/104) violations per inspection. Of the issued violations, 77% (161/209) were serious or willful, 22.5% (47/209) were other than serious, and one repeat violation was issued.

The violations resulting from these inspections addressed hazards related to personal protective equipment, improper electrical equipment in a hazardous location, powered industrial trucks, lock-out/tag-out, machine guarding, entry into and work in grain storage structures, and training deficiencies.

This emphasis program supports the DOL objective, to secure safe and healthful working conditions for America’s workers, by implementing the OSHA Strategic Plan objective to target the most hazardous worksites for inspection. It does so by making efforts to prioritize its limited resources for inspections, compliance assistance, and outreach efforts in specific industries that routinely experience injury, illness, or fatalities.

#### **X. Inspection Scheduling/Site Selection**

**A. Establishment List**

OSHA's National Office, Office of Statistical Analysis, (OSA) was provided a listing of establishments with NAICS codes 311211, 311212, 311119, 493130, and 424510 (based on Dun & Bradstreet information) and will generate a randomized list of covered establishments. Area Offices will consult other sources to identify additional establishments with the above-listed NAICS codes that may not be included in the list provided. These sources include United States Department of Agriculture (USDA) grain handling inspection locations, OSHA OIS data for grain handling facilities, as well as private sources such as industry listings.

**B. Master List**

Area Offices will combine all identified establishments to make one master list. The master list will be arranged alphabetically and then randomized using the most current version of Microsoft Excel's Random Sample Function, i.e., the RANDBETWEEN function in Microsoft Excel, to determine the order of inspections. To prevent duplicate random number generation for multiple records each time the file opens, the Area Office will highlight, copy, and paste the entire worksheet 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 a user to open the worksheet without the possibility of changing the already assigned random numbers. This Notice will continue the use of this master list, as developed from the initial listing of establishments provided by OSHA's OSA, for cycle development.

**C. Cycles**

Area Offices will generate cycles of ten (10) from the master list. Each cycle must be completed before generating another cycle from the master list. An Area Office may carry over an establishment to another cycle for any of the reasons outlined in CPL 02-00-025. Each office will apply deletion criteria (outlined below).

All compliance personnel when out in the field must look for grain handling worksites. If an establishment with one of the targeted NAICS codes is identified after the development of the master list, an inspection will be scheduled.

**D. Deletion Criteria**

The Area Director will review each cycle developed from the master. All establishments inspected (comprehensive safety and health) within the last 36 months from the date the office generated the inspection cycle will be deleted.

If a selected establishment has received a comprehensive safety inspection within the last 36 months but not a comprehensive health inspection, a comprehensive health inspection will be initiated, and vice versa.

**XI. Inspection Procedures**



**A. Comprehensive**

Under this REP, all inspections will be comprehensive in scope, as defined in the Field Operations Manual (FOM) in Chapter 3, paragraph III.A: “A comprehensive inspection is a substantially complete and thorough inspection of all potentially hazardous areas of the establishment. An inspection can be deemed comprehensive even though, as a result of professional judgment, not all potentially hazardous conditions or practices within those areas are inspected.”

Where establishments are found on more than one emphasis program list, the Area Office shall conduct one comprehensive inspection to satisfy all the requirements of all these programs. The OSHA Inspection Report shall then be coded for each inspection with all applicable codes.

**B. Joint Inspections**

OSHA shall conduct comprehensive joint safety and health inspections simultaneously as resources permit. If a joint inspection is not possible, either the safety or a health inspection will be initiated with the opposite discipline to follow as resources become available, or the Area Director will allow a cross-trained CSHO to address both safety and health hazards.

**C. Walkaround**

The CSHO shall conduct a comprehensive walkaround of the facility and ensure the hazards related to grain handling are evaluated, paying special attention to engulfment hazards and fire/explosion hazards created by combustible dust. Other hazards addressed may include noise, confined spaces, machine guarding, falls, fertilizer, and chemicals.

**D. Unprogrammed Inspections**

Area Offices will schedule unprogrammed events such as fatalities, catastrophes, complaints, follow-up inspections, and referrals for inspection following existing procedures outlined in the FOM. If an establishment identified in “Scope” (paragraph II above) receives an unprogrammed inspection, a comprehensive safety and/or health inspection will be initiated (as stated in paragraph XI.B) in conjunction with the unprogrammed activity unless that establishment meets the deletion criteria in paragraph X.D. In the event of a complaint received by the Area Office, the Area Director shall determine if an inspection is to be conducted following Chapter 9 of the FOM.

**E. Evaluation of Temporary Workers**

In addition to the permanent employees found at the establishment, temporary workers may be used. Temporary workers are more vulnerable to workplace safety and health hazards, as they often lack adequate safety and health training, equipment, and explanations of their job tasks and duties. At the opening conference, CSHOs shall obtain the necessary information regarding the presence and/or use of temporary workers. If temporary workers are present or utilized at

the establishment, the CSHO shall obtain all the necessary documentation and information required to evaluate the safety and health program relating to temporary workers and determine compliance with OSHA regulations in providing a safe and healthful workplace for these workers. The CSHO shall refer to the current National Office guidance found on the Temporary Worker Page to conduct these inspections.

