

Chapter Table of Contents

1 OVERVIEW	EE&I 12-1
2 TYPES OF OSHA ACTIVITIES	EE&I 12-1
Agency-wide Evaluations	EE&I 12-1
Regional Field Reviews	EE&I 12-1
Agency Technical Assistance Request Visits	EE&I 12-1
Inspections	EE&I 12-2
3 TYPES OF INSPECTIONS	EE&I 12-2
Targeted Inspections	EE&I 12-2
Special Emphasis Inspections	EE&I 12-3
Fatalities/Catastrophes Inspections	EE&I 12-3
Complaint Inspections	EE&I 12-3
4 HOW TO PREPARE FOR AN INSPECTION	EE&I 12-3
Inspection Materials Checklist	EE&I 12-3
Special Arrangements	EE&I 12-5
5 SIX-STEP INSPECTION PROCESS	EE&I 12-5
Table 1: The Inspection Process	EE&I 12-6
Informal Conference	EE&I 12-9
Changes in Classification of Violations	EE&I 12-11

CHAPTER 12: EXTERNAL ENFORCEMENT AND INSPECTIONS

1. OVERVIEW

This chapter provides DOE managers and employees with information on what to expect when the OSHA, DOL, makes a scheduled or unscheduled visit to their worksite. Facilities should make similar preparations prior to any external inspection or evaluation. When OSHA is to visit a DOE facility, the DOE FEOSH Manager, Dennis Lubow, at (301) 903-2075 should be notified so technical assistance may be provided.

2. TYPES OF OSHA ACTIVITIES

There are four activities that may bring OSHA compliance personnel to a facility. These include agency-wide evaluations, regional field reviews, Agency Technical Assistance Requests (ATARs), and inspections. More details about these activities can be found in draft OSHA Instruction FAP 1.3, "Federal Agency Safety and Health Programs." To obtain a copy, call the FEOSH Program Office at (301) 903-3638.

Agency-wide Evaluations

Both Executive Order 12196 and 29 CFR Part 1960.78 establish OSHA's authority to conduct evaluations of Federal agency safety and health programs. Agency-wide evaluations are usually arranged at the agency level by top-ranking agency and OSHA officials. Specific details about the evaluations will be communicated to the field closer to the time of the evaluation.

The Assistant Secretary for OSHA identifies the agencies to be evaluated for each 2-year period. OSHA staff rely on data from a 2-year history of regional field review reports. These reports are supplemented by written agency program information and interviews of agency personnel. OSHA's draft Federal agency evaluation report is reviewed by senior agency officials before it is finalized. These reports include an executive summary, a chart comparing the program with 29 CFR Part 1960 requirements, an analysis of statistics, and major recommendations.

Regional Field Reviews

At the establishment level, regional field reviews are announced in advance and conducted by OSHA field-based safety and health compliance teams. These teams usually begin by reviewing the agency's injury and illness records, minutes of the agency's safety and health committee (if one exists), records of agency self-evaluations, and program documentation, including compliance with written program requirements. Also, the team usually reviews medical and training data and safety and health training records, as well as conducts confidential interviews with employees.

Agency Technical Assistance Request Visits

Any DOE Element may ask OSHA for help through an Agency Technical Assistance Request (ATAR). The onsite visit may be triggered by an agency's need for hazard abatement advice, training, a partial or comprehensive inspection, and/or program assistance. At DOE, the local facility manager or OSH manager should contact the OSHA Area Office or Regional Office to request technical assistance. The DOE FEOSH Program Office staff also provide technical assistance (see **Appendix 1-1**).

CHAPTER 12: EXTERNAL ENFORCEMENT AND INSPECTIONS

ATAR Visit Criteria. ATARs are scheduled at the discretion of OSHA's Area Office Directors. Key factors about the site that determine whether or not your ATAR is scheduled include the following:

- safety and health commitment
- willingness to assign staff and resources to implement safety and health programs
- past abatement record of previous violations and hazards

Types of ATARS. Depending on the needs of the particular facility, there are several types of ATARS. They may be phoned in, however, agencies normally request them in writing. Onsite and offsite ATARS are conducted. An onsite ATAR may consist of a limited or comprehensive walk-through, complete with opening conference. An offsite ATAR may consist of a review of FEOSH program documents. Whenever you request an ATAR, you have the right to limit the scope. Where other types of OSHA visits (i.e., inspections) may result in citations or notices of findings, the final product of an ATAR will be either a written or verbal report suggesting program or facility improvements.

