



OSHA REGIONAL NOTICE

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

DIRECTIVE NUMBER: CPL 04-00 (LEP-100) | **EFFECTIVE DATE:** April 1, 2018

SUBJECT: LEP for Maritime Industries

REGIONAL IDENTIFIER: Region V

ABSTRACT

Purpose: This Notice continues a Local Emphasis Program (LEP) for the programmed inspection of Maritime Industries engaged in shipbuilding and repair, marine cargo handling, navigation services to shipping, port and harbor operations, other support activities for water transportation, boat building, and marinas engaged in recreational boat repair located on or adjacent to navigable waterways.

References: OSHA Instructions: CPL 02-00-051, CPL 02-01-047, CPL 02-00-154
CPL 04-00-001, CPL 02-00-160, Field Operations Manual (FOM), CPL
02-00-115 and CPL 02-00-111, as noted in Section V of this LEP

Action Offices: Indianapolis Area Office
Lansing Area Office

Originating Office: Lansing Area Office

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By and Under the Authority of

Ken Nishiyama Atha
Regional Administrator

I. **Purpose**

This Regional Notice continues a Local Emphasis Program (LEP) for programmed (safety and health) inspections for Maritime Industries engaged in ship building and repair, marine cargo handling, navigation services to shipping, port and harbor operations, other support activities for water transportation, boat building, and marinas engaged in recreational boat repair located on or adjacent to navigable waterways.

II. **Scope**

This Notice applies to employers located in Michigan and Indiana who are classified with a primary or secondary North American Industry Classification System (NAICS) code of 336611 (Ship Building and Repairing), 488320 (Marine Cargo Handling), 488330 (Navigation Services to Shipping), 488310 (Port and Harbor Operations), 4883390 (Other support activities for water transportation), 336612 (Boat Building), 811490 (Recreational Boat Repair) and 713930 (Marinas).

III. **Application**

The Indiana Occupational Safety and Health Administration (IOSHA) and Michigan Occupational Safety and Health Administration (MIOSHA) are responsible for enforcing the OSH Act in their respective states. State plans located adjacent to navigable waterways are expected to provide coverage to any non-federal public-sector employees engaged in maritime work (such as State Port Authority employees).

These State OSHA Plans cover private and public employers and employees located in the state, but exclude coverage over vessels or workplaces on or adjacent to U.S. navigable waterways. The Federal OSHA Area Offices of Indianapolis and Lansing will be the authority with respect to enforcement over vessels or workplaces on or adjacent to U.S. navigable waterways.

29 CFR Part 1915 *Shipyards* standards apply to marina facilities engaged in recreational ship building, repair, or breaking operations located on or adjacent to a navigable waterway.

29 CFR Part 1917 *Marine terminals* standards apply when an employee steps onto the pier or dock. Ship-to-shore/shore-to-ship cargo transfer and handling operations are accomplished shore-side.

29 CFR Part 1918 *Longshoring* standards apply to all activities related to cargo handling aboard a vessel, and the gangway is considered to be part of the vessel.

29 CFR Part 1919 *Gear Certification* standards apply to cargo handling gear (NOTE: Part 1919 is not a citable standard; cite violations of failure to certificate cargo gear under the applicable Part 1915, Part 1917 or Part 1918 requirement).

The U.S. Coast Guard has issued comprehensive regulations for the working conditions of *seamen* on inspected vessels. Therefore, OSHA may not enforce the OSH Act (except for regulations dealing with the recording and reporting of occupational injuries and illnesses) with respect to *any* working conditions of *seamen* on inspected vessels.

OSHA exercises authority over employers for the working conditions of their employees, other than *seamen*, who are exposed to occupational hazards while working on inspected vessels. These employers include those engaged in longshoring, shipbuilding, ship repair, shipbreaking, and general industry operations.

The U.S. Coast Guard is the agency responsible for making any determination of whether a body of water is considered to be *U.S. navigable waters*. The term, *U.S. navigable waters* includes *U.S. inland waters* (such as rivers, tributaries, lakes, bays, and sounds), as well as *State territorial seas*.

States bordering the Great Lakes and the St. Lawrence River and Seaway, all waters in the Great Lakes and associated rivers up to the international boundary line with Canada are U.S. inland waters.

OSHA Instruction CPL 02-00-160, allows Area Offices to establish LEPs that address specific hazards or industries in their area. This LEP also addresses such as, but not limited to the following areas of emphasis: machine guarding, personal protective equipment, flammable and combustible liquids, chemicals, lead, isocyanates, silica, hazard communication, noise, struck by hazards, falls from elevations, guarding of edges, crushing, explosion, electricity, powered industrial vehicles and cranes.

IV. **Expiration**

This Notice expires on September 30, 2018.

