



Military

Military Matters

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In spring 2010, the Council on Practices and Standards (COPS) authorized the formation of a Military Branch under the mentorship of the International Practice Specialty. At that time, the intent was to have the International Practice Specialty members recruit OSH professionals from the military forces within the countries where they had chapters or sections.

The original intent of the branch was to provide a venue for military-related OSH professionals to network about operational challenges and hazards unique to the uniformed services, but common across the service boundaries.

The expectation was that the branch would get big enough to form subsections that would address challenges faced by the military aviation community, the military surface warfare community, the military land warfare community, contingency operations, and cantonment/installation OSH matters.

Unfortunately, the world economy continued to falter and the contacts made by the International Practice Specialty failed to generate new members from the allied military forces.

Within U.S. military forces, professional education funds were reduced dramatically. More recently, Congressional budget actions (under the sequestration legislation) virtually eliminated funding previously used to send military OSH professionals to conferences. Those actions (along with new Government Accountability Office rules on military travel to conferences that were not sponsored by the military services) meant that there were virtually no military OSH professionals at the ASSE Professional Development Conference (PDC) in Orlando, FL.



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OSHA Recordkeeping in 2015

By Jack Fearing, CPEA

On Sept. 8, 2014, OSHA announced a final rule revision to its injury and illness recordkeeping and reporting requirements. These revisions to 29 CFR 1904 took effect on Jan. 1, 2015, and focus on two key requirements:

- 1) Severe work-related injury and fatality reporting to OSHA.
- 2) Industries partially exempt from routine recordkeeping requirements.

What type of amputation is reportable?

OSHA defines an amputation as “the traumatic loss of a limb or other external body part. Amputations include a part, such as a limb or appendage that has been severed, cut off, amputated (either completely or partially); fingertip amputations with or without bone loss; medical amputations resulting from irreparable damage; and amputations of body parts that have since been reattached.”

OSHA has a **fact sheet** about the updates to reporting fatalities, severe injuries and industry exemptions.

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OSHA Recordkeeping Rule - Reporting Fatalities & Severe Injuries			
Current Rule		2015 Rules	
Work-Related Incident	Reporting Period ¹	Work-Related Incident	Reporting Period ¹
All employee fatalities ²	8 Hours	All employee fatalities ²	8 Hours
3 or more employees with in-patient hospitalizations ³ related to same incident	24 Hours	Any employee in-patient hospitalizations ²	24 Hours
		All amputations ³	24 Hours
		All losses of an eye ³	24 Hours

Note

¹ Reporting period is from when employer has knowledge of the death, hospitalization or severe injury.

² Deaths occurring within 30 days of a work-related incident.

³ Hospitalization or severe injury occurring within 24 hours of a work-related incident

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What Happens When OSHA Knocks?

By Jack Fearing, CPEA

This is the first of a two-part article reviewing how alleged workplace safety violations can lead to an OSHA compliance inspector visiting your workplace. The first installment will review the inspection process. The second part will review what can happen after the inspector leaves regarding any safety violations s/he may have observed during the inspection and potential penalties. Both are valuable information on how to both keep your workplace safe and avoid an unwanted external compliance inspection.

The thought of starting your day with an unexpected visit from an OSHA inspector or compliance officer is one that many would not welcome. Welcome or not, it can happen without any notice.

If your responsibilities include managing safety and health at any of several types of Department of Defense

(DOD) workplaces there are conditions you should be aware of regarding OSHA compliance oversight and jurisdiction. For example, Executive Order 12196, Occupational Safety and Health Programs for Federal Employees (1980), gives OSHA and NIOSH the right to conduct announced and unannounced inspections.

Either agency can issue noncompliance citations to federal agencies. However, neither can fine the allegedly noncompliant agency. This includes occupational safety and health, risk management, aviation safety, ground safety, as well as vehicular and traffic safety. It excludes explosive, or ordinance safety, which are covered under specific DOD standards and regulations. These types of workplaces include military-unique workplaces, operations, equipment and systems. DOD military and civilian operations and workplaces unique to the national defense mission are also included. These include combat and operation, testing and maintenance of military-unique equipment and

systems such as military weapons, military-unique aircraft, military-unique ships, submarines, missiles, early warning systems, military space systems, ordnance and tactical vehicles. It also includes operations such as peacekeeping missions; field maneuvers; combat training; naval operations; military flight and missile operations; military-unique research, development, test and evaluation activities; and actions required under national defense contingency conditions. OSHA is authorized to conduct unannounced inspections unless:

- a) The workplace has a Certified Safety and Health Committees (Certified Committees). OSHA can conduct announced inspections in agencies with a Certified Committees.
- b) The work is performed by military personnel or involves “uniquely military equipment, systems and operations.”

