

CHAPTER 11

INSPECTIONS AND INVESTIGATIONS OF WORKPLACES BY FEDERAL AND STATE OSH OFFICIALS

1101. Background and Discussion

a. Per reference 11-1, Navy facilities are subject to Department of Labor (DOL) inspections with few exceptions.

b. In addition, with few exceptions, contractor operations at Navy activities are subject to DOL inspections.

c. Liaison between the contractor and the contracting agent will help ensure that all responsibilities and procedures for the inspections of contractor workplaces are clearly understood. Some contracts include the provisions of certain Defense Acquisition Regulations (DARs) (e.g., DAR 7-602.42 (NOTAL) for construction contracts) to ensure this liaison. Other contracts must provide a method for the liaison as well as requirements to protect Navy personnel from contractor operations.

d. The provisions that follow apply to the actions of Federal and State Occupational Safety and Health (OSH) officials while inspecting Navy shore installations, ships and Navy civilian workplaces. The inspection authority of Federal and State OSH officials is summarized in appendix 11-A.

1102. Federal and State Occupational Safety and Health Inspections at Contractor Workplaces on Navy Shore Installations

a. The OSHAct provides for the development, issuance 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, and subject to the conditions and exceptions stated here, Navy shore activities shall grant permission for Federal and State Occupational Safety and Health Administration (OSHA) officials, to enter their 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, specific complaints, accidents or illnesses of contractor employees.

b. Federal and State safety and health officials shall present appropriate identifying credentials and shall state the purpose of the visit to the Navy shore installation commander or his/her authorized representative and to the administrative contracting officer (ACO) (if appropriate), before conducting an inspection of contractor workplaces situated on a Navy shore installation.

c. 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. Exceptions are stated in paragraphs 1102e and g.

d. Authorized safety and health officials from States without OSHA-approved OSH plans may, subject to exceptions noted elsewhere in this chapter, exercise jurisdiction over OSH matters involving contractor workplaces on Navy shore installations only when there are no relevant OSHA standards in effect. Prior to authorizing an inspection or investigation, installation commanders shall request the State to provide confirmation that there is no relevant Federal OSHA standard applicable to the contractor workplace.

e. Under reference 11-1, only Federal OSHA officials may perform inspections in DoD contractor workplaces situated in areas where the United States holds exclusive Federal jurisdiction.

f. The Secretary of Labor has no authority over nuclear safety/health or explosive safety aspects of operations specifically covered by:

(1) Any State nuclear safety or health standard or regulation implementing 42 U.S.C. Section 2021 and 2121(b), or 2201(b)

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

NOTE:

This does not circumvent Secretary of Labor authority over other health/safety matters in the same operations. For example, a workplace in a munitions depot subject to DoD explosives safety standards is subject to OSHA jurisdiction for matters relating to machine guarding, noise, etc.

g. Installation commanders shall immediately forward requests to inspect or investigate a contractor workplace, on a Navy shore installation involving handling or storage of ammunition or explosives, nuclear facilities or nuclear weapons by message to Commander, Naval Sea Systems Command (COMNAVSEASYSCOM) with a copy to CNO (N4). All such requests shall identify the contractor workplace involved and furnish all other immediately available details. Installation commanders shall withhold access pending receipt of reply. Where granted, access shall be subject to the requirements of this manual and any conditions contained in the COMNAVSEASYSCOM reply. COMNAVSEASYSCOM shall furnish a reply as quickly as possible after receipt of the request.

h. Installation commanders shall not provide DoD contractors with advance notice of OSH inspections by Federal or State OSHA officials except:

(1) In cases of apparent imminent danger to Navy or contractor employees,

(2) When specifically requested by Federal OSHA 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.

i. When Federal or State safety and health officials require entry into a closed area to accomplish the purpose of their visit, and they cannot effectively be prevented from access to classified material by means such as covering the material to deny visual access, the following procedures apply:

(1) The Navy shore installation commander or the contractor, as appropriate, shall immediately notify the OSHA official and the Navy activity exercising security supervision over the contractor's workplace of the need for a personnel security clearance to enter the closed area.

(2) In the case of State OSHA officials or other State safety and health officials, the Navy security activity, after verifying the need for a personnel security clearance, shall in coordination with the State official, request the cognizant security office to contact the nearest OSHA regional or area office for a cleared Federal OSHA official to conduct the necessary inspection of the closed area.

