F-2

U.S. Coast Guard

U.S. Department of Labor

Assistant Secretary for Occupational Safety and Health Washington, D.C. 20210



OSHA Instruction CPL 2.46 CH-1 March 22, 1982 Office of Compliance Programming

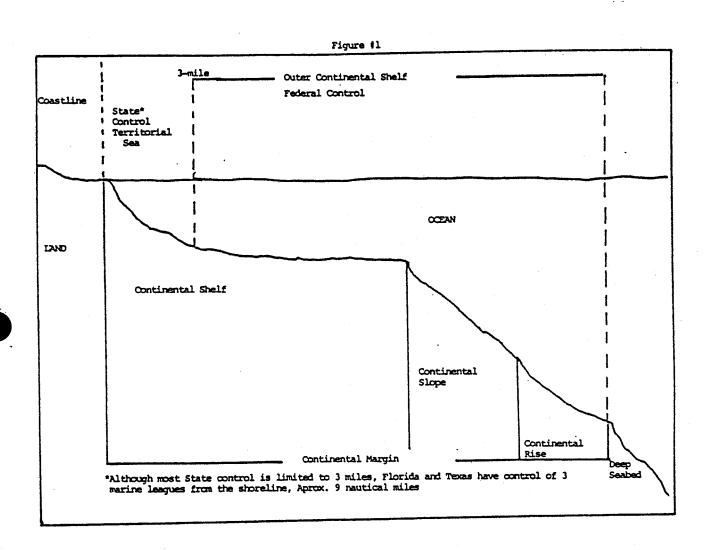
SUBJECT: Memorandum of Understanding Between the Occupational Safety and Health Administration and the United States Coast Guard

- A. Purpose. This instruction provides national guidelines for the interpretation and implementation of the Memorandum of Understanding (MOU) between the Occupational Safety and Health Administration and the United States Coast Guard, which became effective December 7, 1980, concerning the Occupational Safety and Health of personnel working on the Outer Continental Shelf of the United States. (See Appendix A.).
- B. Scope. This instruction applies OSHA-wide.
- C. Action. OSHA Regional Administrations/Area Directors shall ensure that OSHA responsibilities are carried out in accordance with G. and Appendix A of this instruction. In situations that differ from the examples given in G., an attempt shall be made to apply the basic intent of the MOU as stated in F. of this instruction.
- D. <u>Federal Program Change</u>. This instruction describes a Federal program change which affects State programs. Each Regional Administrator shall:
 - 1. Ensure that this change is forwarded to each State designee.
 - 2. Explain the technical content of the change to the State designee as requested.
 - 3. Ensure that State designees are asked to acknowledge receipt of this Federal program change in writing, within 30 days of notification, to the Regional Administrator. This acknowledgment should include a description either of the State's plan to implement the change or of the reasons why the change should not apply to that State.
 - 4. Review policies, instructions and guldelines issued by the State to determine that this change has been communicated to State program personnel. Routine

monitoring activities (accompanied inspections and case file reviews) shall also be used to determine if this change has been implemented by actual performance.

E. State Plan States.

- 1. The Outer Continental Shelf Lands Act (43 U.S.C. 1333) provides that "the subsoil and seabed of the Outer Continental Shelf" and "all devices permanently or temporarily attached to the seabed" are areas of "exclusive Federal jurisdiction." Thus, States are precluded from exercising Ocupational Safety and Health jurisdiction over working conditions on these sites.
- This exclusion does not pertain to such islands or structures which are located within the area of the territorial sea. (For State jurisdiction, see Figure 1.) However, when State plan States receive a complaint or notice of an accident, the State shall discuss the matter with the local Coast Guard District Office prior to initiating any action. In addition, any complaints or accident notices received involving worksites located on the Outer Continental Shelf (outside State jurisdiction) shall be forwarded to the local Coast Guard District Office for their action by the State.
- F. Background. The "Outer Continental Shelf" as used in the Outer Continental Shelf Lands Act Amendments (P.L.95-372) September 18, 1978, means that portion of the Continental Margin lying beyond State boundaries within U.S. Federal jurisdiction.
 - 1. The Continental Margin consists of the Continental Shelf, the Continental Slope and the Continental Rise. Bounding the Continental Margin is the land (Continent) on one side and the deep seabed on the other. (See Figure 1, page 3.)



