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**REPORT TO THE OCCUPATIONAL
SAFETY AND HEALTH
ADMINISTRATION**



**COVID-19: TO PROTECT MISSION
CRITICAL WORKERS, OSHA COULD
LEVERAGE INSPECTION
COLLABORATION OPPORTUNITIES
WITH EXTERNAL FEDERAL AGENCIES**

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BRIEFLY...

COVID-19: TO PROTECT MISSION CRITICAL WORKERS, OSHA COULD LEVERAGE INSPECTION COLLABORATION OPPORTUNITIES WITH EXTERNAL FEDERAL AGENCIES

March 31, 2022

WHY OIG CONDUCTED THE AUDIT

While playing a critical role in the mission to ensure safe and healthful work environments, the Occupational Safety and Health Administration's (OSHA) corps of Compliance Safety and Health Officers (CSHO) declined over the last decade as the number of businesses increased. The COVID-19 pandemic further tested CSHO inspection and oversight capabilities when industries with high risk of exposure continued operating with employees on site. Given the resource constraint with CSHOs, this was an opportunity for OSHA to realize collaborative potential with other federal agencies' enforcement and oversight personnel to help protect workers from the contagion and prevent them from becoming casualties of the virus.

WHAT OIG DID

We conducted this performance audit to answer the following question:

To what extent did OSHA collaborate with external federal agencies' enforcement or oversight personnel to help safeguard U.S. workers during the pandemic?

We interviewed OSHA and other agency officials, analyzed OSHA's referral data, and reviewed information about high-risk industries, memoranda related to interagency collaboration, and public laws and regulations.

WHAT OIG FOUND

OSHA had not collaborated with external federal agencies' enforcement or oversight personnel to help safeguard mission critical U.S. workers during the pandemic.

From the onset of the pandemic, OSHA received a sudden influx of complaints. However, in order to reduce person-to-person contact for its own personnel, the agency decreased the number of its inspections, particularly onsite inspections. Despite receiving 15 percent more complaints in 2020 than in 2019, OSHA conducted 50 percent fewer inspections. This meant leaving employees vulnerable to COVID-19 as a workplace hazard.

With an already historically low number of CSHOs and a growing number of worksites to inspect, enhanced collaboration between OSHA and external federal agencies with enforcement personnel on site in high-risk COVID-19 industries could have better protected workers.

Instead, OSHA neither tracked nor analyzed inspection-related referrals made by external federal agencies to determine if those agencies were regularly referring potential hazards; and if not, OSHA did not gauge their related outreach and training needs. It also did not have up-to-date agreements with federal counterparts conducting enforcement or oversight activities during the pandemic that would have enabled OSHA to capitalize on collaborative efforts. By not identifying federal partners in a position to assist during a large-scale safety and health crisis and not having or creating collaborative agreements with those partners, OSHA lost a valuable opportunity to better protect U.S. workers.

WHAT OIG RECOMMENDED

We made two recommendations to OSHA to establish interagency collaboration by devising a plan containing training and outreach, and using memoranda of understanding or other written agreements.

READ THE FULL REPORT

<http://www.oig.dol.gov/public/reports/oa/2022/19-22-003-10-105.pdf>

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INSPECTOR GENERAL'S REPORT

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The Office of Inspector General (OIG) conducted a performance audit of the Occupational Safety and Health Administration's (OSHA) collaborative efforts with external federal agencies' enforcement or oversight personnel to help safeguard U.S. workers during a pandemic.

On March 13, 2020, by Proclamation 9994, the President declared a national emergency concerning the coronavirus (COVID-19) outbreak. Nearly two years later, the COVID-19 pandemic continues to pose a significant risk to U.S. public health and safety. Since the start of the pandemic, the U.S. has reported more than 67 million COVID-19 infections and over 853,000 related deaths.¹

While the COVID-19 outbreak resulted in many workplaces closing down and a sudden increase in telework, certain businesses continued their operations with mission critical employees reporting to their worksites, as they could not telework. Such employees worked in industries with some of the highest risks of COVID-19 exposure, including meat processing plants, nursing homes, hospitals, grocery stores, restaurants, department stores, and correctional institutions. More than one million mission critical workers became infected with COVID-19 and in some cases, did not survive.

OSHA's mission is to ensure employees work in a safe and healthful environment by setting and enforcing standards and by providing training, outreach, education, and assistance. However, over the past decade the number of OSHA

¹ Cases and deaths reported as of January 19, 2022, on CDC's COVID Data Tracker.

Compliance Safety and Health Officers (CSHO) has decreased while business establishments increased. Therefore, OSHA collaboration with external federal agencies' enforcement or oversight personnel to supplement its reduced inspection resources may better protect U.S. workers, especially during a pandemic.

Accordingly, we conducted an audit to answer the following question:

To what extent did OSHA collaborate with external federal agencies' enforcement or oversight personnel to help safeguard U.S. workers during the pandemic?

We determined OSHA had not collaborated with external federal agencies' enforcement or oversight personnel to help safeguard mission critical U.S workers during the COVID-19 pandemic.

We conducted our audit work from October 29, 2020, through January 19, 2022. OSHA provided referral data from February 1, 2020, to November 17, 2020. We obtained and reviewed OSHA's Memoranda of Understanding with external federal agencies through OSHA's public website. We also reviewed information provided by officials from external federal agencies that have enforcement authority for industries and occupations at elevated risk for contracting COVID-19. Lastly, we reviewed OSHA training documents and outreach efforts with external federal agencies.

RESULTS

OSHA did not collaborate to encourage referrals² of potential COVID-19 safety and health hazards from external federal agency personnel active in industries with a high-risk of COVID-19 exposure. These high-risk industries have oversight and enforcement personnel on-site from the U.S. Department of Agriculture's Food Safety Inspection Service (FSIS); the Department of Health and Human Service's Food and Drug Administration (FDA) and Centers for Medicare and Medicaid Services (CMS); and the Department of Justice's Bureau of Prisons (BOP). OSHA viewed collaboration with these external agencies as separate from its enforcement capabilities, rather than as a way to enhance its enforcement. However, the Wage and Hour Division (WHD) and OSHA, both

² A referral is an allegation of a potential workplace hazard or violation received by OSHA from a variety of potential sources including a state or local health department, an employee, the media, or another government agency.

internal Department of Labor (DOL) agencies, indicated collaboration helped them achieve their individual missions.