V. **References**

- A. OSHA Instruction CPL 04-00-001, November 10, 1999, Procedures for Approval of Local Emphasis Programs (LEPs)
- B. CPL 02-00-160, August 2, 2016, Field Operations Manual (FOM)
- C. OSHA Instruction CPL 02-00-111, November 27, 1995, Citation Policy for Paperwork and Written Requirement Violations
- D. OSHA Instruction CPL 02-00-051, May 28, 1998, Enforcement Exemptions and Limitations Under the Appropriations Act

- E. Memorandum for Regional Administrators, Appropriations Act: Replacement of Appendix A for CPL 02-00-051, January 30, 2015
- F. OSHA Instruction CPL 02-00-157, April 1, 2014, Shipyard Employment “Tool Bag” Directive
- G. OSHA Instruction CPL 02-00-154, July 31, 2012, Longshoring and Marine Terminals “Tool Shed” Directive
- H. OSHA Instruction CPL 02-01-047, February 22, 2010, OSHA Authority Over Vessels and Facilities on or Adjacent to U.S. Navigable Waters and the Outer Continental Shelf (OCS)
- I. OSHA Instruction CPL 03-00-009, August 14, 2008, National Emphasis Program – Lead
- J. Occupational Safety and Health Act, Public Law 91-596, December 29, 1970, as amended through January 1, 2004
- K. OSHA Instruction CPL 02-01-051, May 20, 2011, 29 CFR Part 1915, Subpart B, Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment
- L. Detroit /Wayne County Port Authority-Port Companies
http://www.portdetroit.com/port_companies.php
- M. Ports of Indiana-Burns Harbor-Port Companies
http://www.portsofindiana.com/business/port_companies/burns_harbor.cfm
- N. Ports of Indiana-Jeffersonville-Port Companies
http://www.portsofindiana.com/business/port_companies/jeffersonville.cfm
- O. Ports of Indiana-Mount Vernon Port Companies
http://www.portsofindiana.com/business/port_companies/mount_vernon.cfm

VI. **Background**

The U.S. Bureau of Labor Statistics (BLS) compiles worker safety and health data, including the Days Away, Restricted or Transferred (DART) incidence rates for maritime activities. Its five recent years of available data, calendar years 2007 through 2011, are presented below in Table 1 for (NAICS) code 336611 (Ship building, Repairing), 488320 (Marine Cargo Handling), 488330 (Navigation Services to Shipping), 488310 (Port and Harbor Operations), 4883390 (Other Support Activities for Water Transportation), 336612 (Boat Building), 811490 (Recreational Boat Repair), and 713930 (Marinas).

The national average DART incidence rate for Port and Harbor Operations, Marine Cargo Handling, Shipbuilding and Repair and Boat Building activities far exceeds the rate for general industry and construction. The national average DART incidence rate for “Marinas” more than doubled in 2011 and there was a significant increase for “Other Support Activities for Water Transportation” in 2011.

Calendar Year	Private Industry Average	Construction Industry Average	Port & Harbor Operations (488310)	Marine Cargo Handling (488320)	Navigation Services to Shipping (488330)	Ship Building & Repair (336611)	Other Support Activities for Water transportation (488390)	Boat Building (336612)	Recreational Boat Repair (811490)	Marinas (713930)
2012	1.8	2.1	4.1	6.2	1.9	4.9	1.3	4.1	1.6	1.4
2013	1.7	2.2	2.9	4.2	2.5	4.6	2.4	2.9	1.9	2.1
2014	1.7	2.0	3.0	4.1	1.5	4.2	1.2	3.3	2.7	1.1
2015	1.6	3.5	3.0	3.9	1.6	3.9	3.0	3.8	0.7	0.8

Since 2012, there have been 74 fatalities, nationwide, in the maritime industries, with 15 fatalities in 2015.

NAICS	Maritime Industry	Total Fatalities 2012 to present
488320	Marine Cargo Handling	31
336611	Ship Building & Repair	24
488390	Other Support Activities for Water Transportation	1
336612	Boat Building	3
713930	Marinas	3
488330	Navigation Services to Shipping	12

Below are some examples of fatalities that have occurred in the various maritime industries throughout the nation:

Inspection # 1041497 – 02/19/15 (NAICS 336611), An employee was grinding welds beside an open hatch with a drop of 20 feet to the deck below. The employee fell through the hatch to the deck below, breaking his neck and back in the engine room.

Inspection # 1019297 – 01/20/15 (NAICS 336611), An employee was changing a tire on a crane. The employee was sitting on a pail in front of the tire hammering with a large hammer on the rim of the tire. The rim split and struck the employee in his head, fracturing it.

Inspection # 1010428 – 11/26/14 (NAICS 336612), An employee was walking along the starboard side of a ship after buffing and waxing the bridge section. The employee felled approximately seven feet and struck his head. The employee was airlifted to VCU Medical Center where he was later pronounced deceased from blunt force trauma.