Correcting Violations Found on ATAR Visits. Any serious or imminent danger condition identified by the OSHA Compliance Safety and Health Officer (CSHO) during an ATAR must be abated. All violations will be discussed with agency officials at the closing conference. For serious unabated violations prior to the closing conference, abatement dates and an abatement plan will be discussed.

After the visit, the OSHA Area Director will send the site director a letter that summarizes results of the ATAR and, if appropriate, that documents uncorrected violations and sets abatement dates as discussed with the agency. If an agency does not act in good faith to correct these deficiencies, OSHA will issue a Notice of Unsafe or Unhealthful Working Conditions.

Inspections

OSHA is authorized to conduct announced and unannounced inspections of DOE Federal employee worksites. They are typically conducted in response to high lost-time case (LTC) injury rates at a facility; employee complaints; agency-wide evaluations; or fatalities or catastrophes.

3. TYPES OF INSPECTIONS

There are four types of OSHA inspections or investigations—targeted inspections, special emphasis inspections, fatality/catastrophe inspections, and complaint inspections (employee concerns).

Targeted Inspections

Federal agency sites are targeted for inspections by OSHA based on OWCP injury/illness data. Sites that have a high injury/illness rate may be scheduled for an inspection. During the OSHA inspection, violations of OSHA standards, including the general duty clause, and citable program elements will be identified. Unannounced inspections at DOE Federal employee sites may be conducted. (If the work is performed by military

CHAPTER 12: EXTERNAL ENFORCEMENT AND INSPECTIONS

personnel or involves “uniquely military equipment, systems, and operations,” an inspection will not be conducted.)

Each year, OSHA uses the latest available OWCP data to compile an initial list of potential Federal facilities to inspect. If the facility’s LTC rate is above the national average for Federal worksites, that facility will be on the list. In 1993, the average LTC rate for the Federal sector was 2.7; the projected rate for 1994 is 3.1.

The potential inspection list is then provided as notification to the respective Federal agency’s DASHO for notification. DOE’s DASHO is the Assistant Secretary for Environment, Safety and Health. The DOE FEOSH Program Office immediately contacts the targeted DOE Office (facility) to inform them of the potential OSHA inspection and offer assistance. Although DOE is notified of the site(s) on the target list, OSHA is prohibited from providing the exact inspection date.

**Special
Emphasis
Inspections**

These inspections are directed toward a single hazard, single standard, or single program element that has been associated with serious injuries or illnesses.

**Fatalities/
Catastrophes
Inspections**

Federal agencies must conduct an investigation of each fatal or catastrophic incident. The OSHA Area Director may conduct an independent investigation or participate in the agency’s own investigation. Also, an OSHA CSHO, who joins an agency investigation, is entitled to participate fully in the investigation and may not be relegated to “observer” status by the agency.

**Complaint
Inspections**

When OSHA receives employee complaints alleging unsafe or unhealthful working conditions at a facility, including alleged violations of the program elements listed under 29 CFR Part 1960, OSHA reviews the complaint to determine whether an inspection is warranted. If the complaint is determined to be other than serious or serious but unwritten, OSHA will contact the Federal agency and request an investigation and written response. If the complainant is still unsatisfied, OSHA may conduct its own investigation. If OSHA determines the complaint to be serious, a visit will be scheduled.

4. HOW TO PREPARE FOR AN INSPECTION

While every inspector or inspection team has some unique characteristics, the inspection protocols are similar. This section, based on OSHA instructions to the field, provides guidance on what to expect when an outside agency makes a scheduled or unscheduled inspection. Also included are guidelines and checklists to help you prepare for the inspection.