Not only did OSHA fail to leverage opportunities for collaboration with external agencies, it also did not identify those external agencies with enforcement or oversight personnel who would be active at worksites and could inform OSHA's hazard-specific outreach and training. This is critical because complaints increased 15 percent from 2019 to 2020, while OSHA sharply reduced its onsite inspections during COVID-19 when it already had historically low number of inspectors. OSHA and WHD entered into a collaborative Memorandum of Understanding (MOU) in August 2021 that recognized the value of a collaborative partnership to protect the health and well-being of the nation's workforce. However, OSHA had not created any additional MOUs nor updated existing ones focusing on collaboration with external federal agencies that conduct enforcement or oversight activities of high-risk industries and could have made referrals during the pandemic.

Furthermore, OSHA did not track referrals it received to identify the sources and review outcomes of those referrals. OSHA also did not analyze this information to determine which agencies did not regularly make referrals and which areas and types of outreach and training might be needed to encourage external agencies to share their referrals. Based on our review, OSHA could increase its collaborative efforts with external federal agencies' enforcement or oversight personnel to help safeguard U.S. workers during the current pandemic, as well as any future large-scale safety and health crisis.

We recognize the challenges external federal agencies' enforcement or oversight personnel faced in referring worker safety and health hazards to OSHA. Personnel hired and trained to assess compliance with their agency's applicable rules and regulations were not necessarily trained to identify potential worker safety and health hazards according to OSHA's rules and regulations. Since OSHA's mission and work was not within their scope, external federal agencies did not want to increase their staff's workload or overstep their authority.

However, during the current pandemic, OSHA could have done more in terms of collaborative efforts by identifying those external federal agencies with enforcement or oversight personnel in higher-risk industries and using their input to inform hazard-specific outreach and training. OSHA could have also tracked and analyzed its referral information to determine the outreach and types of training those agencies might need to increase the likelihood of referrals being made to OSHA. It also could have explored mechanisms, such as MOUs or other written agreements, with federal agencies that oversee high-risk industries; and updated its existing MOUs with external agencies to ensure they are current and include accountability characteristics.

**OSHA DID NOT COLLABORATE TO ENHANCE
ITS ENFORCEMENT AND OVERSIGHT
ACTIVITIES TO HELP SAFEGUARD MISSION
CRITICAL WORKERS DURING THE
PANDEMIC**

The COVID-19 pandemic created a unique challenge for OSHA—namely, how to prevent, to the greatest extent possible, the transmission of a highly contagious virus in worksites where employees deemed mission critical continued to work. A number of such employees worked in industries at highest risk of COVID-19 exposure, including meat processing plants, nursing homes, hospitals, grocery stores, restaurants, and correctional institutions. As of January 19, 2022, more than 1 million of these mission critical workers contracted COVID-19, with many resulting fatalities. Reducing morbidity and mortality rates of these essential workers required a whole-of-government approach from multiple agencies.

As a means of reducing person-to-person contact during the pandemic, OSHA reduced the number of its inspections, particularly onsite inspections, while already having a historically low number of CSHOs with a growing number of facilities to inspect. With reduced staff resources and fewer OSHA personnel onsite, collaboration between OSHA and external federal agencies with onsite enforcement or oversight personnel operating in high-risk COVID-19 industries was key to keeping mission critical workers safe and healthy at work.

Although important, OSHA stated collaborating with external federal agencies “does not come before direct enforcement of our regulations and standards, outreach to the regulated community, setting of standards and providing guidance, training compliance officers on unique hazards, etc.” This indicated OSHA prioritized its enforcement activities to such a degree that it viewed collaboration with its federal partners as separate from rather than integral to its enforcement capabilities even though OSHA’s counterparts at external federal agencies were present at worksites when OSHA was not during the pandemic. As there are no statutory mandates, policies, or procedures on collaborating with external federal agencies’ enforcement or oversight personnel during large-scale safety and health crises, such as the COVID-19 pandemic, OSHA and external federal agencies were generally hesitant to collaborate on the safety and health of mission critical U.S. workers during the pandemic.

As a result, OSHA did not attempt to collaborate with external federal agencies’ enforcement or oversight personnel, and therefore, failed to realize the potential benefits that could have been achieved through interagency collaboration to protect the workers most vulnerable during the pandemic.

LACK OF COLLABORATION AMIDST OSHA'S LIMITED RESOURCES AND RISING COMPLAINTS

According to a February 25, 2021 OIG report,³ OSHA received a sudden influx of complaints since the start of the pandemic, but as a means of reducing person-to-person contact, the agency reduced the number of its inspections, particularly onsite inspections. Compared to a similar period in 2019, OSHA received 15 percent more complaints in 2020 but performed 50 percent fewer inspections. Consequently, workplace hazards might have gone unidentified and unabated longer, potentially leaving employees vulnerable to a life-threatening respiratory disease. Thus, collaboration between OSHA and external federal agencies with onsite enforcement personnel in high-risk COVID-19 industries might have been key to abate the soaring infection rates among mission critical workers.

With the Occupational Safety and Health Act of 1970 (OSH Act), Congress created OSHA, requiring OSHA to ensure all employers are in compliance with hazard-specific standards and they provide a work environment "free from recognized hazards that are causing or are likely to cause death or serious physical harm." In its mission to protect workers, OSHA could leverage collaborative partnerships with external agencies' enforcement or oversight personnel to proactively encourage they refer potential safety and health hazards to OSHA.

In the last decade, the number of OSHA's federal CSHOs has decreased from 1,059 in 2011 to 748 in 2020 while business establishments to inspect increased by over 600,000 to nearly 8 million.⁴ Collaborating with external federal agencies' enforcement or oversight personnel could help OSHA bolster its reduced inspection resources and better protect workers during a large-scale safety and health crisis such as the COVID-19 pandemic. OSHA did not leverage external federal agencies' enforcement or oversight personnel to help ensure potential COVID-19 hazards were addressed at job sites. Potential hazards could include lack of Personal Protective Equipment (PPE) and physical distancing of less than 6 feet. External agencies' onsite personnel could have easily observed these highly visible hazards and made a referral for remediation to OSHA.

The Government Performance and Results Modernization Act of 2010 encourages interagency collaboration on common goals. Common goals and interagency collaboration were also a focus of President Joe Biden's "2021 National Strategy for the COVID-19 Response and Pandemic Preparedness"

³ DOL OIG, "COVID-19: Increased Worksite Complaints and Reduced OSHA Inspections Leave U.S. Workers Safety at Increased Risk," (February 25, 2021; Report No. 19-21-003-10-105).

⁴ 2018 U.S. Census data is the most current data available for the total number of business establishments in operation.

