

# U.S. Department of Labor

Office of Inspector General—Office of Audit

## REPORT TO THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION



## OSHA NEEDS TO BETTER ADDRESS COMPLAINTS AND REFERRALS FOR INCREASED WORKER SAFETY

This report was prepared by The Lopez Group, LLP, under contract to the U.S. Department of Labor, Office of Inspector General, and by acceptance, it becomes a report of the Office of Inspector General.

A handwritten signature in cursive script that reads "Carolyn R. Hantry".

U.S. Department of Labor  
Assistant Inspector General for Audit

**DATE ISSUED: MARCH 6, 2023**  
**REPORT NUMBER: 02-23-001-10-105**



## BRIEFLY...

### OSHA NEEDS TO BETTER ADDRESS COMPLAINTS AND REFERRALS FOR INCREASED WORKER SAFETY

March 6, 2023

#### WHY OIG CONDUCTED THE AUDIT

The Occupational Safety and Health Administration (OSHA) is responsible for ensuring safe and healthful working conditions for millions of workers nationwide and does so partly by conducting inquiries and inspections of potential hazards. For Fiscal Year (FY) 2019 and FY 2020, inspections from complaints and referrals were slightly greater than 40 percent of OSHA's total inspections.

A complainant expressed concern that OSHA may not be adequately considering the statements of complainants and witnesses when responding to complaints and referrals. If OSHA does not adequately consider complainant or witness statements, hazardous conditions may go unidentified and unabated, further endangering workers.

#### WHAT OIG DID

The OIG contracted with the independent certified public accounting firm of The Lopez Group, LLP (Lopez) to conduct an audit to answer the following question:

To what extent did OSHA ensure complaints and referrals were adequately and timely addressed?

To answer this question, Lopez reviewed 100 complaint and referral cases. These cases were opened and closed between FY 2019 and FY 2020, 76 were initiated from a complaint, and 70 resulted in an inspection.

#### WHAT OIG FOUND

Lopez concluded OSHA did not consistently ensure complaints and referrals were adequately addressed nor regularly enforce hazard abatement timelines. Specifically, Lopez found OSHA did not consistently involve the complainant and/or witnesses in the investigation or inspection process. OSHA has no policy requiring Compliance Safety and Health Officers to interview or otherwise involve the complainant after the complaint is filed, yet that person may have key insights to ensure alleged hazards are being addressed. Of the 76 complaint cases reviewed, OSHA interviewed the complainant in 38 instances (50 percent). In all sampled cases where OSHA interviewed the complainant and/or witnesses, each person was only interviewed once.

Lopez also found OSHA's files did not contain clear reasoning as to why it did not conduct an inspection for 11 out of 30 sampled cases where a complaint or referral met its criteria for conducting an inspection. Further, OSHA did not regularly ensure safety and health violations from complaints and referrals were corrected in a timely manner.

OSHA lacks: (1) a methodology to determine when complainants and witnesses should be interviewed and the appropriate amount of their involvement, (2) a process for documenting supervisory reviews and decision approvals within case files, and (3) controls to ensure enforcement of abatement deadlines for employers. As a result, OSHA may have conducted incomplete inspections and workers may have been exposed to hazardous working conditions for an extended period of time.

#### WHAT OIG RECOMMENDED

Lopez made three recommendations to OSHA to strengthen the agency's processes to ensure it adequately addresses complaints and referrals. OSHA generally disagreed with the recommendations but agreed that it can improve its documentation, customer service, and training.

#### READ THE FULL REPORT

<https://www.oig.dol.gov/public/reports/oa/2023/02-23-001-10-105.pdf>

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## **INSPECTOR GENERAL'S REPORT**

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The United States Department of Labor (DOL) Office of Inspector General (OIG) contracted with the independent certified public accounting firm of The Lopez Group, LLP (Lopez) to conduct a performance audit of the Occupational Safety and Health Administration (OSHA) hazard complaint and referral process.

The OIG monitored Lopez's work to ensure it met professional standards and contractual requirements. Lopez's independent audit was conducted in accordance with generally accepted government auditing standards. Lopez was responsible for the auditors' evaluation and the conclusions expressed in the report while the OIG reviewed Lopez's report and supporting documentation.