Nonmilitary-Unique Workplaces & Operations

Nonmilitary-unique workplaces and operations are DOD military and civilian work comparable to the private sector performing similar work. Examples include facilities involved and work performed in the repair and overhaul of weapons, vessels, aircraft, or vehicles (except for equipment trials); construction; supply services; civil engineer or public works; medical services; and office work. Employees of private contractors performing work under government contracts are not covered under OSHA. Where an authorized state program (plan) is in existence, the state program has jurisdiction over private sector contractors unless the work being performed is at a location of exclusive Federal jurisdiction within the Federal property.

Government-Owned Contractor-Operated Facilities

OSHA compliance policies concerning government-owned contractor-operated facilities operations are described in separate memoranda of understanding applicable to specific agencies.

DOD Contractor Workplace

Any place, including a reasonable access route to and from, where work has been, will be, or is being performed by contractor employees under a DOD contract. A DOD contractor workplace does not include any area, structure, machine, apparatus, device, equipment, or material therein with which the contractor employee is not required or reasonably expected to have contact; nor does it include any working condition for which OSHA jurisdiction has been preempted.

With this information in mind the best way to prevent an unexpected knock at the front door from OSHA is to have an aggressive and proactive safety program. This includes compliance, demonstrated employee participation and active management support.

A major provision of the OSH Act of 1970 authorizes OSHA to conduct workplace inspections and investigations to determine whether employers are complying with standards for safe and healthful workplaces. During the course of an inspection the inspector will also

enforce Section 5(a)(1), known as the General Duty Clause, which requires that every working person must be provided with a safe and healthful workplace.

Workplace inspections are always conducted without advance notice. Law requires this

provision. There are, however, special circumstances under which OSHA may give notice to an employer, but any notice will normally be less than 24 hours.

These unique circumstances include the following:

- imminent danger situations that require correction as soon as possible;
- accident investigations where the employer has notified the agency of a fatality or catastrophe;
- inspections that must take place after regular business hours or that require special preparation;
- cases where notice is required to ensure that the employer and employee representative or other personnel will be present;
- cases where an inspection must be delayed for more

The best way to prevent an unexpected knock at the front door from OSHA is to have an aggressive and proactive safety program.

Figure 1 OSHA Prioritization

Imminent Danger

Imminent danger situations receive OSHA's top priority. An imminent danger is defined as any condition where there is reasonable certainty that a danger exists that can be expected to cause death or serious physical harm immediately or before the danger can be eliminated through normal enforcement procedures. If a compliance officer finds an imminent danger situation, s/he will request the voluntary abatement of the hazard and the removal of endangered employees from exposure. If you fail to do this, OSHA, through the regional solicitor, may apply for an injunction prohibiting further work as long as unsafe conditions exist.

Catastrophes & Fatal Accidents

Fatalities and accidents resulting in a death or hospitalization. Historically this meant a work-related fatality and/or the hospitalization of three or more employees and reported to OSHA within eight hours. Beginning Jan. 1, 2015, a catastrophic event will include all work-related fatalities, all work-related inpatient hospitalizations of one or more employees, all work-related amputations and all work-related losses of an eye. Fatalities must still be reported within eight hours of the event but all other catastrophes cited must be reported within 24 hours. OSHA investigates to determine the cause of these accidents and whether existing OSHA standards were violated.

Employee Complaints & Referrals

Formal employee complaints of unsafe or unhealthful working conditions and to referrals from any source about a workplace hazard. OSHA gives each employee the right to request an inspection

when the employee believes he or she is in imminent danger from a hazard or when he or she thinks that there is a violation of an OSHA standard that threatens physical harm. OSHA will maintain confidentiality if requested, inform the employee of any action it takes regarding complaints and, if requested, hold an informal review of any decision not to inspect.

Programmed Inspections

Programmed inspections aimed at specific high-hazard industries, workplaces, occupations, or health substances, or other industries identified in OSHA's current inspection procedures. OSHA selects industries for inspection on the basis of factors such as the injury incidence rates (i.e., TCIR), previous citation history, employee exposure records to toxic substances, or simply random selection. OSHA also develops special emphasis programs that are local, regional, or national in scope, depending on the distribution of the workplaces involved. OSHA normally will conduct comprehensive safety inspections in manufacturing in those establishments with lost-workday injury rates (i.e., DART) at or above the Bureau of Labor Statistics (BLS) national rate for manufacturing currently in use by OSHA.

