OSHA REGIONAL NOTICE

U.S. DEPARTMENT OF LABOR Occupational Safety and Health Administration

DIRECTIVE NUMBER: CPL 04-00 (LEP-100) | **EFFECTIVE DATE: October 1, 2015**

SUBJECT: LEP 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

REGIONAL IDENTIFIER: Region V

ABSTRACT

Purpose: This Notice establishes 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 02-00-159, Field Operations Manual (FOM), CPL 02-00-115 and CPL 02-00-111, as noted in Section IV 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

William J. Donovan
Acting Regional Administrator

I. Purpose

This Regional Notice implements 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 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 *Shipyard* 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 02-00-159, 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, 2016.

V. References

A. OSHA Instruction CPL 04-00-001, November 10, 1999, Procedures for Approval of Local Emphasis Programs (LEPs)

B. CPL 02-00-159, April 22, 2011, 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)
2007	2.1	2.8	4.9	6.1	2.0	5.2	3.3	4.7	1.8	2.5
2008	2.0	2.5	4.6	4.9	2.0	5.2	3.3	3.8	1.9	2.1
2009	1.8	2.3	4.7	4.7	3.4	4.8	2.9	3.6	1.8	1.2
2010	1.8	2.1	4.7	4.9	1.3	5.8	2.4	3.2	1.7	1.5
2011	1.8	2.1	4.4	5.8	1.8	4.8	3.9	3.3	1.7	3.8

Since 2007, there have been 143 fatalities, nationwide, in the maritime industries, with 26 fatalities in 2011.

NAICS	Maritime Industry	Total Fatalities 2007 to present
488320	Marine Cargo Handling	56
488310	Port & Harbor Operations	11
336611	Ship Building & Repair	40
488390	Other Support Activities for Water Transportation	9
336612	Boat Building	10
811490	Recreational Boat Repair	1
713930	Marinas	11
488330	Navigation Services to Shipping	3

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

Inspection # 315308189 – 04/04/12 (NAICS 811490), An assistant manager was sanding a cabin door on the port side of a yacht when he accidently fell from the yacht and landed head first on the concrete floor below.

Inspection # 314774399 – 10/25/11 (NAICS 488390), An employee was cutting the rake of a deck barge that was being cut up for scrap, when the top section fell onto the employee, crushing him.

Inspection # 315357665 – 10/22/11 (NAICS 488330), Two employees were working from a suspended man basket while engaged in the task of inspecting the cargo of a vessel. The man basket fell approximately 18 feet to the ground level after a metal ring of the basket failed. One employee died at the scene from the injuries received and the other employee was transported to a local hospital for medical treatment.

Inspection # 315357665 – 10/12/11 (NAICS 336611), Employee #1 was moving a stack of corrugated metal plate with an overhead crane. Employee(s) 2, 3, and 4 were assisting employee #1. Once the plate reached the destination, employee #1 started to lower the load. For an unknown reason, employee #1 placed his head under the load to look at something. The load shifted and subsequently fell onto employee #1.

Inspection # 315816207 – 8/20/11 (NAICS 488320), A longshoreman fell approximately 45 feet while working in the hold of a ship while offloading cargo. The worker was working from an unprotected edge of a pontoon deck that had various cargos. The worker's duty at the time of the accident was to signal the crane to lift the cargo. It is believed that he fell from the deck while signaling the crane.

Inspection # 314277674 – 02/23/11 (NAICS 713930), An employee, a part-time maintenance worker, was checking for leaks in water lines that ran from the shore to the marina. He was found dead in the water near the shore. He was not wearing a life vest.

Inspection # 314258161 – 03/02/10 (NAICS 488310), A gang foreman had climbed a ladder on hold #5 to watch his gang in hold #4 pick up dunnage. Gantry crane #2 was approaching the gang foreman's location from the forward section of the ship, with its traveling alarm ringing loudly. The gang foreman did not see or hear gantry crane Number 1. The walkway of crane struck the gang foreman and knocked him off the ladder. The gang foreman fell to the deck and was caught by a piece of pipe on the crane, and was dragged across the deck until the walking foreman arrived and hit the emergency stop button. The employee sustained unspecified fractures and died from his injuries.

Inspection # 301091526 – 5/10/10 (NAICS 336612), An employee was observed walking up mobile steps on his way to his work area. He was carrying a LN-25 Lincoln Welder. A coworker observed the employee turn right off the steps onto the port side of the gunwale. The employee placed his welder on top of a large barrel fan. As there was insufficient room to walk down the gunwale, the employee was required to edge around the fan. The employee was then required to traverse multiple potential fall hazards in the form of a hatch lid with a lip, multiple weld lines running across the gunwale from the ground below, and the toeboard ends that were curled out into the walkway. Prior to the employee reaching the work level, the coworker observed him with his upper body hanging out over the ground between the mid rail and the top rail with one hand on the top rail and the other hand holding onto the lead cable. The employee fell 20 ft. to the ground below.

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

OSHA has a broad mandate to reduce injuries and illnesses in America's workplaces. OSHA has responded to this mandate by targeting specific employers in designated industries and of various size for enforcement and outreach programs. OSHA has relied on contractor supplied establishment-level data for over 25 years to identify employers within the scope of these programs. For example, establishment-level data supports the annual collection of employer-specific injury and illness data, which improves OSHA's ability to identify and target agency interventions to those employers who have serious workplace problems. It is also used to develop inspection targeting lists for both National Emphasis and Local Emphasis Programs. As a result, establishment-level data enables government resources to be used more effectively.

Annually OSHA provides a contractor with a set of criteria (e.g., SIC codes and number of employees) and the contractor returns a file (Criteria File) of active U.S. businesses in its database that meet these criteria. The Criteria File includes selected data elements on each record, which the contractor refreshes on a semi-annual basis.

A list of active maritime establishments in Indiana and Michigan has been compiled by the OSHA Office of Statistical Analysis (OSA) using the Criteria File. 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)

These establishments have been assigned to the Area Office having jurisdiction and have been given a random number. Establishments with 10 or fewer employees have been filtered out.

Each establishment will be alphabetically arranged and a minimum of 10 will be randomly selected for each cycle in Indiana and Michigan, using the random numbers table provided in Appendix C of CPL 02-00-025. Subsequent cycles will be developed in the same manner. Establishments within a cycle may be inspected in any order that makes efficient use of resources. However, all establishments within a cycle must be inspected prior to initiating a new cycle. Carry-overs will be allowed, as provided in OSHA Instruction CPL 02-00-025, paragraph B.1.b.(1)(b).

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

Where a CSHO observes 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, the CSHO 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, material 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.