### **PURPOSE**

OSHA is responsible for ensuring safe and healthful working conditions for millions of workers nationwide and does so partly by conducting inquiries and inspections of potential hazards. To this end, OSHA receives complaints and referrals<sup>1</sup> regarding potential occupational and health hazards. For Fiscal Year (FY) 2019 and FY 2020, inspections from complaints and referrals were slightly greater than 40 percent of OSHA's total inspections. A complainant expressed concern that OSHA may not be adequately considering the statements of

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<sup>1</sup> A complaint is a notice of an alleged safety or health hazard made by a current employee or a representative of employees. A referral is an allegation of a workplace hazard or violation received from an OSHA Compliance Safety and Health Officer, safety and health agency (such as the National Institute for Occupational Safety and Health), discrimination or whistleblower complaint, other government agency, media report, or employee/employer representative report of accidents other than fatalities and catastrophes.

complainants and witnesses when responding to complaints and referrals. If OSHA does not adequately consider complainant or witness statements, hazardous conditions may go unidentified and unabated, further endangering workers.

Given these concerns, the OIG contracted with Lopez to conduct this performance audit to answer the following question:

To what extent did OSHA ensure complaints and referrals were adequately and timely addressed?

The audit scope covers 62,595 complaint and referral cases that were opened and closed between FY 2019 and FY 2020. To answer the audit objective, Lopez used a random number generator to select 100 complaint and referral cases from OSHA Regions 5 (Chicago), 6 (Dallas), and 7 (Kansas City) for review. Of those 100 cases, 76 cases were initiated from a complaint and 70 cases resulted in an inspection.

## **RESULTS**

Lopez concluded OSHA did not consistently ensure complaints and referrals were adequately addressed nor regularly enforce hazard abatement timelines. Specifically, Lopez found OSHA did not consistently involve the complainant and/or witnesses throughout the process when performing the investigation or inspection. For example, OSHA interviewed the complainant in 50 percent (38 of 76) of sampled complaints (see Exhibit for additional details regarding complainant and witness interviews of the 100 sampled cases). In all sampled cases where OSHA interviewed the complainant and/or witnesses, each person was only interviewed once. Lopez also found OSHA's case files did not contain clear reasoning as to why it did not conduct an inspection for 11 out of 30 (37 percent) of the sampled cases where a complaint or referral met its criteria for conducting an inspection. Finally, Lopez found OSHA did not regularly ensure safety and health violations from complaints and referrals were corrected in a timely manner.

We appreciate the cooperation and courtesies OSHA extended us during this audit.



Carolyn R. Hantz  
Assistant Inspector General for Audit

**CONTRACTOR PERFORMANCE AUDIT REPORT**



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We were engaged by the U.S. Department of Labor (DOL) Office of Inspector General to conduct a performance audit of the Occupational Safety and Health Administration's (OSHA) addressing of complaints and referrals. This report presents the results of our independent performance audit.

OSHA is responsible for ensuring the safe and healthful working conditions for millions of workers nationwide and does so partly by conducting inquiries and inspections of potential hazards. Upon receiving a complaint or referral, OSHA evaluates the information to determine whether it should be handled as an inquiry or an inspection. For Fiscal Year (FY) 2019 and FY 2020, inspections from complaints and referrals were slightly greater than 40 percent of OSHA's total inspections.

A complainant expressed concern that OSHA may not be adequately considering the statements of complainants and witnesses when responding to complaints and referrals. OSHA has no policy requiring Compliance Safety and Health Officers (CSHO), those responsible for performing inspections and investigations, to interview or otherwise involve the complainant after the complaint is filed, yet that person may have key insights to ensure alleged hazards are being addressed. If OSHA does not adequately consider complainant or witness statements, hazardous conditions may go unidentified and unabated, further endangering workers.

Our audit objective was to determine:

To what extent did OSHA ensure complaints and referrals were adequately and timely addressed?

To answer our objective, we analyzed OSHA’s policies, procedures, and guidance for: the intake of complaints and referrals, case evaluation, decisions to conduct inspections, interviews of complainants and witnesses, hazard abatement enforcement, issuance of citations and penalties, and involvement of complainants and witnesses during this process.

We tested complaints and referrals to determine whether and how often OSHA interviewed complainants and witnesses and reviewed OSHA’s documentation supporting decisions not to conduct inspections as well as the timelines and adequacy of hazard abatement. We used a random number generator to select 70 unprogrammed<sup>2</sup> complaint- and referral-initiated inspections. We also used a random number generator to select 30 complaints and referrals that did not result in an inspection for review. Of the 100 selected files, OSHA could not locate 3 files. This report does not project the audit results of the sampled complaints and referrals to either the total population of unprogrammed complaint- and referral-initiated inspections or to those that did not result in an inspection.