Follow-Up Inspections

A follow-up inspection determines if you have corrected previously cited violations. If it is determined that you failed to abate a violation, the compliance officer informs you that you are subject to failure to abate alleged violations. This involves proposed additional daily penalties until all violations cited are corrected.

than 5 working days when there is good cause (key personnel is not available, etc.); and situations in which the OSHA area director determines that advance notice would produce a more thorough or effective inspection. Employers who receive advance notice of an inspection must inform their employees' representative or arrange for OSHA to do so. If you refuse to admit an OSHA compliance officer or attempt to interfere with the inspection, appropriate legal action, such as obtaining a warrant to inspect, will ensue.

Not all of the workplaces covered by OSHA can be inspected immediately upon request for a variety of

reasons. Accordingly, OSHA has determined that the worst situations need attention first and have established a system of inspection priorities (Figure 1, p. 21)

When a determination is made that an inspection of your workplace is warranted, the OSHA compliance officer, upon arrival, must display their official credentials and ask to meet an appropriate employer representative. You should always ask to see the compliance officer's credentials and verify the credentials by calling the nearest OSHA office. There are many documented cases of fraudulent inspections that have ulterior business-related motives.

The Opening Conference

In the opening conference, the compliance officer will explain how your establishment was selected and what the likely scope of the inspection will be. The compliance officer also will determine whether an OSHA-funded consultation visit is in progress or whether the facility is pursuing or has received an inspection exemption through the consultation program (i.e., OSHA Voluntary Protection Program); if so, the inspection may be limited or terminated. These partnership programs are strongly endorsed by OSHA.

The compliance officer will explain the purpose of the visit, the scope of the inspection and the standards that apply. The compliance officer will also provide information on how to get a copy of applicable safety and health standards, as well as a copy of any employee complaint that may be involved (with the employee's name deleted, if the employee requests anonymity.)

The compliance officer will ask for the selection of an employer representative to join the inspection. There should be an appropriate procedure in place to ensure any personnel potentially involved in an inspection are aware of their responsibilities and can execute them in a timely and efficient manner.

The compliance officer also gives all authorized employee representatives the opportunity to attend the

opening conference and to be present during the inspection. If a recognized bargaining agent represents your employees, the agent ordinarily will designate the employee representative to accompany the compliance officer. Similarly, if there is a plant safety committee, the employee members of that committee will designate the employee representative (in the absence of a recognized bargaining agent.) If neither employee group exists, the employees themselves may select an employee representative, or the compliance officer may determine if any employee suitably represents the interest of all employees.

OSHA does not require an employee representative for each inspection. Where there is no authorized employee representative, however, the compliance officer must consult with a reasonable number of employees concerning safety and health matters at the inspected facility.

The Walkthrough or Tour

After the opening conference, the compliance officer, along with you, designated employees and/or employee representatives will proceed through the establishment to inspect work areas for safety and health hazards.

Generally, the compliance officer will determine the route and duration of the inspection. However, the



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author recommends suggesting the route due to your familiarity with the facility. While talking with employees, the compliance officer will make every effort to minimize work interruptions.

Activities that may occur during the walk around by the compliance officer include:

- observing safety and health conditions and practices;
- consulting with employees privately, if necessary;
- taking photos, videotapes and instrument readings;
- examining related records;
- collecting air samples;
- measuring noise levels;
- surveying existing engineering controls;
- monitoring employee exposure to toxic fumes, gases and dusts.

Procedure for accommodating an inspection should include provisions for duplicating all actions and activities taken by the inspector, with the exception of confidential employee interviews. This information can be extremely valuable in subsequent meetings with OSHA related to the inspection.

The inspection tour may cover part or all of the workplace, even if the inspection resulted from a specific complaint, fatality, or catastrophe. If the compliance officer finds a violation in open view, s/he may ask permission to expand the inspection. Keep in mind that compliance officers are trained to keep all trade secrets observed confidential.

It is against the law to discriminate employees that are exercising their safety and health rights.

The compliance officer may also consult with employees during the inspection tour. The officer may stop and question employees, in private, about safety and health conditions and practices at their workstations. It is against the law to discriminate employees that are exercising their safety and health rights.

OSHA places special importance on posting and recordkeeping requirements. The compliance officer will inspect records of deaths, injuries and illnesses required to be kept on the OSHA 300 log. The officer will also check to see that a copy of the previous year's OSHA 300A Form (Annual Summary) is signed and posted as required. Note that all OSHA recordkeeping documents must be maintained for the current year

plus the previous 5 years. The officer will also verify that the OSHA workplace poster, which explains employees' safety and health rights, is prominently displayed. Further, if records of employee exposure to toxic substances and harmful physical

agents are required, the compliance officer will examine them for compliance with the recordkeeping requirements.