**XII. CSHO Protection.**

- A. Inspections under this REP are to be conducted by CSHOs who have received training on the REP and have awareness of industry hazards such as those outlined in paragraph XI.C, through training and/or experience. CSHOs shall attempt to document the presence of potential hazards before initiating the walk-around portion of the inspection and shall make appropriate personal protective equipment (PPE) selections, relying on information obtained during the opening conference, from previous inspection activity at similar sites, safety data sheets, and/or previous exposure monitoring surveys.
- B. The Area Director will ensure that the CSHO has the necessary PPE to conduct the inspection, including but not limited to a hard hat/safety helmet, safety glasses, hearing protection, safety boots, and respiratory protection. The CSHO will not place themselves in potentially hazardous situations, such as entry into permit-required confined spaces, activities requiring the performance of hazardous energy control, engulfment, or exposure to unguarded machinery. In such cases, necessary information should be sought in another manner, such as private employee interviews, witness statements, engineering drawings, manufacturing specifications/manuals, etc. Supervisors shall ensure CSHOs comply with all related requirements developed as part of the ADM 04-00-003, OSHA Safety and Health Management System.
- C. Where applicable, the CSHO shall follow policies outlined in Chapter 27, Exposure Monitoring, of the OSHA Safety and Health Management System manual, ADM 04-00-003, and will conduct self-sampling when they are potentially exposed to hazardous chemicals. A list of hazardous chemicals is included in Appendix A to Chapter 27.

**XIII. OIS Coding**

All inspections conducted under this program (programmed and unprogrammed) shall be coded Regional Emphasis Program, with the designation "R7GRAIN" on the appropriate OIS forms.

If a CSHO determines an inspection will not commence at an establishment due to operational inactivity or an incorrect NAICS code, the appropriate OIS forms shall be coded "No Inspection".

All consultation activities (requests, visits, and compliance assistance) conducted at establishments in the NAICS codes included in this REP shall be coded with "R7GRAIN" in the Regional Emphasis Program field on the appropriate forms.

#### **XIV. Outreach**

Before the Area Offices located in Missouri initiate enforcement of this REP, each of the two Area Offices in Missouri will implement outreach programs that support the Agency in meeting the goals of the REP. These outreach efforts should occur at least three months before the initiation of inspections and continually after. Such programs may include:

- Targeted presentations, speeches, meetings, and/or training sessions with employers/stakeholders.
- Letters/mailings to employers, professional associations, local safety councils, apprenticeship programs, local hospitals, and occupational health clinics.
- News releases through local newspapers, safety councils, and/or industrial hygiene organizations.
- Use of current social media methods such as Twitter and e-mail contacts.
- OSHA Area Offices may leverage existing Partnerships and Alliances with groups representing employers and workers in the affected industries to share successes and technical information concerning effective means of controlling and reducing worker exposure to grain handling facility hazards.

Encourage small businesses to contact OSHA's On-Site Consultation Program. OSHA's On-Site Consultation Service offers free and confidential advice to small and medium-sized businesses in all States; priority will be given to high-hazard worksites. OSHA's compliance assistance resources for this include, but are not limited to:

- Grain Handling eTool and Safety and Health Topics Page
- Respiratory Protection eTool
- Eye and Face Protection eTool
- Hazard Exposure and Risk Assessment eMatrix

The Area Offices located in Kansas and Nebraska previously completed the requisite outreach through identical Local Emphasis Programs. Enforcement under this REP will begin on the effective date of this program in Kansas and Nebraska.

#### **XV. Program Evaluation**

- A. Abatement documentation/verification will be submitted to or otherwise collected by the Area Office for all violations. The abatement information must be included in the case file on time.

- B. The Regional Administrator (RA) will ensure that each Kansas City Region Area Office participating in the REP will prepare and submit to EP a program report in the format specified by OSHA Instruction CPL 04-00-001, Appendix A.
- C. The program report is to be conducted at the midpoint and completion of each REP. The midpoint assessment will take place no later than the end of the fiscal year following the calendar midpoint between the program's effective and expiration dates (i.e., 2 ½ years into a 5-year program). The midpoint assessment will allow for revisions to the REP where necessary, along with an assessment of whether continuation of the REP is appropriate.
- D. At the RA's discretion, additional reports may be required, based on the length, complexity, and coverage of the program.
- E. The program report will, at a minimum, address whether the REP advances OSHA's goals and initiatives. The program report will address, as appropriate, both quantitative and qualitative measures. Types of measures that may be considered include:
  - 1. The number of employees and/or establishments impacted by outreach activities.
  - 2. The number of hazards identified.
  - 3. The types of hazards identified.
  - 4. Number of violations issued and classification of violations.
  - 5. The number of workers removed from hazards.
  - 6. Impact on illness or injury rates. (Note: due to lag in available BLS data, this measure may not be suited for shorter-term evaluations.)
  - 7. Reductions or increases in the number of complaints, referrals, or severe injury reports within affected industries.
  - 8. Any indices that relate directly to measures included in the DOL Strategic Plan, the OSHA Operating Plan, and/or additional goals of the REP.