Inspection # 1088611 – 08/27/15 (NAICS 488320), Employee #1, a dock laborer, was closing sections of a rolling cover on an empty dry bulk cargo barge. The employee attached a cable to the cover at the edge of section one, to be pulled closed

with an excavator. Employee #1 positioned himself at the opposite end of section two and crouched down. While the excavator operator pulled on the cover, the operator caught a glimpse of the employee standing up out of the corner of his eye. As sections one and two of the rolling cover came together, the forward movement caused a jolt from steel on steel. Employee #1 became airborne, fell backwards and was found lying on the inside floor of the barge, face down, 18 feet below the cover. Employee #1 sustained fractures of the head and torso.

Inspection # 983568 – 07/02/14 (NAICS 488320), An employee was working for a firm engaged in marine cargo handling. He was walking through the damage yard of a marine terminal, when a reach stacker backed over him. He sustained blunt force trauma to his head and chest.

Inspection # 893608 – 03/06/13 (NAICS 488390), An employee was climbing a 16 foot ladder, leaving the tug boat, when he fell ten feet into the water and drowned. The employee was not wearing a life jacket.

Inspection # 994521 – 09/10/14 (NAICS 713930), An employee was inspecting boats and the employee fell into the water and drowned.

Inspection # 105079 – 04/28/15 (NAICS 713930), An employee was moving equipment with a forklift. The employee was pinned under a wheel of the forklift which caused minor injuries that may have led to heart failure. The employee had heart surgery five days prior to the accident.

VII. **Action**

The Lansing and Indianapolis Area Directors shall ensure that the procedures outlined in this Notice are followed and adhered to in the scheduling of inspections under this LEP. OSHA Compliance Officers shall ensure that the procedures contained in this Notice are followed when conducting inspections related to this program. Area Directors shall ensure that the State Consultation Program Manager is notified of the procedures to be used in the conduct of inspections under this LEP.

VIII. **Procedures**

The following procedures will be used in the conduct of inspections under this LEP.

A. **Inspection Goals**

The Lansing and Indianapolis Area Offices shall conduct inspections under this program during the Fiscal Year(s) in which this LEP is active.

B. **Selection and Scheduling**

The National Office's Office of Statistical Analysis (OSA) will prepare a master list for each Area Office using OSA's most current establishment file. OSA will apply the industry and establishment-size criteria prescribed below. OSA will assign a random number to each establishment on the OSA-generated Master List and provide the Master List to the Area Office, sorted in random number order.

Area Offices may add establishments to the OSA-generated Master List, based on sources that may include, but are not limited to: (a) commercial directories; (b) telephone listings; (c) local knowledge of establishments, derived from previous OSHA inspection history; and, (d) information from other government agencies, such as the local Health Department. The Area Office must retain documentation of every addition made to the Master List and prior to use, the revised List must be re-randomized – either by OSA or by the Area Office using RANDBETWEEN function in Microsoft Excel.

All establishments on the list provided were from the following NAICS codes:

- 336611 (Ship Building, Repairing)
- 488320 (Marine Cargo Handling)
- 488330 (Navigation Services to Shipping)
- 488310 (Port and Harbor Operations)
- 4883390 (Other Support Activities for Water Transportation)
- 336612 (Boat Building)
- 713930 (Marinas)
- 811490 (Recreational Boat Repair)

Establishments with 10 or fewer employees have been filtered out.

Each establishment on the list will receive a comprehensive safety and health inspection. The safety and health inspections may be conducted jointly or initiated at separate times.

In addition, several lists of active port companies operating at the Michigan and Indiana Port Authorities have been identified as establishments that may be intermittently performing activities that fall under the NAICS codes listed in the scope of this LEP. Establishment sources used:

Detroit /Wayne County Port Authority-Port Companies
http://www.portdetroit.com/port_companies.php

Ports of Indiana-Burns Harbor-Port Companies
http://www.portsofindiana.com/business/port_companies/burns_harbor.cfm

Ports of Indiana-Jeffersonville-Port Companies
http://www.portsofindiana.com/business/port_companies/jeffersonville.cfm

Ports of Indiana-Mount Vernon Port Companies

http://www.portsofindiana.com/business/port_companies/mount_vernon.cfm

When an Area Office becomes aware of an establishment that is not on the current inspection list, engaged in maritime activities that may fall under a NAICS code included in the scope of this LEP, they will consult with the Area Director. Where the activity is determined to fall under a NAICS code listed in this LEP, this establishment will then be scheduled to receive a comprehensive safety and health inspection. The Area Director will add the establishment to the inspection list and it will be randomized along with the remaining establishments.