- The Outer Continental Shelf Lands Act expands the U.S. Coast Guard's role for Safety and Health on the Outer Continental Shelf. By these amendments, Congress has indicated that it expects the U.S. Coast Guard to be the principal Federal agency on matters of safety and health; as well as continuing the present role it exercises for safety of vessels, diving, artificial islands, fixed drill rigs, etc.
- 3. OSHA's authority is derived from the Occupational Safety and Health Act of 1970. The very broad coverage of this Act expressly includes the OCS (29 U.S.C. 653(a)). Because of this broad coverage, Section 4(b)(1) was included in the OSHA Act to preclude the application of OSHA standards to working conditions addressed by another agency's regulations or standards.
- 4. Section 208 of the Outer Continental Shelf Lands Act expressly preserved the provisions of the OSH Act, including the OSH Act's application to the Shelf and to all hazardous working conditions except those addressed by other agencies' standards. Section 208, which amends Section 21 of the Outer Continental Shelf Lands Act states: "Nothing in this Act shall affect the authority provided by law to the Secretary of Labor for the protection of Occupational Safety and Health...."
- The 1978 amendments to the Outer Continental Shelf 5. Lands Act greatly increased the Coast Guard's authority to promulgate and enforce safety and health standards on the Shelf. The Coast Guard, with its issuance of a diving standard, has already begun to implement Congress' instructions. OSHA fully supports the Coast Guard's intention to promulgate additional standards to protect workers on the Shelf. However, OSHA, under Section 4(b)(1) of the OSH Act, still has responsibility for any hazardous working condition for which the Coast Guard has not yet promulgated enforceable standards. As the Coast Guard promulgates more standards OSHA's application to OCS workplaces will diminish.

- 6. OSHA has been actively cooperating with the Coast Guard's standards development projects. The agency has assisted the Coast Guard in identifying and collecting for Coast Guard promulgation those OSHA standards relevant to inspected vessels and shall assist in more projects in the future.
- 7. A Coast Guard investigation alone, however, does not relieve OSHA of its responsibilities. At the present time there exists a substantial number of working conditions on offshore oil/gas rigs which OSHA addresses under its standards applicable to general industry and construction, for which the Coast Guard has yet to promulgate standards.
- 8. The Memorandum of Understanding entered into by the Occupational Safety and Health Administration and the United States Coast Guard sets forth procedures intended to avoid duplication of issuance of citations of violations and regulatory overlap while still retaining the agencies' mutual responsibilities.

G. Requirements.

- 1. Sections I, II and III of the MOU (Appendix A) provide a general description of the purpose of the MOU, a description of the "Working Conditions" on the Outer Continental Shelf, and outline each agency's responsibility under the Act.
- 2. Section IV A enumerates five areas pertaining to standards development and promulgation which will be the responsibility of the headquarters staff of both agencies. OSHA National Office staff may require assistance from the field on specific projects associated with standards research and development. In such cases appropriate contact and inquiries through channels shall be made by the National Office staff of the pertinent Field Office.
- 3. Section IV B, Items a.-e. listed below, are statements of authorities, procedures and specifics to be followed in carrying out the intent of the MOU.

- a. Routine enforcement activities (Section IV B.l.c., where the Coast Guard does not exercise statutory authority to prescribe or enforce standards affecting Occupational Safety and Health on the OCS) shall not be conducted by the concerned OSHA Field Office prior to discussion with the local Coast Guard District Office as to the procedures the OSHA Office intends to follow.
- b. General schedule inspections in the absence of a request by the Coast Guard shall be cause for the Area Director to seek permission from the OSHA National Office, Office of Field Coordination and Experimental Programs, prior to conducting such an inspection.
- c. Allegations of violations (complaints) of applicable OSHA requirements shall be referred to the Commander of the local Coast Guard District Office for action. (Appendix B lists the Coast Guard District Offices.)
 - (1) The complainant shall be informed of the above action and also will be given the Office address and telephone number of the appropriate Coast Guard District Office.
 - (2) The OSHA office receiving the complaints shall maintain a record of complaints and shall periodically monitor the action taken by the Coast Guard. This will be entered in the record.
 - (3) Written and oral complaints shall be forwarded to the Coast Guard within a reasonable time. Additionally, oral complaints shall be transcribed and forwarded to the Coast Guard for confirmation purposes.
 - (4) If the Coast Guard requests assistance for disposition of the complaints, OSHA will assist accordingly.

