

CHAPTER 11**INSPECTIONS BY FEDERAL AND STATE OCCUPATIONAL SAFETY
AND HEALTH (OSH) REPRESENTATIVES ON BOARD LAKEHURST****1. Background and Discussion**

a. The Occupational Safety and Health (OSH) Act of 1970 was directed primarily at the private sector employer. Only a small portion of the Act, Section 19, addressed Federal agencies by requiring agency heads to establish their own comprehensive OSH programs consistent with the standards promulgated under Section 6 of the Act. There are no provisions in the Act that place Federal agency employees under the direct inspection authority of the Department of Labor (DOL).

b. This policy was continued in early versions of Executive Orders and DOL guidelines until 1980 when Executive Order 12196 superseded Executive Order 11807 and the DOL guidelines for Federal Agency OSH programs were revised. These revisions granted Federal Agency heads the option whether or not to establish certified OSH committees at the national and other appropriate levels of the agency. One of the prerogative of such a committee, composed of equal representation from labor and management, is the authority to request DOL inspections if half the committee is not satisfied with an agency response to a report of hazardous working conditions.

c. In the event that an agency head chooses not to establish such certified committees as mentioned above, the Executive Order and the DOL guidelines authorize unannounced inspections of certain Federal agency workplaces by Federal (DOL) representatives. The Department of Defense (DOD) and the Navy elected not to establish certified OSH committees that conform to the provisions of Executive Order 12196 and reference (s); therefore, certain Navy facilities are subject to DOL inspections in accordance with reference (b).

d. There are numerous instances where the Navy hires private sector contractors to perform work at Navy shore or afloat activities. Such contracted operations may be temporary or long term, nevertheless, employees of the contractor shall be afforded the same level of OSH protection as are any other private sector employees. Therefore, with a few exceptions, contractor operations at Navy activities are subject to DOL inspections. Liaison between the contractor and the contracting agent will help ensure all responsibilities and procedures for the inspections of contractor workplaces are clearly understood.

e. The provisions below apply to the actions of Federal and State OSH representatives while inspecting Navy shore installations and Navy civilian workplaces.

2. Action. The following policies and procedures will be followed:

a. Federal/State OSH Inspections at Contractor Workplaces at the Naval Air Warfare Center Aircraft Division Lakehurst (NAVAIRWARCENACDIVLKE)

(1) The OSH Act provides for the development, promulgation, and enforcement of standards. DOD contractors, operating from DOD or privately owned facilities located on or off Navy shore installations, are employers as defined in the Act and are subject to enforcement authority by Federal and certain State safety and health officials. Accordingly, Navy shore activities are advised that permission is granted for Federal and State OSH officials to enter such installations without delay and at reasonable times to conduct inspections of contractor workplaces. These inspections may be routine or based on reports of unsafe or unhealthful conditions or based on specific complaints, accidents, or illnesses of contractor employees.

(2) Federal/State OSH representatives shall present appropriate identifying credentials and shall state the purpose of the visit to the Commanding Officer, NAES Lakehurst, or his designated representative, and the Resident Officer in Charge of Construction (ROICC) before conducting an inspection of contractor workplaces. Additionally, a determination of the need for security clearance shall be made in all cases prior to granting access to the Center.

NOTE: For the purpose of this instruction, the Public Works Department, OSH Manager is designated as the Commanding Officer's representative.

(3) A State may exercise jurisdiction over OSH matters involving a contractor workplace at a Navy shore installation provided the State has an OSH plan approved by the Secretary of Labor.

(4) Authorized safety and health officials from states without OSHA approved OSHA plans may exercise jurisdiction over OSHA matters involving contractor workplaces on the Center only when there are no relevant OSHA standards in effect. Prior to authorizing an inspection or investigation, the Commanding Officer shall request the State to provide confirmation that there is no relevant Federal OSHA standard applicable to the contractor workplace.

(5) Pursuant to reference (t), only Federal OSHA officials may perform inspections in DOD contractor workplaces situated in areas where the United States holds exclusive Federal jurisdiction.

