

OSH INFORMATION MEMORANDUM: 85-X-69

TO: All OSH Directors, Supervisors and Field Personnel

FROM: William M. Lybrand, Director of OSH

SUBJECT: Settlement Agreement Between the National Grain and Feed Association, OSHA, and U. S. Department of Labor.

DATE: November 21, 1985

1. Purpose.

This memorandum establishes policy and procedures for enforcement of the marine terminal standard in accordance with the settlement agreement between the National Grain and Feed Association, Inc. (NGFA) and OSHA.

2. Background.

The NGFA/OSHA Settlement Agreement is the result of both parties having executed and filed a stipulation of dismissal of case No. 83-1935 in the United States Court of Appeals for the District of Columbia Circuit. OSHA agreed to settlement of NGFA's withdrawal of its challenge, OSHA agreed to clarify and interpret certain provisions in the standard as set forth in the Settlement Agreement and distribute these clarifications and interpretations to all OSHA Regional Offices.

3. Guidelines.

The interpretations of the marine terminal standards addressed in the Settlement Agreement, Appendix A, shall be followed when conducting inspections of marine grain handling facilities.

a. Additional enforcement guidelines for Agreement Items 1, 8 and 9 are as follows:

(1) Agreement Item 1: Provisions Generally Applicable or Generally Inapplicable (See Appendix A, Attachment A).

These lists of applicable and inapplicable standards for marine terminal grain elevators must be viewed as indicating general applicability based on the operations present. These lists do not constitute a blanket inclusion or exemption. Where operations addressed in specific sections of the standard are present and where exposure and violation exists, the Compliance Manager will judge the violation on its merit and cite accordingly.

(2) Agreement Item 8: Section 1917.43(c)(3).

Compliance Officers shall ascertain whether the replacement parts manufacturer was made aware of the strength and performance requirements of the original part.

(3) Agreement Item 9: Section 1917.43(d).

Reference Subarticle 6, Section 1910.399(a)(25) for definitions of Class II locations. Reference Subarticle 6, Section 1910.178(b) for designations of powered industrial trucks to be used in specific locations.

b. The South Carolina Department of Labor will follow both this memorandum and Appendix A.

4. Effective Date.

This memorandum is effective upon receipt and will remain in effect until cancelled or superseded.

ATTACHMENT: Appendix A w/ Attachment A

## Appendix A

### Settlement of National Grain and Feed Association, Inc. v. OSHA, No. 83-1935 (D.C. Cir.)

WHEREAS: OSHA and NGFA have discussed settlement of NGFA's challenge to OSHA's newly issued marine terminal standard. These discussions have concerned primarily OSHA's intentions concerning the applicability of the standard's provisions with respect to marine grain handling facilities.

THEREFORE: OSHA agrees to the following settlement of NGRA's challenge to the marine terminal standard: In exchange for NGFA's withdrawal of its challenge, OSHA will (a) clarify and interpret certain provisions in the standard as set forth below and (b) expeditiously distribute these clarifications and interpretations to all OSHA regional offices, in the form of a standards interpretation issued by the Directorate of Field Operations and signed by the Assistant Secretary for Occupational Safety and Health. The clarifications contained in this settlement will be binding on OSHA enforcement personnel and cannot be changed unilaterally by OSHA. This settlement does not bar any employer from challenging any standard.

1. Provisions generally applicable or generally inapplicable—As listed in Attachment A to this Settlement Agreement, OSHA has identified provisions generally applicable and generally inapplicable at marine terminal grain elevators. It is extremely difficult for the Agency to address with absolute confidence applicability and non-applicability. Certain grain facilities may have operations that present the hazards addressed by standards listed as inapplicable. As a consequence, the characterizations in Attachment A must be viewed in general terms. Nonetheless, they do represent OSHA's best analysis of the applicability and non-applicability of the marine terminal standard to grain handling facilities, based in part upon NGFA's descriptions and characterizations of their members' structures and activities and in part on OSHA's judgments derived from the rulemaking record.
2. Section 1917.17(b)—A sign instructing employees not to pass between railcars that are within ten feet of each other would fulfill the requirements of this paragraph.
3. Sections 1917.17(d)(2) and (3)—Opening a hopper door or discharge gate would not necessarily constitute being on, in or under the railcar, and therefore, would not necessarily be covered by these paragraphs; the determination whether an employee is in, on, or under a railcar will depend on whether movement of the car could injure the employee; and when a railcar is part of a train of cars, wheels need not be chocked so long as the brake of the train is set.
4. Section 1917.17(f)—This paragraph applies only to boxcar lifting and dumping operations, not to hopper-bottom cars. The operator of the lifting mechanism is the employee who is required to have an unobstructed view of the dumping operations.

