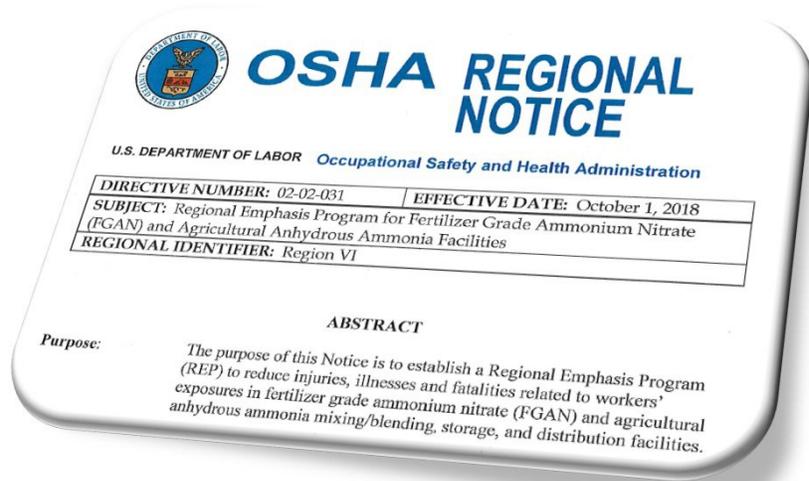


OCTOBER 31, 2018 | NATIONAL, REGIONAL & LOCAL EMPHASIS PROGRAMS (LEPS)

OSHA's New Emphasis Program for Fertilizer Grade Ammonium Nitrate and Anhydrous Ammonia

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On September 25, 2018, OSHA announced the launch of a new [Regional Emphasis Program](#) (REP) to address the hazards from exposure to fertilizer grade ammonium nitrate (FGAN) and agricultural anhydrous ammonia. The REP, effective October 1, 2018, covers the states of Arkansas, Louisiana, Oklahoma, and Texas in OSHA Region VI, and Kansas, Missouri, and Nebraska in OSHA Region VII. OSHA will commence enforcement activities on January 1, 2019, after a three-month period of education and prevention outreach. Generally, enforcement activities will include the inspection and review of: (1) production operations and working conditions; (2) injury and illness records; (3) safety and health programs; and (4) chemical handling and use. OSHA's decision to initiate a new REP covering two regions and seven states is yet another reminder that the agency is continuing full-speed ahead with enforcement efforts. While many anticipated that the Trump administration would retire OSHA's national, regional and local emphasis programs, that has not happened. To the contrary, OSHA continues to implement the same number of enforcement emphasis programs as at the end of the Obama administration.



What prompted OSHA to act now?

On April 17, 2013, a fire and explosion involving FGAN occurred at the West Fertilizer Company in West, Texas, resulting in at least 14 fatalities. While OSHA and the West Fertilizer Company ultimately reached a settlement, OSHA initially issued more than 20 citations, including several under Section (i) of its Explosives and Blasting Agents Standard. The Chemical Safety Board (CSB) also investigated the incident, finding, in part, that there was

a lack of awareness in the fertilizer industry regarding the applicability of OSHA's Explosives and Blasting Agents Standard to FGAN. As such, the CSB recommended in its final investigation report that OSHA "develop and issue an REP for Section (i) of the Explosives and Blasting Agent Standard . . . in appropriate regions (such as Regions IV, VI, and VII) where [FGAN] facilities similar to the West Fertilizer Company facility are prevalent." OSHA specifically references this recommendation in its new Compliance Directive for the REP (identical for Regions VI and VII).

OSHA is also concerned about agricultural anhydrous ammonia, noting in its Compliance Directive that both the storage and dispensing of agricultural anhydrous ammonia can expose employees to airborne concentrations of toxic gas. Noting that "anhydrous ammonia, a toxic gas stored under pressure as a liquid, is involved in many releases each year," OSHA describes a release that occurred in Stewardson, Illinois in April 2016, when anhydrous ammonia spilled from a tanker truck. That release, which occurred during unloading, caused a fog-like cloud to form and forced the evacuation of most of the town. The development and issuance of this REP was thus prompted by the CSB's recommendation for an FGAN-related REP and OSHA's concerns regarding agricultural anhydrous ammonia.

How will OSHA select employers for inspection?

The REP targets worksites in certain North American Industry Classification System (NAICS) codes, namely: (1) 424510, Grain and Field Bean Merchant Wholesalers; (2) 424590, Other Farm Products Raw Material Merchant Wholesalers; and (3) 424910, Farm Supplies Merchant Wholesalers. OSHA will develop an "Inspection Register" from a "randomized" list of worksites within these NAICS codes.

What should employers expect if inspected?

The Compliance Directive provides that "[a]ny inspection activity performed under this emphasis program will be conducted as a **partial safety inspection to include all areas** where FGAN or agricultural anhydrous ammonia is handled, stored, or distributed in the facility . . ." (emphasis added). Employers, however, should take heed that the scope of any programmatic inspection may be expanded if, in reviewing injury and illness records for the past five years, a Compliance Safety and Health Officer (CSHO) observes a trend identifying a common hazard at the workplace and the CSHO has the expertise to address the hazard; if the CSHO lacks the necessary experience, the matter will be referred for further investigation.

Assuming the CSHO sees no reason to expand the scope of the REP inspection, s/he will focus on evaluating certain safety and health program elements, including compliance with: (1) the storage of ammonium nitrate under Section (i) of the Explosives and Blasting Agents Standard; (2) the Storage and Handling of Anhydrous Ammonia Standard; and (3) the Hazard Communication Standard. CSHOs will also be expected to evaluate operations performed in permit-required confined spaces, employee contact with or entrapment in moving machine parts, and electrical equipment hazards. The Compliance Directive specifically lists the items that CSHOs must check for with respect to each of these items.

What should covered-employers do now?

The REP will end on October 1, 2019, unless extended. Until then, establishments included in NAICS Codes 424510, 424590 and 424910 and located in one of the states affected by this REP, should take steps to ensure

they are complying with the applicable standards and are prepared for a programmatic inspection in the coming year.