(National Strategy). The National Strategy emphasizes several common goals where collaboration between OSHA and external federal agencies is key to protecting workers and addressing COVID-19. For example, in accordance with the National Strategy’s common goal to protect workers and issue stronger worker safety guidance, the Administration took steps to cover workers not typically under OSHA’s purview by directing external agencies like the Department of Transportation to keep workers safe. Further, the Administration directed the Small Business Administration to work with the DOL to disseminate updated OSHA guidance on worker safety and support businesses in implementing the updated guidance. Similarly, a recent Government Accountability Office (GAO) report⁵ contains a recommendation for OSHA to address resource and communication challenges related to the pandemic. GAO recommended:

The Assistant Secretary of Labor for Occupational Safety and Health should assess—as soon as feasible and, as appropriate, periodically thereafter—various challenges related to resources and to communication and guidance that the Occupational Safety and Health Administration has faced in its response to the COVID-19 pandemic and should take related actions as warranted.

INTERAGENCY COLLABORATION PRESENTS OPPORTUNITIES AND CHALLENGES

In addressing the pandemic’s challenges, interagency collaboration entails both opportunities and challenges for agencies as they work towards aligning their resources under common goals while serving their own unique mission and culture.

In 2012, GAO issued a report⁶ to address the challenges of interagency collaboration and promote best practices for it. GAO determined collaborative efforts benefit when they address the following seven key features:

⁵ GAO, “COVID-19: Additional Actions Needed to Improve Accountability and Program Effectiveness of Federal Response,” (October 2021; Report No. GAO-22-105051).

⁶ GAO, “Managing for Results: Key Considerations for Implementing Interagency Collaborative Mechanisms,” (September 2012; Report No. GAO-12-1022).

1. Outcomes and Accountability
2. Bridging Organizational Cultures
3. Leadership
4. Clarity of Roles and Responsibilities
5. Participants
6. Resources
7. Written Guidance and Agreements

By implementing these best practices, OSHA could have addressed potential challenges with collaboration proactively and effectively to better protect U.S. workers, their family members, and communities, especially during the highly transmissible phases of the COVID-19 pandemic.

According to the Centers for Disease Control and Prevention (CDC), as of January 19, 2022, there were over 869,000 health care personnel COVID-19 cases with over 3,400 deaths and 167,000 correctional institution staff COVID-19 cases with 292 deaths. In April 2021, a WebMD news article reported meatpacking plants were the source of an estimated 334,000 COVID-19 cases in the U.S.⁷ In the same month, the United Food and Commercial Workers International reported there were at least 91,400 COVID-19 infections among frontline grocery workers, with 456 deaths.⁸ Additionally, the U.S. House of Representatives Select Subcommittee on the Coronavirus Crisis released data in October 2021 showing COVID-19 infections and deaths among workers at five of the largest meatpacking companies were nearly three times higher than previous estimates. At least 59,000 employees at those five companies contracted COVID-19, with 269 deaths amongst those employees.⁹

One way that external federal agencies may help to protect workers from health hazards including but not limited to the COVID-19 pandemic, is to refer suspected health hazards to OSHA via phone, fax, or OSHA's online complaint form. A referral is an allegation of a potential workplace hazard or violation that OSHA receives from a variety of potential sources, including a state or local health department, an employee, the media, or another government agency. For example, enforcement or oversight personnel from any federal agency can refer to OSHA for investigation suspected hazards of workers not wearing PPE or physical distancing a minimum of 6 feet.

⁷ WebMD, "Meatpacking Plants Accounted for 334,000 U.S. COVID Cases," (April 20, 2021).

⁸ Supermarket News, "Grocery worker COVID-19 infections, deaths rise: UFCW report," (April 22, 2021).

⁹ Select Subcommittee on the Coronavirus Crisis, "Select Subcommittee Releases Data Showing Coronavirus Infections And Deaths Among Meatpacking Workers At Top Five Companies Were Nearly Three Times Higher Than Previous Estimates," (October 27, 2021).

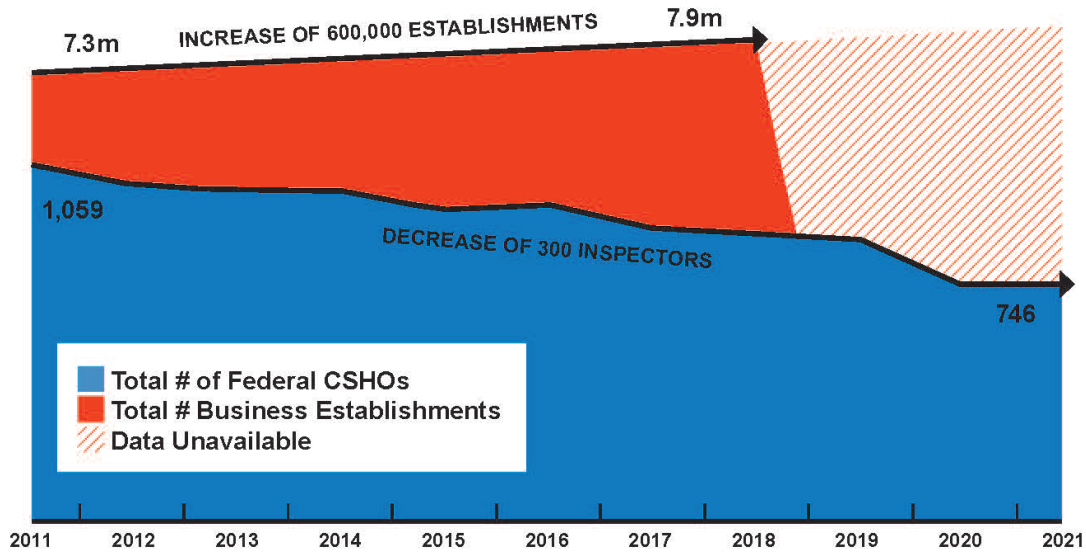
OSHA COULD HAVE LEVERAGED INTERAGENCY COLLABORATION TO TARGET HIGH-RISK INDUSTRIES DURING THE PANDEMIC

Over the past decade, the number of business establishments in the U.S. has continued to increase while the number of federal CSHOs to inspect those establishments has decreased (see Table 1). With only 748 federal and 1,023 State Plan CSHOs¹⁰ responsible for the safety and health of 130 million workers at approximately 8 million worksites, OSHA was already challenged to ensure the safety and health of workers under normal circumstances, and then especially so during a pandemic. Using funds allocated to OSHA through the American Rescue Plan Act of 2021, OSHA planned to hire 150¹¹ CSHOs but despite its hiring efforts, OSHA wound up with a net loss of 2 federal CSHOs overall. In order to inspect all worksites, each CSHO, both federal and state, would have to inspect over 4,300 worksites or nearly 17 sites per day, 5 days per week for one year. Collaboration between OSHA and external federal agencies with onsite enforcement or oversight personnel that focus on the referral process could have assisted in expanding workplace safety and health referrals, and thus increased worker protection during the pandemic.