5. Section 1917.17(l)—This paragraph applies only to boxcar lifting and dumping operations, not to hopper-bottom cars. The operator of the lifting mechanism is the employee who is required to have an unobstructed view of the dumping operations.
6. Section 1917.25—The safety standards contained in 29 CFR 1910.272 will preempt the marine terminal standards that address the same hazards when 1910.272 is finally adopted. Until 1910.272 is finally adopted, pursuant to OSHA’s Field Operations Manual, ch. 4, if compliance with proposed 29 CFR 1910.272 provides protection equal to that of 29 CFR 1917.25, an employer that complies with the proposal, rather than 1910.25, will incur no more than a de minimis citation. The areas in which the proposal is not equally protective are as follows:
- (1) Section 1917.25 covers additional dangerous environments not addressed by the proposed 1910.272.
  - (2) Section 1917.25(b) requires that testing must be appropriate for the hazard and that only designated employees may conduct such tests. Proposed 1910.272 has no such requirement.
  - (3) Section 1917.25(c) requires employers to make available for a period of 30 days the results of all tests. Proposed 1910.272 has no such requirement.
  - (4) Section 1917.25(c) requires that only designated personnel may apply chemicals. Proposed 1910.272 has no such requirement.
  - (5) Section 1917.25(e) requires that only designated employees may enter hazardous atmospheres. Proposed 1910.272 has no such requirement.
7. Section 1917.27(a)(2)—The limitations contained in this paragraph do not apply to a person operating a conveyor. This paragraph does not require an employer to conduct any examination of employees for the health concerns listed.
8. Section 1917.43(c)(3)—Employers may rely on replacement parts manufacturers’ specifications regarding strength and performance ratings.
9. Section 1917.43(d)—An approved industrial truck suitable for a class II hazard will only be required in a situation in which a class II hazard can be identified at the time an industrial truck that has not been approved is being used. The presence of dust at a grain facility does not constitute a hazardous atmosphere requiring use of an approved industrial truck absent an explosion hazard.
10. Section 1917.44—Posting a sign will meet the requirements that an employer direct drivers to follow posted traffic rules, follow established routes, and honk the horn when approaching employees. Regular operating procedures in grain terminals may satisfy the requirement for establishing regular traffic routes where operations require trucks to line

up in a single file line from the entrance to the dumping station; where such a route is established to designate the route.

11. Section 1917.44(i)—The twenty-foot requirement only applies between the truck that is dumping and the next truck in line, and a sign requiring twenty feet between trucks where employees are working is a sufficient direction to the drivers.

12. Section 1917.44(j)—This paragraph may be satisfied by a sign which requires drivers to set their brakes before leaving their trucks.

13. Section 1917.48(a)(1)—Only danger zones to which employees have access need be guarded. Danger zones are those areas, typically at the head and the tail of the conveyor and where the power train of the conveyor is located, where there are nip points in which employees might get stuck or pinched.

14. Section 1917.48(f)—This paragraph does not require emergency stop controls continuously along a conveyor. Stop controls are required only where employees are exposed to hazards, and where there are no employees exposed or no hazard present there is no need for an emergency stop control.

15. Section 1917.48(g)—This paragraph may be satisfied by the posting of a sign advising employees to keep away from the conveyor because it might start at any time.

16. Section 1917.49(a)—The inspections required by this paragraph are not required where a spout or a chute does not have rigging and is permanently mounted in an area that does not expose employees to a hazard.

17. Section 1917.49(b)—This paragraph applies only where an employee is exposed to a hazard at the receiving end of the grain.

18. Section 1917.49(d)—This paragraph was intended to protect against a fall hazard and only applies to elevated hoppers where an employee might fall.

19. Section 1917.49(e)—This paragraph is inapplicable during operations in which grain is directed down a chute, because during such operations, sideboards are not “necessary for the safety of employees,” within the meaning of the paragraph.

20. Section 1917.49(f)—This paragraph’s reference to “chutes” does not include spouts.

21. Section 1917.49(g)—This paragraph is inapplicable when grain is being directed down a chute, because grain is a “bulk commodity,” within the meaning of the paragraph.

22. Section 1917.49(h) and (i)—The safety standards contained in 29 CFR 1910.272 will preempt the marine terminal standards that address the same hazards when 1910.272 is finally adopted. Until 1910.272 is finally adopted, pursuant to OSHA’s Field Operations Manual, ch. 4, if compliance with proposed 29 CFR 1910.272 provides protection equal

to that provided by 29 CFR 1917.49(h) and (i), an employer that complies with the proposal, rather than 1917.49(h) and (i), will incur no more than a de minimis citation. The area in which the proposal is not equally protective is as follows: Sections 1917.49(h)(1) and (i)(1) require that persons controlling the flow of cargo into the bin be notified of the entry of employees into the bin. Proposed 1910.272 has no such requirement.

23. Section 1917.118—The specific language of this section exempts emergency ladders.

24. Section 1917.123—When employees pass through an area that is not illuminated, with no intention to perform any work, flashlights are sufficient supplemental lighting.

25. Section 1917.124—This section is inapplicable to grain handling facilities, because such facilities do not have dockboards (car and bridge plates) or ramps used as passages between levels and across openings.