(3) In the case of Federal OSHA officials, the Navy security activity, after verifying the need for a personnel security clearance, shall contact the appropriate cognizant security office and request:

(a) Verification of the Federal OSHA official's personnel security clearance

(b) Expedient processing of the visit request under reference 11-2. If the official's name is not on the list of cleared Federal OSHA personnel maintained by the cognizant security office, the Navy security activity shall request the cognizant security office to contact the OSHA regional or area office and request an appropriately cleared Federal OSHA official.

j. Federal or State OSHA officials or other state safety and health officials shall not take photographs on any Navy shore installation. Only Navy personnel or cleared contractor personnel shall take photographs requested by any such officials. Navy or contractor personnel shall not deliver photographs to the requesting official until all film, negatives, and photographs have been fully screened and classified by proper Navy authority, as appropriate, in the interest of national security. Activities shall forward further requests, by such officials, for documented data, sketches of military installations and equipment, reports or design information (e.g., noise sound levels, profiles, etc.) to the appropriate screening official for similar action. Screening officials shall normally complete this process within a period of 15 working days from receipt of the material.

k. Representatives of the Navy shore installation commander and the ACO (if appropriate), may accompany Federal OSHA and State OSHA officials on inspections and investigations. Representatives of the contractor and contractor employees may accompany these officials where requisite security clearances are verified.

l. Federal OSHA 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.

m. When the cognizant engineering field division (EFD) of the Naval Facilities Engineering Command (COMNAVFACENGCOM) has defined the boundaries, Navy shore installation com-

manders should advise the applicable state OSHA office in writing of any areas on the installation that are located within an area of exclusive Federal jurisdiction.

n. Navy shore installation commanders shall refer all information regarding citations and notices issued to Navy contractors for violations of OSHA, state OSHA or other State safety and health standards involving DoD-furnished equipment, facilities or other property to the responsible ACO for appropriate action. Shore installation commanders shall send a copy to CNO (N45).

o. 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.

p. Installation commanders shall advise CNO (N4), 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.

1103. Federal and State Occupational Safety and Health Inspections of Contractor Workplaces Aboard Navy Ships

This section provides guidance and procedures regarding requests by Federal or State OSH officials to inspect or investigate contractor workplaces aboard Navy ships in port or located at associated facilities (e.g., repair operations).

a. Subject to the conditions and exceptions stated below, Navy afloat activities shall permit Federal OSHA compliance officials, to be taken aboard U.S. Navy ships in port to conduct safety and health inspections and investigations of contractor workplaces. Commanding officers shall not grant State occupational safety and health officials access aboard naval ships and service craft or in areas of exclusive Federal jurisdiction.

(1) Except for the limitations imposed in paragraphs 1103a(2) and (3), commanding officers shall provide OSHA compliance officials, upon request, immediate access to contractor workplaces where contractor employees are currently performing work or where the contractor has equipment or other work-related material or paraphernalia in the workplace under a government contract.

(2) If the requested inspection/investigation involves handling or storage of ammunition or explosives, commanding officers shall deny the request for access. The commanding officer shall make a report of any such request to COMNAVSEASYSCOM by message, with a copy to CNO (N4).

(3) With respect to nuclear-propulsion plant spaces on nuclear powered ships, related nuclear shipyard facilities ashore or afloat, shipboard nuclear support facilities or nuclear weapons areas, commanding officers shall forward the request for access by message and by the telephone to COMNAVSEASYSCOM with a copy to CNO (N4). All message requests shall identify the contractor workplace involved and furnish all other immediately available details. Commanding officers shall withhold access pending receipt of the reply. Where granted, ac-

cess shall be subject to the requirements of this chapter and any conditions imposed in the COMNAVSEASYSCOM reply. COMNAVSEASYSCOM shall furnish a reply expeditiously, and, if possible, within a period of 3 working hours from receipt of the request.

(4) In cases of non-nuclear ships or nuclear ships, with the exceptions stated in paragraphs 1103a(2) and (3), and per the procedures in paragraphs 1103a(1), commanding officers shall grant access to contractor workplaces (as defined above) after requesting Federal OSHA compliance officials to conduct inspections and investigations of such workplaces within reasonable limits and in a reasonable manner during regular working hours (except when other times are mutually agreed upon by the concerned officials).

(5) OSHA officials shall not take photographs. Navy personnel shall take any photographs requested by OSHA officials. Commanding officers shall tentatively classify these photographs as confidential, and shall not deliver them to OSHA compliance officials until all film, negatives and photographs have been sent to COMNAVSEASYSCOM and fully screened and censored, as appropriate, in the interest of national security. Commanding officers shall forward any design or system performance data (e.g., recordings of noise sound level profiles, etc.) to COMNAVSEASYSCOM for screening, as above, prior to release. COMNAVSEASYSCOM shall complete this process within a period of 15 working days from the receipt of material.

(6) Commanding officers shall not give OSHA officials copies of any Federal records or reports. If OSHA officials request access to Navy records or reports, commanding officers shall forward the request to the appropriate releasing officials.