(6) The Secretary of Labor has no authority over nuclear safety, health, or explosive safety aspects of operations specifically covered by:

(a) Any state nuclear safety or health standard or regulation implementing 42 U.S.C. 2021.

(b) Any nuclear safety or health standard or regulation implementing 42 U.S.C. Sections 2012 and 2121(b), or 2201(b).

(c) Any explosive safety or health standard or regulation implementing 10 U.S.C. 172.

(7) DOD contractors shall not be provided with advance notice of OSH inspections by Federal or State OSHA officials except:

(a) In cases of apparent imminent danger to Navy or contractor employees.

(b) When specifically requested by Federal or State OSHA officials.

NOTE: Any person who violates the foregoing is subject to a fine of not more than \$1,000 or to imprisonment for not more than 6 months, or both.

(8) When Federal or State safety and health officials would require entry into a closed area to accomplish the purpose of their visit and they cannot effectively be prevented from access to the classified material by such means as covering the material to deny visual access, etc., the Commanding Officer or the contractor, as appropriate, shall immediately notify the OSHA official and the activity exercising security supervision over the contractor's workplace of the need for a personnel security clearance to enter the closed area. In the case of Federal OSHA officials, the security activity, after verifying the need for a personnel security clearance, shall contact the appropriate cognizant security office and request to verify the Federal OSHA official's personal security clearance.

(9) No photographs shall be taken by Federal or State OSHA officials or other State safety and health officials on the Center. Photographs requested by any such official shall be taken only by Navy personnel, or by cleared personnel of the contractor, and shall not be delivered to the requesting official until all film, negatives, and photographs have been fully screened and classified as appropriate, in the interest of national security, by appropriate Navy authority. Further, requests for documented data, sketches of military installations and equipment, reports, or design information (e.g., noise sound levels, profiles, etc.) by such officials, shall be forwarded to the appropriate screening official for similar action. This process shall normally be completed within a period of 15 working days from receipt of the material by the screening official.

(10) Federal/State OSH representatives shall be accompanied on inspections by the OSH Manager, ROICC, and a representative of the contractor.

(11) Federal or State OSHA officials shall have access to and be provided with copies of records and reports pertinent to specific Navy contractor accident investigations upon request unless prohibited from release by the Privacy Act or exempted from release under the Freedom of Information Act.

(12) The Commanding Officer will advise the applicable State OSHA office in writing of any areas on the installation which are located within areas of exclusive Federal jurisdiction.

(13) Full information regarding citations and notices issued to Navy contractors for violations of OSHA safety and health standards involving DOD

furnished equipment, facilities, or other property shall be referred to the responsible ROICC for appropriate action in accordance with Defense Procurement Circular 76-1. A copy shall be sent to the Chief of Naval Operations (OP-45).

(14) DOD policy states that the contractor is responsible for resolving issues related to citations and initiating requests for delays in compliance with variations, tolerances, or exemptions from applicable OSH standards.

(15) The Commanding Officer shall advise the Chief of Naval Operations (OP-04), via the chain of command, of any situation resulting from compliance with these procedures that could impair the Navy's ability to properly carry out its mission in support of the national defense or adversely affect the national security.

b. Federal OSH Inspection of Navy Civilian Workplaces

(1) In accordance with the provisions of reference (b), Federal OSH officials, acting as representatives of the Secretary of Labor, are authorized to conduct announced or unannounced inspections at all Navy workplaces except military unique equipment operations, systems, workplaces, or workplaces staffed exclusively with military personnel. Such inspections may be in response to a complaint from a Navy civilian employee or employee representative; they may be scheduled as part of DOLs annual evaluation of the DOD OSH Program; or they may be solely at the discretion of the Secretary of Labor.

NOTE: 1. In order to understand the term "military unique" equipment systems or workplaces, the following definitions are provided:

a. Equipment and systems that are unique to the national defense mission, including the operation, testing, and maintenance procedures dictated by design and configuration. Examples are: military weapons, aircraft, ships, submarines, missiles and missile sites, early warning systems and sites, military space systems ordnance, tanks and tactical vehicles.

b. Operations or workplaces that are uniquely military, such as field maneuvers, combat training, naval operations, military flight and missile operations, associated research, test, and development activities during the actual test phase and actions required under emergency conditions.

c. Facilities designed to simulate shipboard/aircraft configuration or built solely to support testing of shipboard/aircraft equipment are considered military unique.