**Inspection
Materials
Checklist**

- ✓ sample policy statements from the agency head (see Chapter 1 and OSHA’s *Managing Worker Safety and Health*)
- ✓ policy statements issued by top facility managers and department heads

CHAPTER 12: EXTERNAL ENFORCEMENT AND INSPECTIONS

- ✓ written safety and health documentation that has been sent from your agency to the site
- ✓ written program documentation prepared by the site
- ✓ memos, speeches, and articles in the facility newsletter issued by the facility manager during the past year
- ✓ sample (blank) performance standards for different levels of the facility's management
- ✓ listing of OSH staff by job title
- ✓ listing of site's OSH staff's training and experience
- ✓ documented safety and health goals for the agency and facility
- ✓ injury and illness logs (e.g., OSHA No. 200)
- ✓ supplementary record examples (e.g., 5484.3)
- ✓ agency feedback on injury/illness statistics (e.g., CAIRS report)

Program Implementation Checklist. As evidence that your site is implementing an adequate safety and health program, use the following ten-point checklist.

(1) employee rights and involvement

- ✓ employee safety and health rights and responsibilities poster
- ✓ written procedures describing how employees can report hazards anonymously
- ✓ latest year's log of employee hazardous conditions reports
- ✓ union contract safety clauses

(2) reprisal policy and procedures

- ✓ copies of recent reprisal investigations (if any)
- ✓ copies of agency and facility procedures for investigating reprisals

(3) safety and health committees

- ✓ latest safety and health committee meeting minutes, if any
- ✓ safety and health committee walkaround site visit reports, if any

(4) Federal Safety and Health Field Council participation

- ✓ facility personnel listing of Council members
- ✓ written reports and memos relating to site members' field council participation

(5) site safety and health training

- ✓ facility-wide safety and health training course listing, including class roster for the past year

(6) recordkeeping and reporting

CHAPTER 12: EXTERNAL ENFORCEMENT AND INSPECTIONS

- ✓ facility injury/illness logs for the past 2 years
- (7) **inspections**
 - ✓ records of the most recent internal and external facility inspection/field review reports, including both safety and health, if they are separate
- (8) **hazard abatement**
 - ✓ facility's written hazard abatement procedures
 - ✓ facility's written hazard abatement log
- (9) **standards compliance and adoption**
 - ✓ site's procedures for complying with OSHA standards, including new standards
 - ✓ identification of standards, other than OSHA standards, which are being followed
- (10) **program impact and evaluation**
 - ✓ site's internal safety and health evaluation reports
 - ✓ recent external evaluations, such as Headquarters or field reports, or recent OSHA field reviews
 - ✓ written corrective action plans, developed in response to the various internal and external evaluations

Special Arrangements

In addition to compiling the documents suggested by the checklist, there are other advance arrangements that can be scheduled to have the inspection process proceed efficiently, including the following:

- Arrange for the use of a room or several rooms with adequate tables and chairs for document reviews and interviews. Ensure that a computer or a word processor, telephone, and other equipment and supplies are available if needed.
- Determine whether any special security clearances are required for facility admission.

5. SIX-STEP INSPECTION PROCESS

The typical OSHA inspection comprises a six-step process: opening conference/initial briefing, document review and analyses, site walkthrough, employee/employer interviews, closing conference/presentation of findings, and final report/issuance of notices of unsafe or unhealthful working conditions. See Table 1 for key elements of each step.

During the entire process, everyone at the facility (managers, supervisors, workers, OSH professionals, etc.) should cooperate fully, answering questions truthfully and supplying all requested information. The FEOSH POC, identified in DOE's FEOSH Directory, should be integral to the entire process, accompanying the OSHA inspector at all times to provide information and clarify situations.