- d. Accident investigations on the OCS shall be conducted by the Coast Guard in accordance with the regulations issued under its authority.
 - (1) The Coast Guard shall cooperate with OSHA with respect to identifying violations of applicable OSHA standards related to the casualty or accident by:
 - (a) Inviting OSHA to formal Coast Guard hearings;
 - (b) Developing lines of inquiry suggested by OSHA; and
 - (c) Making investigation information available to OSHA.
 - (2) The Coast Guard shall notify OSHA where an investigation identifies an apparent violation of an applicable OSHA standard, and subsequently will cooperate with OSHA with respect to any enforcement action OSHA may undertake.
- e. When the Coast Guard requests an OSHA office to assist in, or respond to complaints, accident investigations or routine enforcement activities, that office shall:
 - (1) Inform the National Office, Office of Field Coordination and Experimental Programs, and
 - (2) Consult with the local or pertinent Coast Guard District Office regarding the inspection and, when required, the availability of transportation.
- 4. Section V of the MOU shall be the responsibility of the Office of Training.

5. Section VI. The OSHA representative is:

James M. Meagher, Chief Division of Maritime Programming Room N3608 200 Constitution Avenue, N.W. Washington, D.C. 20210

The U.S. Coast Guard Representative is:

Commander David Zawadzki, USCG Manager, Outer Continental Shelf Safety Project - Room 1604 2100 - 2nd Street, S.W. Washington, D.C. 20590

Thorne G. Auchter Assistant Secretary

DISTRIBUTION: National, Regional and Area Offices

All Compliance Officers

State Designees

NIOSH Regional Program Directors

Appendix A

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES COAST GUARD,
THE DEPARTMENT OF TRANSPORTATION
AND THE

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION,
THE DEPARTMENT OF LABOR
CONCERNING OCCUPATIONAL SAFETY AND HEALTH ON ARTIFICIAL ISLANDS,
INSTALLATIONS AND OTHER DEVICES ON
THE OUTER CONTINENTAL SHELF OF THE UNITED STATES

- L. <u>PURPOSE</u> The purpose of this Memorandum of Understanding is to establish procedures to increase consultation and coordination between the United States Coast Guard (USCG) and Occupational Safety and Health Administration (OSHA) with respect to matters affecting the occupational safety and health of personnel working on the Outer Continental Shelf of the United States.
- II. <u>DEFINITION</u> For purposes of the Memorandum, the following definition applies:

Working Conditions on the Outer Continental Shelf of the United States

Working conditions related to activities, including diving, taking place on or from, on the waters adjacent to, or otherwise associated with artificial islands, installations, or other devices permanently or temporarily attached to the seabed and exploring for, developing or producing resources from the Outer Continental Shelf of the United States, or any device (other than ship or vessel) used for the purpose of transporting such resources (43 U.S.C. 1333(a)(1)).

IL AGENCY RESPONSIBILITIES

A. United States Coast Guard

The USCG has authority to promulgate and enforce Safety and Health Regulations for working conditions on the OCS of the United States. In carrying out this responsibility on the OCS the Coast Guard will cooperate with the Occupational Safety and Health Administration to maximize the safety and health protection of employees, avoid duplication of effort, and avoid undue burdens on the maritime industry. The USCG, consistent with its statutory authority:

L Promulgates regulations and may modify any regulation, interim or final, applying to hazardous working conditions related to activities on the Outer Continental Shelf, and promulgates such other regulations as may be necessary to promote the safety of life and property on the OCS:

- 2. Promulgates regulations to provide for scheduled onsite inspection, at least once a year, of each facility on the Outer Continental Shelf which is subject to any environmental, safety or health regulation promulgated by the Coast Guard pursuant to the OCS Act*, and also provides for periodic onsite inspection without advance notice to the operator of such facility to assure compliance with such environmental, health or safety regulations;
- 3. Reviews any allegation from any person of the existence of a violation of a safety or health regulation or other unsafe working condition.
- 4. Investigates and makes a public report on any death or serious injury occurring as a result of operations conducted pursuant to the OCS Act, and may investigate and report on other injuries, casualties or accidents.
- 5. Initiates appropriate civil and criminal procedures and other actions to enforce any provision of the OCS Act or any regulation issued under the Act.

B. Occupational Safety and Health Administration

The Occupational Safety and Health Act (OSHAct)** applies with respect to working conditions on Outer Continental Shelf Lands (29 USC 653(a)), but does not apply to working conditions with respect to which the Coast Guard or other Federal agencies exercise statutory authority to prescribe or enforce standards affecting occupational safety and health (29 USC 653(b)(1), Sec. 21(d) of the OCS Act). The Occupational Safety and Health Administration will cooperate with the Coast Guard to maximize the safety and health protection of employees, avoid duplication of effort, and avoid undue burdens on the maritime Industry.