(7) In addition to presenting appropriate identification credentials, commanding officers shall require all OSHA compliance officials to possess appropriate security clearance for entry into areas where the contractor workplace is located.

(8) Representatives of the ship's commanding officer, and, if appropriate, the ACO and the commanding officer or officer in charge of the shore activity at which the ship is located, shall accompany the OSHA compliance official at all times during the physical inspection of contractor workplaces. A representative of the contractor and a representative of the contractor's employees may accompany the OSHA compliance officials during the inspection/investigation provided proper security clearances are verified. If there is no authorized contractor employee representative, the OSHA compliance officer is only authorized to consult with a reasonable number of contractor employees concerning matters of health and safety in pertinent workplaces.

(9) OSHA compliance officials may privately question contractors, contractor employees or their authorized representatives during their inspection.

b. Unless the responsible OSHA official specifically requests it, installation commanders and ship commanding officers shall not provide contractors with advance notice of OSHA inspections, except in cases of apparent imminent danger to Navy or contractor employees. Any person who violates the foregoing is subject to a fine of not more than \$1,000 or to imprisonment of not more than 6 months, or both.

c. Ship commanding officers shall report full information regarding any OSHA inspection/investigation aboard ship in writing to the CNO (N4) with a copy to COMNAVSEASYSCOM.

1104. Federal Occupational Safety and Health Inspections of Navy Civilian Workplaces

a. Under the provisions of reference 11-1, Federal OSH officials, acting as representatives of the Secretary of Labor, may conduct announced or unannounced inspections at all Navy workplaces except military unique workplaces, workplaces staffed exclusively with military personnel, or workplaces located in foreign countries. Such inspections may be in response to a complaint from a Navy civilian employee or employee representative. They may schedule these inspections as part of DOL's targeted inspection program or as part of an evaluation of the DoD OSH program. These inspections may also be solely at the discretion of the Secretary of Labor.

b. In addition to the exclusions mentioned above, the Secretary of Labor has no authority over nuclear safety/health or explosive safety aspects of operations specifically 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. Section 2021, 2021(b) or 2201(b)

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

NOTE:

This does not circumvent Secretary of Labor authority over other health/safety matters in the same operations. For example, a workplace in a munitions depot, subject to DoD explosive safety standards, is subject to OSHA jurisdictions for matters relating to machine guarding, noise, etc.

c. Navy activities employing civilians shall designate a coordinator with whom Federal OSHA officials may interface for inspection purposes.

d. Federal OSHA officials shall initially report to the Navy installation commander or his/her authorized representative, present identification credentials, and state the purpose of the visit. Installation commanders shall admit these officials 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 excluded under the provisions of paragraphs 1104a or 1104b, installation commanders shall withhold permission for immediate access and forward a request for access by message and by telephone to CNO (N45) with copies to the appropriate chain of command having management cognizance. All requests shall identify the exclusion under consideration, and CNO (N45) shall furnish an expeditious reply upon receipt of the message, as well as identifying other pertinent details regarding the inspection that must be performed.

Navy installation commanders shall require Federal OSHA inspectors to show appropriate security clearances if they require entry into closed areas. Federal OSHA officials must verify all security clearances. Navy/Marine Corps personnel shall take any photographs these officials request in these areas. Navy installation commanders shall tentatively classify such photo-

graphs CONFIDENTIAL and shall not deliver them to Federal officials until higher authority (i.e., Echelon Three commanders) have screened/classified all film, negatives and photographs as appropriate, in the interest of national security

f. Representatives of the activity commander shall accompany Federal OSHA inspectors at all times.

g. Upon request, Navy installation commanders shall grant Federal OSHA officials 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. Installation commanders shall also grant Federal OSHA officials access to and release 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, Navy installation commanders shall:

(1) Refer requests for copies of Judge Advocate General (JAG) investigative reports to the JAG (Code 35)

(2) Refer requests for copies of accident investigation reports to Commander, Naval Safety Center (COMNAV SAFECEN) (Code 03), per Chapter 14.

h. Federal OSHA officials may interview or be accompanied by civilian employees or employee representatives with appropriate clearances during their visit.

i. If Federal OSHA officials issue reports or notices of unsafe or unhealthful working conditions discovered during their inspections, the commander of the inspected Navy activity shall forward a summary report with a copy of such notices immediately to CNO (N45) and COMNAVSAFECEN (Code 41). The commanding officer shall provide information copies to the chain of command having management cognizance. The commanding officer shall treat deficiencies discovered during such inspections in the same manner as deficiencies noted during internal Navy inspections.

j. If reports of inspections by Federal OSHA officials require a response, the commander of the inspected Navy activity shall provide such responses. Commands may participate in informal conferences with OSHA officials, and utilize established OSHA review/appeal procedures for Federal agencies in developing final resolutions to issues raised in OSHA inspections. Parent commands may require headquarters coordination prior to such responses. The activity commander shall provide copies of such responses to CNO (N45) and to the chain of command having management cognizance. Unresolved conflicts may require interagency resolution via DoD and DOL channels.