¹⁰ The OSH Act provides safety and health protections to most private sector employers and workers in all 50 states, the District of Columbia, and the U.S. territories – either directly through OSHA or through an OSHA-approved State Plan. Twenty-two State Plans cover state and local government and private sector workers, and six State Plans cover only state and local government workers. State Plans are required to be at least as effective as OSHA in adopting workplace safety and health standards and enforcing these standards within their area of coverage throughout the state. Federal CSHOs oversee and enforce worker safety and health issues in federal OSHA states.

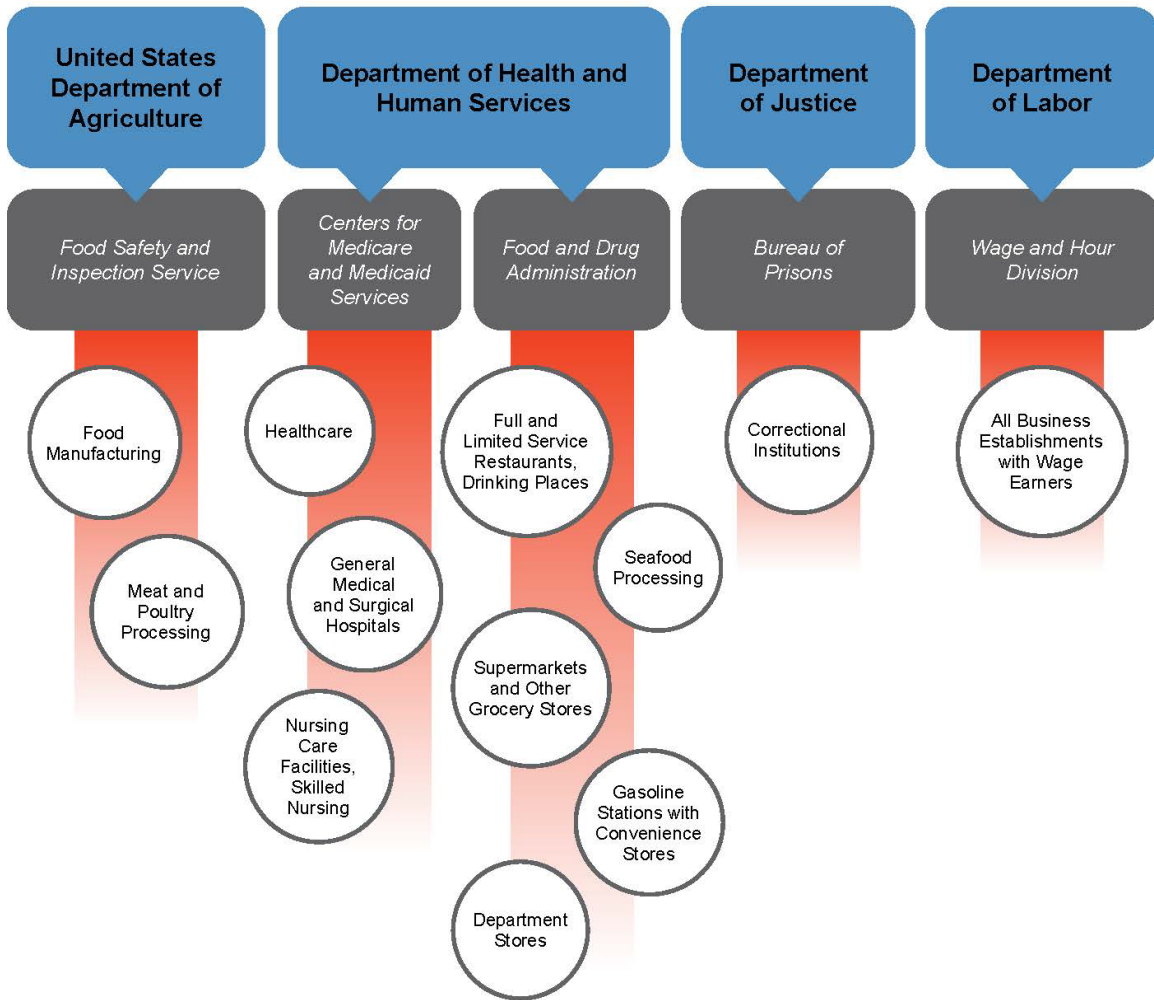
¹¹ This figure includes 85 OSHA federal CSHOs and 65 State Plan CSHOs.

Table 1: Federal CSHOs and Business Establishments



We reviewed OSHA’s list of 20 higher-risk COVID-19 industries and analyzed referral data from those industries to determine a list of 10 industries with the most COVID-19 referrals (see Table 2). We determined FSIS, FDA, CMS, and BOP were primarily responsible for the enforcement or oversight of the occupations in those 10 higher-risk industries. We focused on OSHA’s collaborative efforts with those agencies and added WHD based on its prominent enforcement presence in various sectors, including the higher-risk industries that were the focus of our audit work.

Table 2: Agencies with Enforcement or Oversight in Industries with Higher COVID-19 Exposure



GAO’s best practices for interagency collaboration include defining the right participants, their roles and responsibilities, the needed resources, and bridging organizational cultures. Although OSHA had identified the top industries in which workers were at higher risk for COVID-19, such as meat processing plants, long-term care facilities, and hospitals, it had not identified the federal agencies that were conducting onsite enforcement or oversight activities in those industries. We found OSHA had not analyzed its referral data. OSHA analysis of referral data would have allowed it to determine the oversight agencies that regularly participated in making referrals and the oversight agencies that might need more outreach and training to increase their participation.

To understand OSHA’s collaborative efforts with external federal agencies, we sent a questionnaire and invited interviews with BOP, CMS, FDA, FSIS, and WHD’s oversight personnel and enforcement staff. BOP and WHD engaged in our interviews while CMS, FDA, and FSIS supplied written responses to our questionnaire.

We discovered in our interviews with BOP officials and enforcement or oversight personnel and from written responses provided by CMS and FDA officials and enforcement or oversight personnel that they had seen workers without PPE and not physical distancing during the pandemic. While OSHA has an operational online portal to receive referrals from external agencies, the personnel from external agencies needed to know where to find the website and how to navigate the referral process online, or alternatively, how to submit referrals by fax, phone, or email. BOP, CMS, and FDA indicated they do not typically refer potential hazards to OSHA. For example, 75 percent of BOP personnel we interviewed had observed potential COVID-19 worker safety and health hazards during the COVID-19 pandemic and 87 percent did not refer them to OSHA. BOP stated it handles potential hazards “on the spot” and it would take too long for OSHA to address.

FDA personnel asserted they did not receive regular training on OSHA standards. OSHA had not provided referral process and other safety and health hazards training to FDA since 2011 despite guidance updates. The 2011 training predated OSHA’s 2014 and 2020 guidance about submitting electronic safety and health complaints/referrals and other technological advances in the past decade. As a result, the 2011 training content might be obsolete. Additionally, FDA officials explained when an FDA investigator observes an egregious condition related to a potential safety and health hazard, the investigator works with division management to make the appropriate referral to state and/or local authorities.