CHAPTER 12: EXTERNAL ENFORCEMENT AND INSPECTIONS

Table 1: The Inspection Process

1. Opening Conference/ Initial Briefing	<p>Prepares for the onsite review.</p> <ul style="list-style-type: none"> - Site management and employee representatives have the right to attend. - Inspector describes the goals, type, and scope of visit. - Protocol is established for employer/employee interviews. - Procedures are outlined for hazard abatement.
2. Document Review	<p>Identifies more hazardous work areas and determines if the site is maintaining appropriate records.</p> <p><u>Injury/Illness Records:</u></p> <ul style="list-style-type: none"> - Inspector analyzes OSHA No. 200, spot checks supplemental injury/illness records, and samples OWCP Forms CA-1, CA-2 and CA-16 (see Chapter 11, Recordkeeping and Reporting). - Reviews DOE F 5484.3, <i>Individual Accident/Incident Report</i>, to verify that lost workday cases are recorded properly; these may also be compared to OSHA No. 200 entries. <p><u>Program Documents:</u></p> <ul style="list-style-type: none"> - Inspector checks for compliance with 29 CFR Part 1960 programmatic requirements. - May request documents for the following topics—OSH training, hazard abatement, accountability, complaint and reprisal procedures, PPE, exposure monitoring and surveys, medical monitoring, accident/incident investigations, emergency response, fire protection. <p><u>OSH Standards Requirements:</u></p> <ul style="list-style-type: none"> - May request documentation required by specific OSH standards—e.g., written hazard communication program, MSDSs, lockout/tagout procedures. - Inspector reviews safety and health committee records and minutes.
3. Site Walkthrough	<p>Enables the inspector(s) to observe how the site implements its safety and health program and assess its adequacy.</p> <ul style="list-style-type: none"> - Targeted inspections usually cover all assessable areas of the site to oversee the types of safety and health concerns that might exist and determine if those concerns are being addressed adequately. - OSHA inspectors/teams usually limit the scope of complaint inspections and ATARs, but note all safety, health and physical hazards observed going to or from the items of interest. - Special attention is usually focused on safety and health concerns identified through review of prior inspection findings and injury/illness records. - Inspection teams usually include both safety specialists and industrial hygienists, both of whom follow the site's process flow. - Both safety specialists and industrial hygienists record notes on program improvements and management systems needed to correct or prevent observed problems. - Safety specialists and industrial hygienists usually are cross-trained to address basic hazards in the other's discipline if there is no joint inspection.

CHAPTER 12: EXTERNAL ENFORCEMENT AND INSPECTIONS

3.a. Safety Walk-through	<p>Safety specialists look for specific categories of hazards, including:</p> <ul style="list-style-type: none"> - walking and working surfaces - fire safety - storage and handling of general materials - machine guarding - power tools - welding operations
3.b. Industrial Hygiene Walk-through	<p>Industrial hygienists review monitoring records and MSDSs, check potential health hazards, and perform sampling for possible problems with:</p> <ul style="list-style-type: none"> - work practices - ventilation - storage, handling, and use of toxic materials - emergency equipment - respirator usage and maintenance - noise control - radiation protective measures
4. Employee/ Employer Interviews	<p>Inspectors and inspection teams conduct both brief random interviews and formal interviews. They usually interview several supervisors, maintenance personnel, safety and health committee members, and employee representatives.</p> <p><u>Brief Random Interviews:</u></p> <ul style="list-style-type: none"> - During the walkthrough, the inspector/team may talk briefly to randomly selected employees at or near workstations. - They help assess employee awareness of potential health and safety hazards and, if applicable, their understanding of the role and use of appropriate engineering controls and/or PPE. <p><u>Formal Interviews:</u></p> <ul style="list-style-type: none"> - Formal interviews usually are approximately 15 to 20 minutes long, and are conducted privately and away from the work station. - They help determine the extent and quality of employee involvement and the level of employee safety and health awareness. <p><u>Evaluating Responses:</u></p> <ul style="list-style-type: none"> - Inspectors/teams use professional judgment to evaluate employee/employer responses. - A small number of interviews allow for only general impressions rather than more probative findings from valid statistical samples. <p><u>Minimizing Biases:</u></p> <ul style="list-style-type: none"> - Interviewers are aware of and sensitive to external issues such as reductions-in-force or furloughs, or labor-management disputes which could affect responses. - They are trained to look for overall patterns in responses, particularly those supported by other information.