The compliance officer will also request a copy of the hazard communication program. Under OSHA's hazard communication standard, employers must establish a written, comprehensive communication program that includes provisions for container labeling, material safety data sheets and an employee training program. The program must contain a list of the hazardous chemicals in each work area and the means the employer will use to inform employees of the hazards associated with these chemicals. The recently promulgated hazard communication changes, as part of the globally harmonized standard and the implementation schedule must also be included in your program.

During the course of the inspection, the compliance officer will point out any unsafe or unhealthful working conditions observed. At the same time, the compliance officer will discuss possible corrective action if requested. The author strongly recommends requesting

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the officer's opinion on an appropriate corrective action, and documenting it.

Some apparent violations detected by the compliance officer can be corrected immediately. If said violations are corrected on the spot, the compliance officer records the corrections to help in judging your good faith in compliance. Although corrected, the apparent violations may still serve as the basis for a citation and, if appropriate, a notice of proposed penalty. However, OSHA may reduce the penalties for some types of violations if they are corrected immediately.

The Closing Conference

At the conclusion of the inspection, the compliance officer will conduct a closing conference with you, your employees involved in the inspection and/or the employees' representative. The compliance officer will give all parties involved a copy of *Employer Rights and Responsibilities Following an OSHA Inspection* for your review and discussion.

At the closing conference the compliance officer will discuss all unsafe or unhealthful conditions observed during the inspection and indicates all apparent violations for which s/he may issue or recommend a citation and a proposed penalty. The compliance officer will not indicate any specific proposed penalties but will inform you of your appeal rights. This process actually takes place at the OSHA area office and always includes the area director or the assistant director.

Afterward

After the closing conference matters will generally return to normal in the workplace while you wait for the OSHA area office to determine if any safety citations and proposed penalties will be issued, depending on the type of workplace you manage. This process can take 45 to 60 days and you will always receive the results via certified mail. Communicating the results of the inspection to your commanding officer or customer representative in a timely and thorough manner is essential. Their active participation and support of any necessary changes in the workplace will go a long way

towards demonstrating to OSHA your commitment to workplace health and safety. In the next installment the author will review some possible outcomes of the inspection and what you can do to create a safe and healthy workplace for your employees, customers and stakeholders.

Jack Fearing, CPEA, is the managing partner of *Fearing International Group*, a global occupational safety and health consulting firm in Flemington, NJ. He has more than 30 years of extensive experience in occupational safety and health compliance in the manufacturing, chemical, pharmaceutical and defense industries. His most recent position was director of global safety and health at *DynCorp International*. He is a retired U.S. Army Lt. Colonel and was a helicopter pilot and Aviation Safety Officer. He is a graduate of the University of Massachusetts and Boston University and is an OSHA-Authorized General Industry 10/30 Hour Trainer.



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Applications International Corp. Pledges \$250,000 to ASSE Foundation

Applications International Corp. (AIC) has pledged \$250,000 to the ASSE Foundation over 3 years to strengthen the future of the safety profession by investing in education, leadership development and research.

The donation is a milestone for both organizations—it is the largest charitable gift AIC has ever given and the largest donation ever received in the ASSE Foundation’s 25 year history.



“The ASSE Foundation is overwhelmed with Applications International Corporation’s generosity and commitment to helping our veterans pursue a career in occupational health and safety field,” says Alexi Carli, Foundation Chair. “It mirrors the Foundation’s desire to provide educational and leadership development to advance the safety profession.”

“At AIC, our commitment to excellence goes beyond the high-quality enterprise applications we specialize in providing our clientele. We know that a truly excellent company gives back, making deep investments in others and the future,” says AIC senior account manager Angelica Lauriano.

In 2015, the gift funded six of the Foundation’s Impact Scholarships—one at \$15,000 and five at \$10,000. You can view the 2015 recipients **online**.

In addition to funding six Impact Scholarships in 2015, AIC’s landmark gift will provide a \$3,000 grant to the Next Generation Board (NGB), the Foundation’s young professionals board. With AIC’s grant the NGB will expand its outreach to ASSE’s student members, encouraging stronger connections and volunteerism within ASSE. Furthermore, \$17,000 will be appropriated to Safety Matters, the Foundation’s growth and development fund, which enables the Foundation to continually improve and expand its programs and offerings. AIC’s gift to the Foundation will continue into 2016 and 2017, with allocations to be determined.

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