Consistent with its statutory authority under the Occupational Safety and Health Act, OSHA:

- Prescribes occupational safety and health rules and regulations as necessary to carry out its responsibility under the OSHAct;
- 2. Inspects and investigates places of employment to insure compliance with any applicable OSHA requirements;

*"OCS Act" refers to the Outer Continental Shelf Lands Act, as Amended (43 USC 1331 et seq).

***OSHAct* refers to Public Law 91-595, the Occupational Safety and Health Act of 1970.

- 3. Responds to allegations of violations of applicable OSHA requirements and makes investigations where there are reasonable grounds to believe that a violation exists.
- 4. Issues citations and initiates appropriate civil and criminal procedures against employers for violations of applicable OSHA requirements;

IV. PROCEDURES

The two agencies agree, consistent with their statutory obligations, to observe the following procedures in carrying out their responsibilities to promote safe working conditions on the OCS:

A. Development and promulgation of standards

The Coast Guard will develop and promulgate necessary regulations to assure safe and healthful working conditions on the OCS. OSHA will continue to promulgate general standards, which may apply to working conditions on the OCS not being regulated by the Coast Guard. In developing regulations and standards, the two agencies will cooperate to the maximum extent possible. Such cooperation will include, but will not be limited to the following:

- 1. <u>Information and data availability</u>. For the purposes of identifying work hazards, determining accident or illness causes, developing corrective measures, and assessing the impacts of new or revised regulations or standards, the two agencies will exchange data and study results to the extent permitted by law.
- 2. Standards research and development projects. The two agencies will jointly participate in standards research and development projects of mutual interest and benefit.
- 3. Review of existing regulations and standards. The two agencies will jointly review existing USCG and OSHA regulations and standards to help identify hazards that require priority attention in Coast Guard regulations development projects;
- 4. Exchange of technical expertise. Each agency will provide the other with technical support, where leasible, to assist in the review of particular hazards or the development of regulations.
- 5. Early notice of rulemaking activities. The Coast Guard will provide for OSHA's review and consultation copies of drafts of advance notices of proposed rulemaking, notices of proposed rulemaking, and final rules, which relate to working conditions on the OCS. Likewise, OSHA will provide for the Coast Guard's review and consultation copies of drafts of advance notices of proposed rulemaking, notices of proposed rulemaking, and final rules, which have application to any working condition on the OCS. Publication of any rule, however, is not contingent upon receipt of comments.

B. Enforcement of regulations and standards

While OSHA has statutory responsibilities with respect to workplaces on the OCS, the following provisions have been drafted to emphasize the Coast Guard's increasing role for safety and health on the OCS, as provided under the OCS Lands Act Amendments of 1978 (Pub. L 95-372). Through this Act, Congress expressed the expectation that the Coast Guard would be the principal Federal agency in matters of occupational safety and health on the OCS.

1. Routine enforcement activities:

- a. The Coast Guard will continue to enforce existing regulations issued under its authority which affect working conditions on the OCS.
- b. The Coast Guard will also enforce any new occupational safety and health regulations promulgated under its authority affecting working conditions on the OCS.
- c. OSHA remains responsible for enforcing requirements adopted under the OSHAct which apply to working conditions on the OCS for which the Coast Guard or other Federal agencies have not exercised their statutory authority to prescribe or enforce standards affecting occupational safety and health. To minimize any duplication which may result from exercising this responsibility, OSHA will consult with the Coast Guard and seek to minimize the need for OSHA's routine inspection activity.

2. Investigation of accidents:

In accordance with regulations issued under its authority, the Coast Guard will investigate deaths, injuries and other casualties or accidents occurring as a result of operations conducted pursuant to the OCS Act. In the course of all such investigations, formal and informal, the Coast Guard will cooperate with OSHA with respect to identifying violations of applicable OSHA regulations related to the casualty or accident. Such cooperation will include: promptly making investigation information available to OSHA; inviting OSHA attendance at Coast Guard formal hearings; and developing lines of inquiry suggested by OSHA. Where a Coast Guard investigation identifies an apparent violation of an applicable OSHA regulation the Coast Guard will promptly notify OSHA and subsequently will cooperate with OSHA with respect to any enforcement action OSHA may undertake. This cooperation may include, but is not limited to, providing transportation, as available; provided, however, OSHA remains responsible for obtaining its own legal right of access to any facility.