Because OSHA did not track referrals by agency in its Occupational Safety and Health Information System (OIS), we were unable to verify whether or not OSHA received regular referrals from external federal agencies. Considering this information, OSHA needed to conduct more outreach and training on easy-to-identify hazards to help ensure external agencies understood this aspect of the referral process, and to track incoming referrals to ensure the training had been effective.

Prior to the pandemic, despite receiving some training on potential safety and health hazards and referrals, only 50 percent of BOP staff interviewed said the training was useful, and pre-pandemic, none had ever referred potential hazards to OSHA. When asked, only one interviewee indicated they could see some benefit to making referrals to OSHA.

OSHA did not encourage or train external agencies' enforcement or oversight personnel to make referrals when it issued guidance describing highly visible safety and health hazards related to COVID-19. OSHA does not normally track training at the national level and OSHA officials from the National Office had to request a list of trainings provided between August 2019 and August 2021 from the local area offices. The local areas offices provided a list of 44 training sessions including topics such as jurisdiction, mission, referrals, hazard identification, effect of the pandemic on enforcement, as well as WHD cross-training. Although 3 of the 44 trainings included information on referrals those trainings were not provided to external enforcement or oversight personnel.

Agencies faced organizational cultural gaps and challenges in making referrals that OSHA could have addressed and overcome through focused training. These challenges included differing missions, such as FSIS' mission to ensure the safety and health of meat, poultry, and eggs, not workers' safety unless it effects the quality of the product¹². Likewise, FSIS, CMS, and FDA officials emphasized they do not have the authority to enforce OSHA standards. These statements indicated confusion regarding OSHA's referral process. Agency mission and authority are, in fact, not deterrents to making referrals. A referral is not an enforcement action that requires authority or a related mission; rather it is a notification to OSHA about an observed potential safety and health hazard, which OSHA may determine requires further investigation.

Additionally, a prior GAO report¹³ found FSIS inspectors were hesitant to refer potential safety and health hazards to OSHA. Historically, OSHA had used referrals from FSIS to inspect FSIS, rather than the employer named in its referral. Consequently, OSHA's actions presented a challenge to FSIS' referral culture. OSHA outreach and training could have helped to bridge cultural gaps and challenges and sent a clearer message to external agencies that making a referral is not enforcing a standard and does not require OSHA authority. It is particularly important that OSHA clarify these issues of possible miscommunication and misunderstanding with FSIS enforcement personnel as they play a prominent role in meat and poultry processing facilities, which are some of the highest-risk COVID-19 industries and more prone to worker safety and health hazards.

¹² Under 29 CFR 1960, each federal agency must assure safe and healthful working conditions for its federal workers. It is OSHA's mission to assure private sector employers provide safe and healthful working conditions for their workers and this audit focused on the safety and health of private sector workers in industries at higher risk of exposure to COVID-19.

¹³ GAO, "Workplace Safety and Health: Better Outreach, Collaboration, and Information Needed to Help Protect Workers at Meat and Poultry Plants," (November 2017; Report No. GAO-18-12).

Some agencies, such as BOP and CMS, have their own safety and health programs and personnel who address safety and health hazards internally, and there was no requirement for those organizations to refer hazards to OSHA, unless they resulted in a hospitalization or fatality. Employees may opt to submit complaints to OSHA instead of internal resolution. However, workers may be reluctant to share their workplace concerns due to some being in a vulnerable status as undocumented or foreign-born workers, or fear of potentially lacking anonymity. Likewise, these employees may be less likely to pursue abatement or contact OSHA if an employer does not correct a hazard. OSHA had not collaborated with agencies that have internal safety programs to ensure those programs effectively corrected hazardous worker safety and health conditions specifically related to the COVID-19 pandemic. OSHA stated it was appropriate for federal agencies to try to rectify issues in the business establishments they oversee, including correctional institutions, hospitals, and meat processing plants, before referring those issues to OSHA. OSHA also had not collaborated to define when potential hazards, excluding hospitalizations and fatalities, should be referred to OSHA versus handled internally.

Our interviews with WHD indicated greater success in collaborating with OSHA. WHD and OSHA, both DOL agencies, reported concerted efforts to bring together both of their enforcement programs in a cohesive way to satisfy their missions. For example, WHD has established agency cross-training to learn about OSHA regulations and requirements and outlined OSHA's referral process in WHD's Field Operations Handbook. Potentially, due to these concerted efforts, WHD reported it made health and safety referrals to OSHA during the pandemic via phone calls or emails. Because OSHA does not track its referrals by agency as a searchable field in OIS, we could not confirm WHD's referrals.

Unlike WHD's close collaboration with OSHA to enhance each agency's enforcement capabilities, there was no such collaboration with agencies external to DOL. External agencies said although they had observed safety and health hazards in industries at higher risk of exposure to COVID-19, they did not refer them to OSHA. OSHA outreach might have been necessary to help ensure external agencies knew how to navigate its referral system and address challenges to making referrals such as those described by FSIS, CMS, FDA, and BOP.

OSHA did not conduct focused referral outreach or training to external agencies' enforcement or oversight personnel in high-risk industries. For example, OSHA had not identified enforcement or oversight roles at external federal agencies, such as CMS surveyors and FDA division managers, to help ensure they knew how to make referrals to OSHA. Moreover, OSHA had not evaluated its referral data to determine the extent to which external federal agencies refer potential safety and health hazards and had not determined if additional outreach or

training might be needed in some agencies, such as those agencies with oversight responsibility for industries with high-risk COVID-19 occupations. These examples highlight lost opportunities for OSHA to protect workers, their families, and communities from the spread of COVID-19. To better protect workers, OSHA could still leverage external agency resources for the current ongoing pandemic and future large-scale safety and health crises.

Unfortunately, there are no statutory mandates, policies, or procedures to ensure OSHA's collaboration with external federal agencies' enforcement or oversight personnel during evolving emergency circumstances, such as the COVID-19 pandemic. Lacking a mandate, OSHA did not develop collaboration with external federal agencies as an important tool to aid enforcement and address the organizational culture gaps and challenges presented by different agencies' mission-related priorities.

As part of its mission to protect workers, OSHA could have invested greater effort towards collaborating with external agencies' enforcement or oversight personnel to address challenges and help ensure partner agencies referred easily identifiable safety and health hazards to OSHA during the pandemic. OSHA had not identified enforcement or oversight agencies that could have benefited from outreach and training on OSHA's referral process. Without delivering the necessary outreach and training, OSHA could not leverage the observations of external federal agencies' enforcement or oversight personnel active on job sites regarding potential safety and health hazards.