2. Applicable workplaces and operations are workplaces and operations generally comparable to those of business/industry in the private sector. Examples include facilities involved and work performed in repair and overhaul of equipment, aircraft, or vehicles; industrial

shop operations, construction, supply services, engineering or public works; medical services, and office work. Accordingly these are subject to OSHA regulations.

3. Determination as to what is considered "military unique" will be made by the Commanding Officer with advice from the Public Safety Department and department heads concerned.

a. In addition to the exclusions mentioned above, the Secretary of Labor has no authority over nuclear safety/health or explosive safety aspects of operations covered by:

(1) Any state nuclear safety or health, standard or regulation implementing 42 U.S.C. 2021.

(2) Any nuclear safety or health standard or regulation implementing 42 U.S.C. Sections 2012 (b) or 2201 (b).

(3) Any explosive safety standard or regulation implementing 10 U.S.C. 172.

b. The Public Safety OSH Office has been designated as the NAES Lakehurst coordinator with whom Federal OSHA officials may interface for inspection purposes. The appropriate OSHA has been notified.

c. Federal OSHA officials shall initially report to the Commanding Officer or the Public Safety Department, present identification credentials, and state the purpose of the visit. These officials shall be admitted to conduct inspections of authorized Navy workplaces without delay, at reasonable times, and in a reasonable manner. If the inspection is to involve areas/operations which are excluded pursuant to the provisions of paragraphs (a) or (b) above, permission for immediate access shall be withheld and a request for access shall be forwarded by message and by telephone to the Chief of Naval Operations (OP-45) with copies to the appropriate chain of command. All requests shall identify the exclusion under consideration and furnish other related details regarding the inspection to be performed. A reply will be furnished expeditiously upon receipt of the message.

d. Federal OSHA inspectors shall be required to show appropriate security clearance if entry into closed areas is required. All security clearances must be verified by the cognizant Navy security office. No photographs shall be taken directly by Federal OSHA officials. Any photographs requested by these officials in these areas shall be taken by Navy personnel. Such photographs shall be tentatively classified CONFIDENTIAL and shall not be delivered to the Federal officials until all film, negatives, and photographs have been fully screened/classified as appropriate in the interest of national security.

e. Federal OSHA inspectors shall be accompanied at all times by representatives of the Commanding Officer.

f. Federal OSHA officials shall, upon request, have access to available safety and health information related to Navy civilian employees. Examples are data on hazardous materials, copies of recent inspection reports, employee hazard reports, and information on the status of abatement projects provided such information is not specifically required by Executive Order to be classified in the interest of national defense or foreign policy and is otherwise releasable. Federal OSHA officials shall have access to and be provided copies of records and reports pertinent to specific accident investigations involving Navy civilian employees, provided such release is consistent with the Privacy Act and other applicable laws and regulations. With respect to the release of records pertinent to specific accident investigations involving Navy civilian employees:

(1) Requests for copies of Judge Advocate General (JAG) investigative reports shall be referred to the JAG.

(2) Requests for copies of accident investigation reports shall be referred to Naval Safety Center (NAVSAFECEN).

g. Federal OSHA officials are authorized to interview or be accompanied by civilian employees or employee representatives with appropriate clearances during their visit.

h. If Federal OSHA officials issue reports or notices of unsafe or unhealthful working conditions discovered during their inspections, a summary report with a copy of such notices will be forwarded immediately to the Chief of Naval Operations (OP-45). Information copies shall be provided to the chain of command having management cognizance. Deficiencies discovered during such inspections shall be treated in the same manner as deficiencies noted during internal Navy inspections.

i. If reports of inspections by Federal OSHA officials require a response, such responses shall be provided by the Commanding Officer. Parent commands may require headquarters coordination prior to such responses. Information copies of such responses shall be provided to the Chief of Naval Operations (OP-45) and to the chain of command having management cognizance. Elevation of unresolved conflicts to higher echelons of command for interagency resolution shall be at DOLs initiative via DOL channels.

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