3. Investigation of allegations:

The Coast Guard will review any allegation from any person of the existence of a violation of an occupational safety or health regulation or other unsafe working condition on the OCS and take appropriate action under the circumstances. Copies of complaints of occupational safety or health violations on the OCS received by OSHA will be referred to the appropriate Coast Guard district commander for action. The Coast Guard will notify OSHA as promptly as possible of the disposition of allegations forwarded by OSHA.

V. JOINT TRAINING PROGRAM

The two agencies will review the training needs of agency personnel with responsibilities for matters pertaining to safety and health on the OCS, and will develop programs responsive to these needs.

VL IMPLEMENTATION

The Coast Guard and OSHA shall each designate a representative who shall be responsible for coordinating implementation of the provisions of this Memorandum.

VIL EFFECTIVE DATE

This Memorandum is effective upon signature by the parties. It may be amended at any time by mutual written agreement of the agencies and may be terminated by either agency upon thirty days written notice.

VIII. SAVINGS PROVISION

Nothing in this Memorandum shall be deemed to alter, amend, or affect in any way the statutory authority of the Coast Guard or OSHA.

Signed At Washington, DC this 19th day of December, 1979.

primandant United States Coast Guard

Department of Transportation

Occupational Safety and Health Department of Labor

Appendix B

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION COAST GUARD OUTER CONTINENTAL SHELF COORDINATION LISTING

OSHA OFFICES

Regional Administrator U.S. Department of Labor-OSHA 16-18 North St. 1 Dock Square, 4th Floor Boston, MA 02109

COM: 617-223-6710 FTS: 223-6710

Area Director 400-2 Totten Pond Rd-2nd floor Waltham, MA 02154

COM: 617-890-1238 FTS: 839-7681

Area Director
U.S. Department of Labor-OSHA
U.S. Federal Bldg--Room 121
40 Western Avenue
Augusta, ME 04330

COM: 207-622-6171 FTS: 833-6417

Area Director
U.S. Department of Labor-OSHA
Federal Bldg and U.S. Post Office
Room 204
Providence, RI 02903
COM: 401-528-4669

COM: 401-528-4669 FTS: 838-4667

Regional Administrator
U.S. Department of Labor-OSHA
1515 Broadway (1 Astor Plaza)Room 3445
New York, NY 100

COM: 212-944-3426 FTS: 265-3432

COAST GUARD OFFICES

Commander (m)
First Coast Guard District
150 Causeway Street
Boston, MA 02114
FTS & COM: 617-223-3601

Commanding Officer
U.S. Coast Guard
Marine Safety Office
447 Commercial Street
Boston, MA 02109
FTS & COM: 617-223-1470

Commanding Officer
U.S. Coast Guard
Marine Safety Office
P. O. Box 108
Portland, ME 04112
FTS: 8-833-3251
COM: 207-780-3251

Commanding Officer
U.S. Coast Guard
Marine Safety Office
John O'Pastore Federal Bldg.
Providence, RI 02903
PTS: 8-838-4335
COM: 401-528-4335

Commander (m)
Third Coast Guard District
Governors Island
New York, NY 10004
PTS: 8-664-7852
COM: 212-668-7852

.

OSHA OFFICES

Area Director
U.S. Department of Labor-OSHA
Federal Bldg. and U.S. Post Office
Room 204
Providence, RI 02903
COM: 401-528-4669
FTS: 838-4667

Area Director
U.S. Department of Labor-OSHA
Room 242 U.S. Customs House
Second & Chestnut Street
Philadelphia, PA 19106
COM: 215-597-4955
FTS: 597-4955

Regional Administrator
U.S. Department of Labor-OSHA
Gateway Bldg. - Suite 2100
3535 Market Street
Philadelphia, PA 19104
COM: 215-596-1201
FTS: 596-1201

Safety Specialist
U.S. Department of Labor - OSHA
340 Federal Building
200 Granby Mall
Norfolk, VA 23510
COM: 804-441-3181
PTS: 827-3181

Area Director
U.S. Department of Labor-OSHA
Federal Building - Rm. 1110
Charles Center, 31 Hopkins Plaza
Baltimore, MD 21201
COM: 301-962-2840
FTS: 922-2840

COAST GUARD OFFICES

Supervisor
U.S. Coast Guard
Marine Inspection Detachment
Room 1, Customhouse
150 Bank St.
New London, CT 06320
FTS: 8-642-7203
COM: 203-442-5689

Commanding Officer
U.S. Coast Guard
Marine Inspection Office
801 Customhouse
Philadelphia, PA 19106
FTS & COM: 215-597-4350

Commander (m)
Fifth Coast Guard District
431 Crawford St.
Federal Building
Portsmouth, VA 23705
FTS: 8-827-9288
COM: 804-398-6288