OSHA'S MEMORANDA OF UNDERSTANDING ARE OUTDATED OR LACK KEY FEATURES AS COLLABORATIVE TOOLS

MOUs are important tools for collaborating with external federal agencies, but OSHA's MOUs regarding interagency collaboration are outdated or lack key features to effectively address current or future large-scale safety and health crises such as COVID-19.

We evaluated OSHA's current MOUs¹⁴ regarding collaboration with external federal agencies against GAO's "Key Considerations for Implementing Interagency Collaborative Mechanisms" and the Department of Labor Manual Series (DLMS) 1-700: Memorandum of Understanding. DLMS 1-700, issued in August 2020, which defines an MOU as an agreement between two or more parties that constitutes an understanding between the parties. The DLMS further states all MOUs involving DOL agencies must be in the best interest of the

¹⁴ At the time of our audit fieldwork, OSHA had MOUs dated from 1974 to 2021.

federal government, consistent with Departmental policy and applicable laws, and approved by the Department. Additionally, some MOUs are defined as informal and not legally enforceable (i.e., non-binding), serving only to memorialize the intent and purpose of the parties' working relationship, whereas other MOUs may be more formal and/or legally enforceable (i.e., binding) on the parties.

We determined OSHA's collaborative MOUs are outdated or lack key considerations to effectively address an emerging crisis situation such as COVID-19. Specifically, in comparison to the seven key features outlined in GAO's best practices for interagency collaboration, OSHA's collaborative MOUs lacked verbiage to identify and evaluate short- and long-term goals; did not contain processes or procedures to help bridge organizational cultures between agencies; did not clearly define roles and responsibilities; and did not outline the specific resources required to accomplish the intention of the MOU.

The DLMS states with the exception of detail MOUs, which are shorter in duration, MOUs may extend up to a five-year period of agreement. MOUs that commit budgetary resources must follow applicable appropriation laws or other legal limits regarding the obligation and expenditure of funds to determine an MOU's period of performance. We noted of OSHA's 47 MOUs, 43 extended beyond a five-year extension. OSHA issued just 10 MOUs in the past decade and only 4 in the past 5 years. We also noted although OSHA entered into a collaborative MOU with WHD in August 2021, it did not establish any additional collaborative MOUs or other written agreements to protect workers during the pandemic — indicating OSHA does not regularly update or commonly use MOUs as a tool for collaboration.

Of the 47 MOUs on OSHA's public website, we evaluated the 18 MOUs most related to our audit objective. We found many key elements of GAO's best practices for collaboration were missing from those 18 MOUs.

GAO reported defining outcomes and accountability is a key feature for successful collaboration. Nonetheless, OSHA did not clearly define short-term and long-term outcomes, nor did it define and implement tracking and monitoring mechanisms in its collaborative MOUs. For example:

- OSHA officials stated MOUs related to interagency collaboration help facilitate the relationships between various agencies, but they could not evaluate whether external federal agency personnel were actually referring issues they had observed.
- In a 2011 MOU, OSHA came to an agreement with FDA to develop a practicable process including procedures and criteria for information

sharing and a plan for implementation; however, this was never completed.

- In 2012, GAO recommended the Assistant Secretary of Labor for Occupational Safety and Health should work with FSIS to assess the implementation of their 1994 MOU, make needed changes to ensure improved collaboration, and set specific timeframes for periodic evaluations of the MOU. At the time of our audit fieldwork, the MOU was not finalized and OSHA said it had removed the outcomes and accountability features as part of its update.
- In August 2021, OSHA and WHD finalized their MOU that recognized the value of a collaborative partnership to protect the health and well-being of the nation’s workforce. However, the MOU focuses on interactions between the agencies while lacking outcomes.
- OSHA officials indicated CSHOs at the local level use various MOUs to determine jurisdiction and share information with federal partners.

GAO also indicated roles, responsibilities, and resources are key features of collaborative efforts that need to be defined. Yet OSHA did not define resource commitments or include information on how to fund or staff the collaborative efforts in its MOUs, stating it “does not consider this to be critical for identifying in its MOUs.” Of the MOUs we evaluated, 50 percent did not contain language to determine whether an agency’s commitment of resources was allowable and only 28 percent included information describing how to fund and staff the collaborative mechanism. In addition, GAO noted online tools are useful mechanisms for interagency collaboration. Although OSHA has an online tool to receive referrals from external agencies, it had not developed or referenced online tools for any of the MOUs we reviewed, mostly because the MOUs pre-dated the long-standing practice of using online tools as normal business practice.

GAO’s key features for successful interagency collaboration also included using written guidance and agreements. However, OSHA had not entered into written agreements with all of the agencies that have enforcement or oversight personnel in high-risk COVID-19 industries, nor had the agency undertaken initiatives to update existing MOUs. For example:

- OSHA established an MOU with WHD during August 2021; however, it did not establish any additional collaborative MOUs or other written agreements to protect workers during the pandemic.
- According to OSHA officials, periodically updating MOUs was not necessary, unless an issue surfaced, since the fundamental mission and

responsibilities of a cabinet-level Department tend not to change over time. Therefore, the existing MOUs were still helpful for the field offices.

- OSHA stated, “While updating timeframes may have been contained in the original MOU agreement resource restrictions require the Agency to focus its efforts in areas of the greatest benefit for the Agency.”
- There was no MOU between BOP and OSHA.
- There was no MOU between CMS and OSHA.
- OSHA said it informally collaborated with external agencies, such as the CDC, National Institute for Occupational Safety and Health, and USDA, during the pandemic to consult on best practices, continually updated science, and issuing guidance. However, it did not document its meetings with its collaborative stakeholders or otherwise monitor and track its progress toward common collaborative goals.

OSHA’s most current MOUs were ineffective to put into motion a whole-of-government approach for large-scale safety and health crises such as the COVID-19 pandemic. OSHA used MOUs to share information, but had not incorporated specific, outcome-oriented, and accountability characteristics, as recommended to OSHA in prior GAO reports or according to GAO’s best practices regarding the seven key features benefitting collaboration in the federal government.

OSHA could take proactive steps by incorporating GAO’s seven key features into its collaborative MOUs under development or being updated. The objective is for OSHA to encourage external federal agencies with enforcement or oversight personnel directly at worksites to make referrals to better protect the safety and health of U.S. workers.