26. Section 1917.153—This section does not apply during the use of portable spray painting apparatus that may be used in various locations throughout the terminal

OCCUPATIONAL SAFETY AND HEALTH  
ADMINISTRATION

Witness my hand and seal this \_\_\_\_ day of  
October, 1984

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By: Judith N. Macaluso  
Assistant Counsel for Appellate Litigation

NATIONAL GRAIN AND FEED  
ASSOCIATION

Witness my hand and seal this \_\_\_\_ day of  
October, 1984.

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By: Arent, Fox, Kintner, Plotkin and Kahn  
Stewart S. Manela  
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Attachment A

PROVISIONS GENERALLY INAPPLICABLE  
AT MARINE TERMINAL GRAIN ELEVATORS

- 1917.13 Slinging
- 1917.14 Stacking of Cargo and Pattets
- 1917.15 Coopering
- 1917.17 Railroad Facilities
  - (a)
  - (c)
  - (d)(1)
  - (f)
  - (h)
  - (k)
- 1917.18 Log Handling
- 1917.22 Hazardous Cargo
- 1917.23 Hazardous Atmospheres and Substances
- 1917.41 House Falls
- 1917.43 Powered Industrial Trucks
  - (g)
  - (h)
- 1917.44 General Rules Applicable to Vehicles
  - (c)
  - (k)
  - (l)
  - (m)
- 1917.46 Crane Load and Limit Devices
- 1917.48 Conveyors
  - (b)
  - (c)

(d)  
(e)

1917.49 Spouts, Chutes, Hoppers, Bins and Associated Equipment

(e)  
(g)

1917.71 Terminals Handling Intermodal Containers or Roll On Roll Off Operations

1917.73 Terminals Handling Manhaden and Similar Species of Fish

1917.114 Cargo Doors

1917.115 Platforms and Skids

1917.124 Passage between levels and across openings

1917.153 Spray painting

PROVISIONS GERALLY APPLICABLE  
AT MARINE TERMINAL GRAIN ELEVATORS

- 1917.11 Housekeeping
- 1917.12 Slippery Conditions
- 1917.16 Line Handling
  - (a)
  - (b)
- 1917.17 Railroad Facilities
  - (g)
  - (i)
  - (j)
  - (m)
  - (n)
  - (o)
- 1917.19 Movement of Barges and Railcars
- 1917.20 Interference with Communications
- 1917.21 Open Fires
- 1917.24 Carbon Monoxide
- 1917.26 First Aid and Lifesaving Facilities
- 1917.27 Personnel
  - (a)(1)
  - (b)
- 1917.42 Miscellaneous Auxiliary Gear
- 1917.43 Powered Industrial Trucks
  - (a)
  - (b)
  - (e)
  - (f)
- 1917.44 General Rules Applicable to Vehicles

- (a)
- (b)
- (c)
- (d)
- (e)
- (f)
- (g)
- (h)
- (n)
- (o)

1917.45      Cranes and Derricks

1917.47      Winches

1917.48      Conveyors

- (h)
- (i)
- (j)

1917.49      Spouts, Chutes, Hoppers, Bins, and Associated Equipment

- (c)
- (j)
- (k)
- (l)

1917.50      Certification of Marine Terminal Material Handling Devices

1917.51      Hand Tools

1917.70      General

1917.72      Grain Elevator Terminals

1917.91      Eye Protection

1917.92      Respiratory Protection

1917.93      Head Protection

1917.94      Foot Protection

1917.95      Other Protective Measures

1917.111	Maintenance and Load Limits
1917.112	Guarding of Edges
1917.113	Clearance Heights
1917.116	Elevators and Escalators
1917.117	Manlifts
1917.119	Portable Ladders
1917.120	Fixed Stairways
1917.121	Spiral Stairways
1917.122	Employee Exits
1917.126	River Banks
1917.127	Sanitation
1917.128	Signs and Marking
1917.151	Machine Guarding
1917.152	Welding, Cutting and Heating
1917.154	Compressed Air
1917.155	Air Receivers
1917.156	Fuel Handling and Storage
1917.157	Battery Charging and Changing
1917.158	Prohibited Operations

PROVISIONS APPLICABLE AT MARINE  
TERMINAL GRAIN ELEVATORS THAT  
HAVE BEEN CLARIFIED BY OSHA

- |          |   |
|----------|---|
| 1917.17  | Railroad Facilities   |
|          | (b)   |
|          | (d)(2)  |
|          | (e)   |
|          | (l)   |
| 1917.25  | Fumigants, Pesticides, Insecticides and Hazardous Preservatives |
| 1917.27  | Personnel   |
|          | (a)(2)  |
| 1917.43  | Powered Industrial Trucks                                       |
|          | (c)   |
|          | (d)   |
| 1917.44  | General Rules Applicable to Vehicles                            |
|          | (i)   |
|          | (j)   |
| 1917.48  | Conveyors   |
|          | (a)   |
|          | (f)   |
|          | (g)   |
| 1917.49  | Spouts, Chutes, Hoppers, Bins, and Associated Equipment         |
|          | (a)   |
|          | (b)   |
|          | (d)   |
|          | (f)   |
|          | (h)   |
|          | (i)   |
| 1917.118 | Fixed Ladders   |
| 1917.123 | Illumination  |