Commanding Officer U.S. Coast Guard Marine Safety Office 200 Granby Mall Norfolk, VA 23510 FTS: 8-827-3300 COM: 804-441-3300

Commanding Officer
U.S. Coast Guard
Marine Safety Office
U.S. Customhouse
Baltimore, MD 21202
FTS: 8-922-3545
COM: 301-752-3573



OSHA OFFICES

Area Director
U.S. Department of Labor-OSHA
Federal Office Bldg. - Room 406
310 New Bern Avenue
Raleigh, NC 27601
COM: 919-755-4770
FTS: 672-4770

Area Director
U.S. Department of Labor-OSHA
Federal Office Bldg. - Room 406
310 New Bern Avenue
Raleigh, NC 27601
COM: 919-755-4770
FTS: 672-4770

Regional Administrator
U.S. Department of Labor-OSHA
1375 Peachtree St., N.E. - Suite 587
Atlanta, GA 30309
COM: 404-881-3573
FTS: 257-3573/2281

Area Director
U.S. Department of Labor-OSHA
Federal Building - Room 301
299 East Broward Blvd.
Fort Lauderdale, Florida 33301
COM: 305-527-7292

FTS: 820-7292

Area Director
U.S. Department of Labor - OSHA
Art Museum Plaza - Suite 4
2809 Art Museum Drive
Jacksonville, FL 32207
COM: 904-791-2895
FTS: 946-2895

Area Director
U.S. Department of Labor-OSHA
700 Twiggs St, Room 624
Tampa, FL 33602
COM: 813-228-2821
FTS: 826-2821/23

COAST GUARD OFFICES

Commanding Officer
U.S. Coast Guard
Marine Safety Office
Suite 20
201 N. Front St.
Wilmington, NC 28401
FTS: 8-671-4878
COM: 919-343-4878

Supervisor U.S. Coast Guard Marine Safety Detachment Room 128, Maritime Bldg. 113 Arendell St. Morehead City, NC 28557 FTS: 8-670-2438

COM: 919-726-1525

Commander (m)
Seventh Coast Guard District
51 S. W. 1st Avenue
Miami, FL 33130
FTS & COM: 305-350-5654

Commanding Officer
U.S. Coast Guard
Marine Safety Office
111 S. W. 3rd St.
Miami, FL 33130
FTS & COM: 305-350-5691

Commanding Officer
U.S. Coast Guard
Marine Safety Office
2831 Talleyrand Avenue
Jacksonville, FL 32206
FTS: 8-946-2648
COM: 904-791-2648

Commanding Officer U.S. Coast Guard Marine Safety Office 155 Columbia Drive Tampa, FL 33606 FTS: 8-826-2191 COM: 813-228-2191

OSHA OFFICES

Area Director
U.S. Department of Labor-OSHA
400 Mall Boulevard
Suite J
Savannah, GA 31405
COM: 912-354-0733
FTS: 248-4393

U.S. Department of Labor-OSHA 334 Meeting St, Room 312 Federal Bldg. - 6th floor Charleston, SC 29403 COM: 803-724-4529 FTS: 677-4529

Regional Administrator
U.S. Department of Labor-OSHA
555 Griffin Square Bldg.-Rm. 602
Dallas, TX 75202
COM: 214-767-4731

COM: 214-767-473. FTS: 729-4731

Area Director
U.S. Department of Labor-OSHA
600 South St. - Room 337
New Orleans, LA 70130
COM: 504-589-2451/2
FTS: 682-6166/7

Area Director
U.S. Department of Labor-OSHA
600 South St. - Room 337
New Orleans, LA 70130
COM: 504-589-2451/2
FTS: 682-6166/7

COAST GUARD OFFICES

Commanding Officer U.S. Coast Guard Marine Safety Office P. O. Box 8191 Savannah, GA 31412 FTS: 8-248-4347 COM: 912-232-4321

Commanding Officer U.S. Coast Guard Marine Safety Office 196 Tradd St. P. O. Box 724 Charleston, SC 29402 FTS: 8-677-4434 COM: 803-724-4433

Commander (m)
Eighth Coast Guard District
Rm. 1313 Hale Boggs Federal Bldg.
500 Camp St.
New Orleans, LA 70130

FTS: 8-682-6298 COM: 504-589-6298

Commanding Officer
U.S. Coast Guard
Marine Inspection Office
1440 Canal St.
Canal LaSalle Bldg., Suite 2300
New Orleans, LA 70112
FTS: 8-682-6273
COM: 504-589-6273