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 objective. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Our scope, methodology, and criteria are detailed in Appendix A.

## **BACKGROUND**

OSHA is authorized by the Occupational Safety Health Act of 1970 (OSH Act) to assure employers provide safe and healthful conditions for working men and women free of recognized hazards. OSHA does so by setting and enforcing standards and by providing training, outreach, education, and technical assistance.

OSHA has a complaint and referral system where a complainant or third party can notify OSHA of alleged safety or health hazards. OSHA officials evaluate the information provided to determine whether it should be handled as an

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<sup>2</sup> According to OSHA’s Field Operations Manual, “unprogrammed inspections” are those “scheduled in response to alleged hazardous working conditions identified at a specific worksite,” such as for imminent dangers, fatalities/catastrophes, complaints/referrals, and follow-up and monitoring inspections scheduled by the Area Office. Note, not all complaints/referrals qualify for an inspection. Chapter 2, IV.H.1 (last accessed April 7, 2022), available at: <https://www.osha.gov/enforcement/directives/cpl-02-00-164/chapter-2>

investigation or an inspection.<sup>3</sup> This decision is based on OSHA's guidance and left to the discretion of the area director. If OSHA determines the complaint or referral information provides reasonable grounds that a hazard exists, CSHOs perform an inspection.

OSHA has no policy requiring a complainant to be interviewed by the CSHO conducting a complaint inspection or to be otherwise involved after the complaint is filed. For the purpose of the audit, we determined an interview with the complainant occurred when there was evidence in the case file that either a face-to-face meeting or telephone conversation was conducted.

## RESULTS

OSHA did not consistently ensure complaints and referrals were adequately addressed nor did it regularly enforce hazard abatement timelines. Specifically, we found OSHA did not consistently involve the complainant and/or witnesses in the investigation or inspection process. For example, OSHA interviewed the complainant in 50 percent (38 of 76) of sampled complaints. In all sampled cases where OSHA interviewed the complainant and/or witnesses, each person was only interviewed once.

Additionally, we found OSHA did not consistently follow procedures in its Field Operations Manual (FOM)<sup>4</sup> involving documentation of decision points indicating a possible inadequacy in their inspection processes. For example, 37 percent (11 of 30) of sampled case files did not contain clear reasoning as to why CSHOs did not conduct an inspection when a complaint or referral met its inspection criteria. Further, OSHA did not regularly ensure safety and health violations from complaints and referrals were corrected in a timely manner.

These conditions were caused by OSHA's lack of:

1. a methodology to determine when complainants and witnesses should be interviewed and the appropriate amount of their involvement,
2. documented supervisory reviews and approvals of decisions made within case files, and
3. controls to ensure enforcement of abatement deadlines for employers.

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<sup>3</sup> An OSHA inspection is an examination of a worksite by OSHA inspectors to help both employers and employees minimize onsite hazards while, in an investigation, the employer is expected to conduct its own investigation into the work-related incident and share its findings and abatement verification with OSHA.

<sup>4</sup> The applicable chapters in two versions of the FOM are identical: Directive Number CPL 02-00-163, Effective Date 09/13/2019; and Directive Number CPL 02-00-164, Effective Date 04/14/2020.



As a result, OSHA may have conducted incomplete inspections and workers may have been exposed to hazardous working conditions for an extended period of time.

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**OSHA DID NOT SUFFICIENTLY INVOLVE  
COMPLAINANTS AND/OR WITNESSES IN  
THE INVESTIGATION OR INSPECTION  
PROCESS**

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Complainant involvement in the investigation or inspection process was limited to the initiation of the complaint and, in 50 percent of the cases sampled, an interview. Further, OSHA obtained witness statements in only 63 percent of the cases sampled. Overall, OSHA was not consistent as to when and how it interviewed the complainant and witnesses. This occurred because OSHA has no policy requiring CSHOs to interview or otherwise involve the complainant after the complaint is filed, yet that person may have key insights to ensure alleged hazards are being addressed.

OSHA's limited involvement of complainants and witnesses may have resulted in the absence of vital information specific to the investigation and alleged hazardous conditions. Sampled case data indicated a possible correlation between interviewing both complainants and witnesses and a higher rate of citations and/or penalties. For sampled inspections without interviews, citations or penalties were not imposed.