OIG’S RECOMMENDATIONS

We recommend the Assistant Secretary for Occupational Safety and Health:

1. Develop an OSHA outreach plan to be activated during a large-scale safety and health crises such as the COVID-19 pandemic that (a) identifies external federal agencies with enforcement or oversight personnel who are active on worksites and (b) defines how OSHA will collaborate with those agencies. OSHA should consider incorporating into

- the plan: a process to identify and document highly visible, safety and health hazards for large-scale safety and health crises; a plan for how OSHA will conduct related outreach and training on those hazards and how to refer them to OSHA; and a tracking system for agency referrals and outcomes of those referrals, using that information to periodically inform the outreach plan on areas and types of guidance and training the agencies' oversight and enforcement personnel need.
2. Explore mechanisms to enhance collaboration, such as MOUs or other written agreements using GAO's seven key features for collaboration, and incorporate a process to utilize those mechanisms into the outreach plan.

SUMMARY OF OSHA'S RESPONSE

OSHA generally disagreed with the report and provided a number of comments. We considered OSHA's comments to the report and adjusted the report as appropriate. However, OSHA's response did not change our conclusions in the report.

OSHA's response stated it collaborated with external agencies in numerous ways through workgroups and meetings as evidence of their collaboration with external federal agencies. However, we still maintain that OSHA could have invested greater effort towards collaborating with external agencies' enforcement or oversight personnel to address challenges, and to help ensure partner agencies referred easily identifiable safety and health hazards to OSHA during large-scale safety and health events.

Additionally, OSHA's response asserted under 29 CFR 1960, federal agencies have occupational safety and health responsibilities and authority for their own employees, including training all their employees on occupational safety and health, and that these federal agencies can request assistance from OSHA when needed. However, it is OSHA's mission to ensure private sector employers provide safe and healthful working conditions for their workers by setting and enforcing standards and by providing training, outreach, education, and assistance.

This audit focused on the safety and health of private sector workers in industries at higher risk of exposure to COVID-19.

OSHA also recommended we modify our second recommendation to focus on actions OSHA can undertake to ensure federal agencies understand their responsibilities under 29 CFR 1960. The intention of our recommendation to

explore mechanisms to enhance collaboration, such as MOUs or other written agreements is for OSHA to enhance its collaborative efforts with external federal agencies to be better prepared for future large-scale safety and health events. OSHA can include information on federal agencies' responsibilities under 29 CFR 1960 as part of its enhanced collaborative efforts with external federal agencies. Thus, we did not make any changes to the recommendation.

OSHA's response to our draft report is included in its entirety in Appendix B.

We appreciate the cooperation and courtesies OSHA extended us during this audit. OIG personnel who made major contributions to this report are listed in Appendix C.



Carolyn R. Hantz
Assistant Inspector General for Audit

APPENDIX A: SCOPE, METHODOLOGY, & CRITERIA

SCOPE

The audit covered OSHA's efforts to collaborate with external federal agencies' enforcement or oversight personnel to help safeguard U.S. workers during the COVID-19 pandemic between February 1, 2020, and January 19, 2022. The audit also covered the review of OSHA's referral data from February 1, 2020, to November 17, 2020, OSHA's list of 20 industries at higher risk of COVID-19 exposure, and OSHA's MOUs with external federal agencies. We extracted other information directly from the U.S. Census Bureau's publicly available database for business establishments from 2011 to 2018, and the CDC's COVID-19 Data Tracker for the COVID-19 cases and deaths between February 1, 2020, and January 19, 2022. Lastly, we reviewed information provided by or interviewed enforcement or oversight personnel at the U. S. Department of Agriculture Food Safety and Inspection Service (FSIS), the Department of Health and Human Services Centers for Medicare and Medicaid Services (CMS) and Food and Drug Administration (FDA), the Department of Justice Bureau of Prisons (BOP), and the Department of Labor Wage and Hour Division (WHD).

METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

To achieve our audit objective, we:

- Reviewed public laws and regulations, and DOL and OSHA guidance related to MOUs and COVID-19.
- Interviewed OSHA officials to learn about OSHA's enforcement programs and challenges faced to collaborate with external federal agencies, especially during the pandemic.
- Reviewed OSHA's MOUs with external federal agencies to determine how OSHA historically collaborated with federal agencies and potentially identify best practices for developing specific, measurable, achievable, relevant and time-bound outcomes and reporting processes.

- Analyzed OSHA’s referral data and its list of 20 industries to determine a list of ten industries with the most COVID-19 referrals.
- Identified BOP, CMS, FSIS, FDA and WHD were primarily responsible for enforcement or oversight of these ten industries with workers at higher risk of exposure to COVID-19.
- Interviewed and/or analyzed responses from BOP, CMS, FSIS, FDA, and WHD enforcement or oversight personnel to learn about their experiences of collaborating with OSHA, including identifying worker safety and health hazards and referral process to OSHA.
- Reviewed evidence for OSHA training with external federal agencies and documentation of OSHA’s outreach efforts.

RELIABILITY ASSESSMENT

In planning and performing the audit, we relied on computer-generated data file from OSHA. We assessed the reliability of this data by (1) performing analytical tests and tracing selected data elements for completeness and authenticity of the data elements used in the audit, and (2) reviewing existing information reported on OSHA’s public website. We determined that the data were sufficiently reliable for the purposes of this audit report.

INTERNAL CONTROL

In planning and performing our audit, we considered OSHA’s internal controls relevant to our audit objective by obtaining an understanding of those controls through interviews and reviews of policies and procedures. We assessed the following internal control areas relevant to the audit objective: Control Environment, Control Activities, Agency Risk Assessment, Information and Communication, and Monitoring. Our consideration of internal controls relevant to our audit objective would not necessarily disclose all matters that might be significant deficiencies. Because of inherent limitations in internal controls, or misstatements, noncompliance may occur and not be detected.

CRITERIA

- Department of Labor Manual Series (DLMS) 1-700: Memorandum of Understanding, August 2020
- GAO, “COVID-19: Additional Actions Needed to Improve Accountability and Program Effectiveness of Federal Response,” (October 27, 2021, Report No. GAO-22-105051)
- GPRA Modernization Act of 2010
- National Strategy for the COVID-19 Response and Pandemic Preparedness, January 21, 2021
- Occupational Safety and Health (OSH) Act of 1970

APPENDIX B: AGENCY'S RESPONSE TO THE REPORT


U.S. Department of Labor

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



March 29, 2022

MEMORANDUM FOR: CAROLYN R. HANTZ
Assistant Inspector General for Audit

FROM: DOUGLAS L. PARKER 

SUBJECT: Response to the Office of the Inspector General's Draft Report,
COVID-19: To Protect Mission Critical Workers, OSHA Could
Leverage Inspection Collaboration Opportunities with External
Federal Agencies

This memorandum is in response to your March 10, 2022, transmittal, Office of Inspector General's (OIG) Draft Report *COVID-19: To Protect Mission Critical Workers, OSHA Could Leverage Inspection Collaboration Opportunities with External Federal Agencies*. OSHA appreciates the opportunity to provide a response to the draft report.