Supervisor
U.S. Coast Guard
Marine Inspection Detachment
P. O. Box 2374
Morgan City, LA 70380
FTS: 8-389-0515
COM: 504-384-8670

OSHA OFFICES

Area Director U.S. Department of Labor-OSHA 2156 Wooddale Blvd. Hoover Annex, Suite 200 Baton Rouge, LA 70806 COM: 504-923-0718 X474 FTS: 687-0474

Area Director
U.S. Department of Labor-OSHA
600 South St. - Rm. 337
New Orleans, LA 70130
COM: 504-589-2451/2
FTS: 682-6166/7

District Supervisor
U.S. Department of Labor-OSHA
4455 S. Podra Dr.
Suite 105
Corpus Christi, TX 78411
COM: 512-888-3257
FTS: 734-3257

Area Director
U.S. Department of Labor-OSHA
Riverview Professional Bldg.
1325 S. 77 Sunshine Strip, Suite 9
Harlingen, TX 78550
COM: 512-425-6811/12
FTS: 734-4516/18

Area Director
U.S. Department of Labor-OSHA
2320 La Branch St., Rm. 2118
Houston, TX 77004
COM: 713-226-5431
FTS: 527-5431

COAST GUARD OFFICES

Supervisor
U.S. Coast Guard
Marine Inspection Detachment
Room B-16
707 Florida Street
Baton Rouge, LA 70801
FTS: 8-687-0271
COM: 504-389-0271

Supervisor
U.S. Coast Guard
Marine Inspection Detachment
P.O. Drawer 989
Houma, LA 70360
COM ONLY: 504-868-5595

Commanding Officer
U.S. Coast Guard
Marine Safety Office
P. O. Box 1621
Corpus Christi, TX 78403
FTS: 8-734-3192
COM: 512-888-3192

Supervisor U.S. Coast Guard Marine Safety Detachment Box 2, Star Route Brownsville, TX 78521 FTS: 8-734-8283 COM: 512-831-9691

Commanding Officer
U.S. Coast Guard
Marine Safety Office
Rm. 313, Post Office Bldg.
601 Rosenberg
Galveston, TX 77550
FTS: 8-527-6655
COM: 713-763-1211 x655

OSHA OFFICES

Area Director
U.S. Department of Labor-OSHA
2320 La Branch St., Rm. 2118
Houston, TX 77004
COM: 713-226-5431
FTS: 527-5431

Area Director
U.S. Department of Labor-OSHA
951 Government St.
Suite 511
Mobile, AL 36602
COM: 205-690-2131
FTS: 537-2131

U.S. Department of Labor-OSHA Professional Bldg. - Suite 300 2900 North Street Beaumont, TX 77702 COM: 713-839-2420 FTS Phone: 527-2420

Regional Administrator
U.S. Department of Labor-OSHA
11349 Federal Bldg.
450 Golden Gate Ave.
P.O. Box 36017
San Francisco, CA 94102
COM: 415-556-0586
FTS: 556-0586

Area Director
U.S. Department of Labor-OSHA
400 Oceangate, Suite 530
Long Beach, CA 90802
COM: 213-432-3434
FTS: 796-2431

COAST GUARD OFFICES

Commanding Officer
U.S. Coast Guard
Marine Inspection Office
7300 Wingate St.
Houston, TX 77011
FTS: 8-527-5621
COM: 713-226-5621

Commanding Officer
U.S. Coast Guard
Marine Safety Office
200 Federal Office Bldg.
Mobile, AL 36602
FTS: 8-534-2201
COM: 205-690-2201

Commanding Officer
U.S. Coast Guard
Marine Safety Office
Federal Bldg. Customhouse
5th and Austin Ave
Port Arthur, TX 77640
FTS: 8-527-8244
COM: 713-983-8244

Commander (m)
Eleventh Coast Guard District
400 Oceangate
Union Bank Bldg.
Long Beach, CA 90822
FTS: 8-984-9211
COM: 213-590-2211

Commanding Officer
U.S. Coast Guard
Marine Inspection Office
165 North Pico Avenue
Long Beach, CA 90802
FTS: 8-984-9376
COM: 213-590-2376

OSHA OFFICES

Area Director
U.S. Department of Labor-OSHA
400 Oceangate, Suite 530
Long Beach, CA 90802
COM: 213-432-3434
FTS: 796-2431