(1) Replies to OSHA violation notices shall be within time frames assigned by OSHA, shall specifically state abatement action and shall include appropriate backup information.

(2) If the command cannot resolve deficiency or abatement actions at the local level, it shall refer them up the chain of command for resolution.

1105. OSHA Targeted Inspections

Under Federal Agency Program requirements, OSHA maintains a targeted inspection program for Federal installations. Each fiscal year, OSHA targets Federal installations for inspections based on the frequency rate of their occupational injury and illness cases. If a rate is above the threshold established by OSHA (usually the average Federal Agency lost time case rate), OSHA will target the activity for inspection. Rate data is taken from Federal Employee Compensation Act (FECA) claims records. As part of the targeting program, OSHA requires each activity targeted for inspection to develop a targeting plan. The targeting plan shall identify high injury frequency work areas and specify actions to reduce mishap experiences. OSHA will notify activities targeted, by letter, at the beginning of the fiscal year and request that they prepare targeting plans. Activities may use activity self-assessment improvement plans, as discussed in chapter 5, as a substitute for the targeting plans. Targeted activities shall forward copies of the plans to the chain of command and to CNO (N45). Targeted activities shall notify the chain of command and CNO (N45) of inspection dates, and provide copies of reports and replies to reports.

1106. Overall Information Security Requirements

State and Federal agencies exercising their regulatory authorities in the area of occupational safety and health will periodically visit Navy activities. Activities need to pay particular attention to ensure that Navy regulations and Federal statutes governing the control and protection of classified and sensitive unclassified information are properly enforced while avoiding any interference with the legitimate regulatory purpose being served. Commanders of Navy activities shall use the following guidelines:

- a. Permit only personnel with appropriate security clearances access to classified information, under reference 11-2. Limit such access to classified information required to resolve the matter at hand.
- b. Navy commands handle a considerable amount of sensitive unclassified information controlled under Navy security regulations, Federal Export Control regulations and other government-wide requirements. While access to this information does not require a security clearance, it is important that the holder and recipient of the information comply with applicable security regulations governing dissemination and protection of the information.
- c. Place emphasis on the fact that classified or unclassified sensitive information must be controlled. Thus, if the recipient of controlled Navy information prepares reports or other documents based on the information, advise the recipient to seek advice from qualified Navy security personnel to ensure compliance with Federal laws and Navy regulations.
- d. Classified or sensitive unclassified information produced during litigation or administrative proceedings also requires protection. Seek advice from the Office of the Judge Advocate General (Navy JAG) or cognizant Office of General Counsel (OGC) to ensure the classified or sensitive unclassified information is properly protected per reference 11-2.

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References

- 11-1. DoD Instruction 6055.1 of 19 Aug 98, Department of Defense Occupational Safety and Health (OSH) Program (NOTAL)
- 11-2. SECNAV Instruction 5510.30A of 3 Mar 99, Department of Navy Personnel Security Program
- 11-3. SECNAV Instruction 5510.36A of 17 Mar 99, Department of Navy (DON) Information Security Program (ISP) Regulation.

Appendix 11-A

**Inspection of Department of the Navy Workplaces by
Federal and State OSH Representatives**

	SHORE			AFLOAT		
	Contractor Workplaces	Civilian Employees' Workplaces	Exclusively Military Workplaces	Contractor Workplaces	Civilian Workplaces	Exclusively Military Workplaces
Federal OSH Representatives	YES 4,5	YES 4,5	NO	YES 3,4,5	YES 3,4,5	NO
State OSH Representatives	YES 1,2,4,5	NO	NO	NO	NO	NO

NOTES:

1. State OSH plan must be approved by the Department of Labor. If State plan is not approved, access may be denied. However, States without approved OSH plan may inspect contractor worksites only if there is no relevant Federal OSH standard applicable to the contractor workplace.

2. If the Navy facility is in an area of exclusive Federal jurisdiction, State OSH representatives have no legal authority on the station and may be denied access to the facility.

3. Ships or service craft must be in port; Navy Department will not transport Federal OSHA representatives to ships or service craft that are underway.

4. Federal and State OSH representatives have no jurisdiction over military unique operations or equipment. In addition, these officials are not authorized to inspect workplaces or operations for compliance with any standard implementing 10 U.S.C 172 (explosive safety) or 42 U.S.C. Section, 2012, 2021, or 2022 (nuclear safety).

5. Inspections may be announced or unannounced.