CHAPTER 12: EXTERNAL ENFORCEMENT AND INSPECTIONS

<p>4.a. Sample Supervisor Questions</p>	<p>Interviewers ask supervisors the following typical questions:</p> <ul style="list-style-type: none"> - Have you seen any OSH policy statements? If so, from whom? - Does your performance evaluation include an OSH element? How is your performance on this element measured (e.g., by a reduction in injuries)? - Do employees report unsafe or unhealthful conditions to you? How do you correct the condition? - Who selects your employees' PPE? Is it approved by the safety office before purchase? - Have you received any safety and health training? When? From whom? On what subject?
<p>4.b. Sample Employee Representative Questions</p>	<p>Interviewers ask employee representatives (e.g., union officials, shop stewards) the following typical questions:</p> <ul style="list-style-type: none"> - Have you ever seen any OSH policy statements? From whom? - What type of PPE are you issued? Do you feel you need any other type? - Do employee representatives accompany the site's internal safety and health inspectors during inspections? Do the onsite inspectors question employees privately? - Have you received any OSH training? When? From whom? On what subject? For how long?
<p>4.c. Sample Employee Interview Questions</p>	<p>Interviewers ask employees the following typical questions:</p> <ul style="list-style-type: none"> - Have you ever seen any OSH information at the site? Where? What was it? - Do you know of anyone who has gotten into trouble for making a safety and health complaint? - Do you know what you can do if you see an unsafe condition? - Have you ever reported a safety or health hazard? To whom? Was it addressed satisfactorily? How long did it take? - Have you received any training about your agency's OSH program or about the hazards of your job? When? By whom? What subjects were covered?
<p>5. Closing Conference/ Presenting Findings</p>	<p>When the previous steps are completed, the inspector/team holds a meeting with site managers and employee representatives to summarize findings, including:</p> <ul style="list-style-type: none"> - site injury rates and compliance with recordkeeping and reporting requirements - employee involvement in the site's safety and health program and extent to which employee participation impacts safety and health decisions - review of the site's safety and health program in relation to the basic minimum requirements contained in 29 CFR Part 1960, and discussion of potential facility safety and health hazards - agreed-upon times and means of abatement for identified hazards - notices of unsafe or unhealthful working conditions

CHAPTER 12: EXTERNAL ENFORCEMENT AND INSPECTIONS

6. Final Report	<p>The final step in the inspection process is OSHA's issuance of an OSHA-2H Form, "Notice of Unsafe or Unhealthful Working Conditions," which is equivalent to a private sector citation.</p> <ul style="list-style-type: none"> - The OSHA-2H is issued to the facility manager by the OSHA Regional Administrator or Area Director, and includes citations for violations of 29 CFR Part 1960 which were observed during the inspection. - OSHA may issue the notice as a last resort when an Agency does not correct hazards identified by OSHA in an ATAR visit. - When violations are classified as willful or repeated, a copy of the notice is also sent to the DASHO.
6.a. Inspection Letter	<p>Notices are accompanied by an inspection form letter, "Notification to Employer—Inspection Results." DOE sites that receive a notice or letter should forward a copy to the DOE FEOSH Program Office. The inspection letter addresses the following:</p> <ul style="list-style-type: none"> - Indicates whether violations of 29 CFR Part 1960 were found and encloses notices of unsafe or unhealthful working conditions. - Establishes correction dates for each cited hazard and reminds employer to post notices at or near the area where the violation occurred (for 3 working days or until the violation is corrected, whichever is longer). - Requests written abatement verification, with documentation including photographs, monitoring results, measurements and equipment requisitions. - Requests a timetable of steps to achieve compliance during the abatement period; and, if appropriate, asks the agency to estimate any additional abatement time needed. - If an agency requests additional abatement time, the basis must be justified (e.g., unavailability of professional or technical personnel or materials and equipment, or why necessary alteration of facilities cannot be completed by the original abatement date). - If additional abatement time is requested, the agency must inform OSHA of interim steps proposed to safeguard employees against the cited hazard during the abatement period. - The OSHA letter may also contain a general summary of what penalty amounts would have been proposed if the violations occurred in the private sector. (Since these are public documents, there may be media interest in major cases.) - The letter will also provide the Agency with a copy of OSHA publication "<i>Federal Employer Rights and Responsibilities Following an OSHA Inspection.</i>"

Informal Conference

An informal conference may be requested with the Area Director in writing or by telephone by confirmation letter within 15 working days after receiving the OSHA Notice. The purpose of holding an informal conference with officials is to make every attempt to resolve outstanding issues at the Area Director level.