Unprogrammed events such as complaints, fatalities, catastrophes, referrals and follow-up inspections will be scheduled for inspection in accordance with existing procedures in the FOM.

C. Inspection Procedures

Maritime establishments may be inspected in any order that makes efficient use of the available resources. Upon arrival at each maritime establishment, the CSHO shall confirm and document the NAICS code for each employer on the inspection list and all information required by the FOM prior to initiating each inspection.

All active employers classified with a confirmed and documented primary or secondary NAICS that is covered by this program shall be inspected.

The scope of inspections conducted under this program will be comprehensive safety and health inspections. During inspections, CSHOs must make an initial determination of whether or not the potential exists for worker exposure to flammable and combustible liquids, chemicals, lead, isocyanates, silica, noise, struck by hazards, falls from elevations, machine guarding, crushing, explosion, electricity, powered industrial vehicles and cranes. If exposure to lead exists, the CSHO will address all aspects of any potential lead work or exposure and include a review of all related written documentation (i.e., record keeping, monitoring, compliance program, medical monitoring, respirator fit testing and procedures, and training materials), in accordance with OSHA Instruction CPL 03-00-009. As resources allow, an inspection may begin as safety only or health only and appropriate referrals may be initiated.

Sampling. Sampling will normally be performed on all inspections under this LEP. However, if the facility has adequate, recent (no more than one year old) representative sampling performed by an On-Site Consultation Service that shows no over-exposures for all processes that have a potential for employee exposures, the CSHO may in his or her professional judgment determine that sampling is not necessary. For the purposes of this LEP “representative

sampling” shall be defined as sampling that: (1) includes all exposed job descriptions; (2) was conducted on all shifts or on the heaviest production shifts; and (3) includes processes and a work environment that have not changed since the representative sampling. Information should be documented from the company and supported through employee interviews. If the company has sampling performed by an On-Site Consultation Service, the results must be included and documented in the file. When employee sampling is conducted, CSHOs will perform self-sampling in accordance with ADM 04-00-001, OSHA Safety and Health Management System, Ch. 27: Policies and Procedures for Field Staff Exposure Monitoring.

D. Data Collection

The Area Office will collect data from OSHA 300 logs for the previous three calendar years plus the current year from all employers inspected under this program that are required to maintain them. The data, which will include the totals from all the columns of the 300 log and the total hours worked by all employees for these years, will be used to assist in the evaluation of the program.

E. Deletion Criteria

OSHA Instruction CPL 02-00-051, Enforcement Exemptions and Limitations under the Appropriations Act, will be adhered to in the implementation of this program.

IX. **OIS Coding**

Current instructions for completing the appropriate OSHA forms shall be applied when recording inspections under this LEP.

- A. For any programmed inspection conducted under this LEP, the Manage Inspection section of OIS shall be marked as:
 - 1. “Program Planned”
 - 2. LEP coding marked as: MARITIME PRGM
- B. For any unprogrammed inspections conducted under this LEP (i.e., accidents, complaints, referrals, fatalities/catastrophes), the Manage Inspection section of OIS shall be marked as:
 - 1. “Unprogrammed”
 - 2. LEP coding marked as; MARITIME UNPRGM

X. **CSHO Protection**

Inspections under this LEP are to be conducted by cross-trained CSHOs who have received training on the LEP, the hazards of the industry most likely to be encountered and personal protective equipment (PPE) needed to protect themselves

from such hazards. Each Area Office will provide training. Compliance Officers shall establish the presence of hazardous substances prior to initiating the walk around portion of the inspection, relying on information such as previous inspection histories, safety data sheets, and/or previous exposure monitoring surveys.

XI. **Outreach Activities**

- A. Each Area Office must develop or continue to offer outreach programs that support the purpose of this LEP to identify and reduce workplace hazards associated with the maritime industry. 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 the identification and elimination of hazards associated with the maritime industry. At the discretion of the Regional and Area Offices, outreach materials may either be mailed directly or made available upon request to employers, professional associations, and local unions.
- B. One Area Director in each state shall be responsible for notifying the State Consultation Program Managers of the procedures to be used in conducting inspections under this LEP.
- C. In the event of a fatality during the course of this LEP, the jurisdictional Area Office will compile a fatal fact sheet (FFS) describing the fatal event and recommended preventative measures for release after the enforcement issues relating to the event have been closed. The FFS should be coordinated with the Regional Office (ARA for EP) and should not include the establishment's name or that of the deceased. The FFS should be distributed to all Region V Area Offices.

XII. **Evaluation**

The Lansing Area Office will prepare a written evaluation of this LEP in the format specified by OSHA Instruction CPL 04-00-001. Evaluations will be submitted annually for the previous Fiscal Year. The evaluation will include a recommendation for the continuation or elimination of this program.