Regional Administrator

FTS: 556-8743

11349 Federal Bldg.
450 Golden Gate Avenue
P.O. Box 36017
San Francisco, CA 94102
COM: 415-556-0586
FTS: 556-0586
District Director
U.S. Department of Labor - OSHA
11349 Federal Bldg.
450 Golden Gate Avenue
P.O. Box 36017
San Francisco, CA 94105
COM: 415-556-8743

Regional Administrator
U.S. Department of Labor-OSHA
Federal Office Bldg., Room 6003
909 First Avenue
Seattle, WA 98174
COM: 206-442-5930
FTS: 399-5930

Area Director
U.S. Department of Labor-OSHA
121-107th Street, N.E.
Bellevue, WA 98004
COM: 206-442-7520
FTS: 399-7520

COAST GUARD OFFICES

Commanding Officer U.S. Coast Guard Marine Safety Office 2710 Harbor Drive San Diego, CA 92101 FTS: 8-895-5860 COM: 714-293-5860

Commander (m)
Twelfth Coast Guard District
630 Sansome Street
San Francisco, CA 94126
FTS & COM: 415-556-3860

Commanding Officer
U.S. Coast Guard
Marine Safety Office
1 Embarcadero Center
Suite 309
San Francisco, CA 94111
FTS & COM: 415-556-1697

Commander (m)
Thirteenth Coast Guard District
915 Second Avenue
Seattle, WA 98174
FTS: 8-399-5078
COM: 206-442-5078

Commanding Officer
U.S. Coast Guard
Marine Inspection Office
1519 Alaskan Way S.
Building 1
Seattle, WA 98134
FTS: 8-399-7510
COM: 206-442-7510

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OSHA OFFICES

Area Director
U.S. Department of Labor-OSHA
1220 Southwest Third St.
Room 640
Portland, OR 97204
COM: 503-221-2251
FTS: 423-2251

Area Director
U.S. Department of Labor-OSHA
1220 Southwest Third St.
Room 640
Portland, OR 97204
COM: 503-221-2251
FTS: 423-2251

Area Director
U.S. Department of Labor-OSHA
121-107th St. N.E.
Bellevue, WA 98004
COM: 206-442-7520
FTS: 399-7520

Area Director
U.S. Department of Labor-OSHA
1220 Southwest Third St.
Room 640
Portland, OR 97204
COM: 503-221-2251
PTS: 423-2251

Regional Administrator
U.S. Department of Labor-OSHA
11349 Federal Building
450 Golden Gate Avenue
P.O. Box 36017
San Francisco, CA 94102
COM: 415-556-0586
FTS: 556-0586

COAST GUARD OFFICES

Commanding Officer
U.S. Coast Guard
Marine Safety Office
6767 N.Basin Avenue
Portland, OR 97217
FTS: 8-423-6320
COM: 503-221-6320

Supervisor
U.S. Coast Guard
Marine Safety Detachment
209 Federal Bldg.
750 Commercial Street
Astoria, OR 97103
FTS Oper; 8-423-4111
COM: 503-325-7338

Supervisor
U.S. Coast Guard
Marine Safety Detachment
Federal Bldg., Rm. 103
421 W. State Street
Aberdeen, WA 98520
FTS: 8-429-9269
COM: 206-269-9309

Supervisor
U.S. Coast Guard
Marine Safety Detachment
332 N. Front St.
Coos Bay, OR 97420
FTS: 8-429-9269
COM: 503-269-9309

Commander (m)
Fourteenth Coast Guard District
Prince Kalanianaole
Federal Building
300 Ala Moana Blvd.
Honolulu, III 96850
COM: 808-546-7531
(Dial FTS Oper. 8-556-0220,
which is San Francisco Oper.,
give Honolulu No.)

OREGON OCCUPATIONAL SAFETY AND HEALTH DIVISION DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

PROGRAM DIRECTIVE

Program Directive _ A-195 (formerly D-19) May 1, 1982 October 8. Revised .

SUBJECT:

Memorandum of Understanding Between the Occupational Safety and Health Administration, OR-OSHA, and the United States Coast Guard

AFFECTED CODES/

DIRECTIVES:

OSHA Instruction CPL 2.46

(1) PURPOSE: To inform OR-OSHA staff of the existence of federal program

directive.

BACKGROUND:

This directive has not been adopted into State language because of its limited application, but is provided for staff

information.

(3) ACTION:

This federal directive will be followed (see page 2, Section E) when determining OR-OSHA jurisdiction and enforcement, on

the Outer Continental Shelf of the Coast of Oregon.

EFFECTIVE

DATE:

This directive is effective immediately and will remain in

effect until cancelled or superseded.