The discussion below addresses OIG's characterization of OSHA's inspection efforts and OSHA's collaboration efforts with federal agencies and their occupational safety and health responsibilities.

Characterizing OSHA's Inspection Efforts

Although on-site inspections decreased during the pandemic, OSHA worked to ensure that every valid complaint and referral received attention in accordance with the Field Operations Manual. For each valid complaint or referral, if OSHA did not inspect, the agency engaged with the employer to ensure that COVID-related hazards were addressed and abated. OIG failed to credit OSHA's engagement with employers in ensuring worker health and safety during this dynamic crisis.

Characterizing OSHA's Collaboration Efforts

OIG asserts that:

"OSHA had not collaborated with external federal agencies' enforcement or oversight personnel to help safeguard mission critical U.S. workers during the pandemic."

OSHA disagrees with OIG’s assessment. As detailed in OSHA’s earlier comments on and proposed edits to OIG’s draft report, the agency collaborated with external agencies in numerous ways as part of the Administration’s overall effort to control and respond to the pandemic. OSHA’s collaborations included, but were not limited to, its participation in the Federal Emergency Management Agency’s National Response Framework (<https://www.fema.gov/emergency-managers/national-preparedness/frameworks/response#esf>) and the following workgroups and meetings:

- The White House National Security Council Executive Office of the President (WH NCS/EOP) Domestic Preparedness/Response Working Group on COVID-19,
- The White House NSC Medical and PPE Supply Chain Task Force,
- The Department of Health and Human Services (HHS) Disaster Leadership Group (DLG),
- The HHS Office of the Assistant Secretary for Preparedness and Response (ASPR) Interagency Workgroup,
- The HHS/Department of Homeland Security, Federal Emergency Management Agency (FEMA) Supply Chain Task Force,
- HHS Secretary Operations Center (SOC) Task Force Coordination Group,
- OPM Human Resource Guidance for Federal Agency Workgroup,
- HHS, National Institute of Environmental Health Sciences (NIEHS) Worker Safety and Health Support Training Annex Workgroup,
- OSHA received Mission Assignments (MAs) from FEMA to provide virtual Worker Safety and Health Technical Assistance and Support in Region 1, 2, 3, and National Office,
- DHS FEMA Food Supply Chain Task Force Workgroup (via the National Response Coordination Center), and
- DHS/FEMA Emergency Support Function Leadership Group.

These collaboration efforts included dozens of permanent federal, and sometimes state, members. Membership included all the departments and agencies OIG identifies as potential partners with which OSHA should have collaborated. OIG did not evaluate the work of the workgroups and other collaborative efforts listed above and how they acted to mitigate pandemic effects in the essential industries that are the focus of this audit. Consequently, OIG’s audit did not capture the effectiveness of OSHA’s collaboration with these groups to reduce the spread of COVID-19 to workers throughout the U.S., including working together on issues related to personal protective equipment and COVID-19 control measures, especially in workplaces where workers were performing essential services.

In addition, early in 2020, OSHA, independent of the efforts listed above, began holding weekly conference calls with the Department of Agriculture’s Food Safety Inspection Service, along with HHS’s Centers for Disease Control, and the Food and Drug Administration, to discuss COVID-19 issues at meatpacking establishments.¹ This collaborative effort primarily involved OSHA and CDC providing technical information and updates to FDA and USDA regarding products under development and the group often discussed safety and health issues concerning

¹OSHA and FSIS switched to monthly calls in November 2021.

meatpacking and other food processing facilities to ensure the health of meat and food workers and the federal inspectors nested at those facilities. OSHA enforcement staff, as well as other technical experts, attended the meetings to ensure that accurate information was shared. OSHA judged this effort to be far more fruitful than attempting to reach individual FSIS inspectors. OIG did not evaluate the efficacy of this effort and instead focused solely on OSHA's alleged lack of direct interaction with individual FSIS inspectors.

In addition to the collaboration between OSHA, CDC, FDA and USDA, OSHA conducted 383 inspections in meatpacking establishments between March 1, 2020 and March 15, 2022—157 of which were COVID-19-related. In nearly all cases, OSHA interviewed FSIS inspectors regarding COVID-19-related hazards and exposure or other workplace hazards. Nearly all inspections in meatpacking establishments were initiated due to worker complaints, fatalities, employer-reported referrals, and referrals. Although FSIS inspectors were not the sources of the complaints or referrals, OSHA interviewed them as part of the inspection when appropriate. OIG did not show how referrals or complaints from individual FSIS inspectors would have improved this process.

Moreover, in addition to overlooking OSHA's many collaborative efforts or showing how alternative methods of collaboration would have improved OSHA's COVID-19-related enforcement work, OIG's statement that OSHA "could have created MOUs with federal agencies that oversee high-risk industries; and updated its existing MOUs with external agencies to ensure they are current and include accountability characteristics" fails to acknowledge the labor and time resources necessary to create and update such MOUs. (Report p. 3). Although OSHA agrees that MOUs can be valuable tools, developing or revising MOUs during the pandemic would have required the reallocation of resources from OSHA's other activities in developing employer guidance, enforcement policy, and management, at a time when those other activities were crucial in protecting workers from the hazards posed by COVID-19. The agency did not have any resources to spare.

Characterizing Other Agencies' Occupational Safety and Health Responsibilities

As stated in the report, "OSHA's mission and work is not within" the scope of other federal agencies and these agencies "do not want to increase their staff's workload or overstep their authority." (Report p. 6). Yet federal agencies have significant occupational safety and health responsibilities and authority for their own employees under 29 U.S.C. 668, 29 CFR 1960, and EO 12196. Under 29 CFR 1960.26 federal agencies must conduct inspections of the worksites where their employees are located, identify the hazards they find, and post Notices of Unsafe or Unhealthful Working Conditions, referencing the standard or other requirement and including the time for the hazard to be abated.

The OIG reports that federal agencies "emphasized they do not have authority to enforce OSHA standards." (Report, p. 6.) However, when federal agencies' employees face the same hazards as other workers or people in a shared space, as is the case with COVID-19, these agencies are responsible for taking appropriate action and have the authority to take that action. Specifically, under 29 CFR 1960 subpart H, agencies have the responsibility to train all their employees on occupational safety and health, including training employees to conduct inspections and refer

hazards to the appropriate contacts within their agencies. Further, under 29 CFR 1960.60, agencies can request assistance from OSHA when needed.

To the extent OIG's findings indicate that other federal agencies have failed to carry out these responsibilities, OSHA recommends that the OIG modify its second recommendation to focus on actions OSHA can undertake to ensure federal agencies understand their responsibilities under 29 CFR 1960.

APPENDIX C: ACKNOWLEDGEMENTS

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