OSHA interviewed the complainants in 38 of 76 sampled complaints. For these 38 complaints, we found the complainants were interviewed once, typically at the start of the complaint process. OSHA policy leaves the decision whether to interview the complaints and witnesses to the CSHO's discretion. This practice does not allow for consistent decisions regarding interviews, which may reduce the likelihood for obtaining all pertinent information concerning the alleged hazardous condition(s).

Based on documented practices by OSHA State Plans,<sup>5</sup> a free and open exchange of information between OSHA and employees, complainants, and

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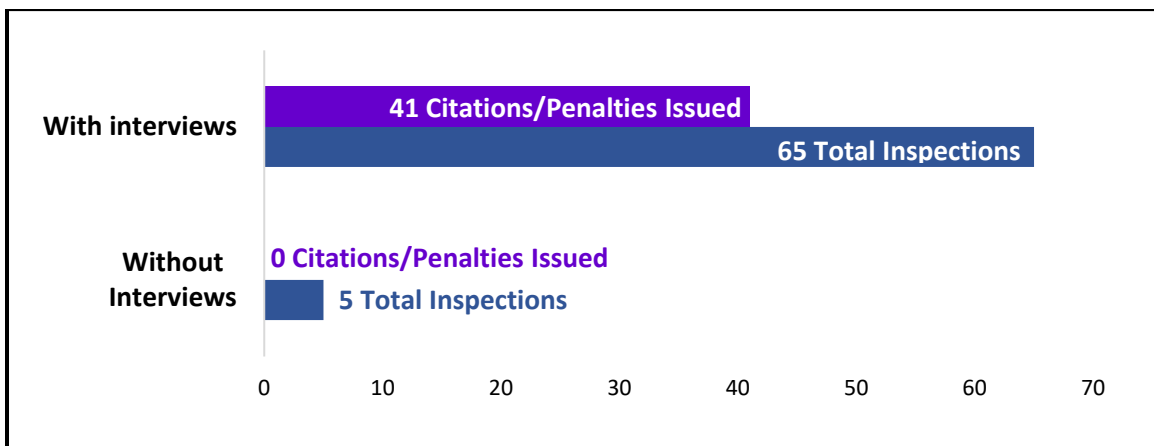
<sup>5</sup> According to OSHA, "State Plans are OSHA-approved workplace safety and health programs operated by individual states or U.S. territories...State Plans are monitored by OSHA and must be at least as effective as OSHA in protecting workers and in preventing work-related injuries, illnesses, and deaths." OSHA website, State Plans (last accessed April 7, 2022), available at: <https://www.osha.gov/stateplans/>

witnesses is essential to an effective investigation or inspection. Interviews provide an opportunity for complainants and/or witnesses to supply valuable, factual information concerning hazardous conditions, including information on how long workplace conditions have existed, the number and extent of employee exposure(s) to a hazardous condition, and the actions of management regarding correction of hazardous conditions. These State Plans, which have been approved by OSHA, include mandatory employee interviews and, in some cases, a minimum number of interviews. These additional state processes ensure complainant and witness participation during an investigation or inspection.

OSHA officials stated that CSHOs are highly trained expert investigators and can determine whether it is appropriate to conduct such interviews depending on the particular circumstances of each case. However, the practice of interviewing complainants and witnesses is consistent with practices observed in State Plans' investigation processes such as those in Michigan and California. Michigan requires inspectors to conduct a minimum number of interviews (complainants/witnesses) based upon the number of employees affected by the inspection, and California requires a representative number of employees and supervisors to be interviewed. Both allow for follow-up contact with the complainant for clarification of issues on an as-needed basis.

For the 70 inspection cases sampled, interviewing both complainants and witnesses may have correlated with a higher rate of citations and/or penalties (see Figure 1).

**Figure 1: Citations/Penalties Issued for Inspections, Sampled Cases with and without Interviews**



Source: Lopez's analysis of sampled cases and OSHA Information System data

For 65 cases in which interviews were conducted, 41 (63 percent) resulted in penalties and/or citations. For the remaining 5 inspections where interviews were not conducted, no penalties or citations were issued. For these 5 inspections, OSHA stated its OSHA Information System showed that: (1) interviews were conducted, (2) interviews were not possible due to site closure, or (3) that an inspection did not occur. However, OSHA's case files are its official record, and, within those files, OSHA did not provide evidence of interviews, site closure, or documentation that an inspection occurred.