- An agency letter requesting an informal conference should identify specific items and issues to be discussed.

CHAPTER 12: EXTERNAL ENFORCEMENT AND INSPECTIONS

- Summaries of unresolved issues (including the Federal agency's position) are prepared and forwarded to the regional OSHA Office within 5 working days of the informal conference.
- If the OSHA/Regional Administrator, in consultation with the Area Director, rules against the Federal agency's position, the decision—along with supporting documents, informal conference notes and relevant portions of the investigation file—is sent to the OSHA Director of the OFAP in Washington, D.C., for final review and resolution.

National Office Review. OFAP reviews the issues. After discussing the case with top agency officials and respective OSHA field office staff, a decision is issued. Since there are no Federal Agency Appeal Rights to the OSHA Review Commission, it stands as OSHA's final decision.

Petitions for Modification of Abatement. After an inspection and receipt of an OSHA Notice, a Federal agency has the right to file a Petition for Modification of Abatement Dates (PMA). Under this action, the agency does not dispute the citation but rather seeks additional time to correct the hazard.

- If agreement to extend the abatement time cannot be reached at the Area Director or facility manager level, the issue is forwarded to the Regional Administrator for resolution. Unresolved PMA issues at the regional level are sent to the OFAP (Washington, D.C.) for resolution.
- OSHA Area Directors are encouraged to work with local Federal agency managers to develop an abatement plan that is acceptable to both parties.
- If local dispute resolution cannot be achieved within 30 calendar days of the abatement date, the Area Director sends a Notification of Failure to Abate Alleged Violation (FTA notice) with a transmittal letter to the agency official.

This letter, which may include mention of the penalties that would apply to a private sector firm, is also sent to the DASHO and employee representatives at the facility. If the inspection was the result of a complaint, the person who filed the complaint will also be notified.

- If the case cannot be resolved at the Area Director level, the case file will be sent to the Federal Agency Program Officer (FAPO) at the regional level. The FAPO then contacts the agency's regional level (or equivalent) officials and requests that the agency abate the violations or develop a suitable abatement plan.
- Cases unresolved at the regional level after 60 days are sent to the OFAP Director (Washington, D.C.). Within 30 days, OFAP refers the case to the appropriate senior executive service (SES)-level office in OSHA. Within 30 days, the senior executive recommendations are forwarded to the Office of the Director of Compliance Programs (DCP) which has jurisdiction over these cases. If DCP upholds the citation, an SES-level meeting with agency officials will be scheduled to resolve the matter.
- If this fails, OSHA attempts to resolve the matter first at the Assistant Secretary level and next at the cabinet level.

CHAPTER 12: EXTERNAL ENFORCEMENT AND INSPECTIONS

**Changes in
Classification
of Violations**

OSHA recently changed and clarified its policies regarding the classification and issuance of notices.

- The Federal equivalent of the general duty clause, 29 CFR Part 1960.8(a)—not Executive Order 12196 Section 1-201(a)—will be used in the notification of “serious” hazards that are not addressed by a specific OSHA standard. For “other-than-serious” hazards, the agency will be notified by letter.
- Recordkeeping violations at Federal agencies will be cited under 29 CFR Part 1960, Subpart I and not, as in the past, under Executive Order 12196, Section 1-201(j).
- Violations of citable program elements under 29 CFR Part 1960 normally will be classified as “other-than-serious” unless they are identified as a contributing factor to a serious safety or health standard violation. For example, if a lack of supervisory training significantly contributed to an unshored trench, both the trenching standard and 29 CFR Part 1960.55 would be cited as “serious.”
- An agency may be issued a “Repeat Notice” if the agency was cited before for the same or a substantially similar condition.
- Before issuing repeat notices, OSHA looks for the following:
 - Serious violations—does OSHA’s region-wide inspection history for the agency show a previous citation within the past 3 years?
 - Other-than-serious—has the facility received a previous citation within the past 3 years?
 - Was the previous citation issued to an agency within the same two-digit Standard Industrial Code?
 - Is there documentary evidence that the previous citation had been abated?