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**OSHA DID NOT PROVIDE EVIDENCE THAT  
AN INSPECTION WAS CONDUCTED WHEN A  
COMPLAINT/REFERRAL MET THE CRITERIA**

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In 11 of 30 (37 percent) of the complaints or referrals reviewed that did not undergo an inspection, OSHA case files did not contain evidence to support determinations that inspections were not needed. This occurred because OSHA did not have procedures in place to ensure case files were complete, including supervisory review and approval of case file documentation. As a result, OSHA could not support its decision not to perform inspections in 37 percent of the sampled complaints reviewed, potentially jeopardizing workers to hazardous conditions.

OSHA's guidance requires that all case files contain an activity diary sheet to provide a record and summary of all actions and decisions relating to a case. Further, the FOM requires that justification for not inspecting or conducting an inquiry<sup>6</sup> be noted in the case file. According to OSHA's FOM Chapter 9.I.C, Criteria Warranting an Inspection, an inspection is normally warranted if at least one of the following nine conditions is met:

1. A valid formal complaint is submitted. Specifically, the complaint must be reduced to writing or submitted on a Complaint (OSHA-7 or OSHA Online Complaint Form), be signed by a current employee or representative of employees, and state the reason for the inspection request with reasonable particularity...;
2. The information received in a signed, written complaint from a current employee or employee representative that alleges a recordkeeping deficiency that indicates the existence of a potentially serious safety or health violation;

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<sup>6</sup> OSHA FOM Chapter 9 Complaint and Referral Processing, Section H Procedures for an Inspection, Paragraph 2

3. The information alleges that an imminent danger situation, a violation of the [OSH] Act or of an OSHA standard exists, that exposes employees to a potential serious physical or health hazard in the workplace;
4. The information concerns an establishment and an alleged hazard covered by a local, regional, or national emphasis program (such as the Site-Specific Targeting Plan);
5. The employer fails to provide an adequate response to an inquiry, or the individual who provided the original information provides further evidence that the employer's response is false or does not adequately address the hazard(s). The evidence must be descriptive of current or recurring hazardous conditions;
6. The establishment that is the subject of the information has a history of egregious, willful, failure-to-abate, or repeated citations within the Area Office's jurisdiction during the past five years, or is an establishment or related establishment in the Severe Violator Enforcement Program. However, if the employer has previously submitted adequate documentation for these violations, demonstrating that they were corrected and that programs have been implemented to prevent a recurrence of hazards, then the Area Director will normally determine that an inspection is not necessary;
7. The Whistleblower Protection Program requests that an inspection be conducted in response to an employee's allegation that the employee was discriminated against for complaining about safety or health conditions in the workplace, refusing to perform an allegedly dangerous job or task, or engaging in other activities related to occupational safety or health;
8. If an inspection is scheduled or has begun at an establishment and a complaint or referral that would normally be handled through inquiry is received, then this complaint or referral can, at the Area Director's discretion, be incorporated into the scheduled or ongoing inspection. If such a complaint is formal, then the complainant must receive a written response that addresses the complaint items; and
9. If the information gives reasonable grounds to believe that an employee under 18 years of age is exposed to a serious violation of a safety or health standard or a serious hazard, then an on-site inspection will be initiated if the information relates to construction, manufacturing, maritime, agriculture, or other industries as determined by the Area Director.

Additionally, there must be reasonable grounds to believe either a violation of the OSH Act or an OSHA standard that exposes employees to physical harm exists or that an imminent danger of death or serious injury exists, as provided in Section 8(f)(1) of the OSH Act.

Of the 30 sampled case files where an inspection was not performed, 11 (37 percent) lacked documentation to support OSHA's consideration of the FOM's nine criteria for not conducting an inspection. For example, one complaint alleged an employer failed to provide personal protective equipment (PPE); however, the case file lacked documentation in support of OSHA's decision that an inspection was not warranted. Further, the letters to the employer and to the complainant on this decision in the case file were not signed by the area director, indicating the possibility that they may not have been sent. Procedures requiring a review of case files for completeness could improve OSHA's support for its decisions as required by the FOM and further help to protect worker safety and health.

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**OSHA DID NOT ENSURE VIOLATIONS FROM COMPLAINTS AND REFERRALS WERE CORRECTED IN A TIMELY MANNER AND DID NOT ADHERE TO DOCUMENTATION REQUIREMENTS**

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In 10 percent of sampled inspection cases, employers corrected hazards/violations anywhere from 4 days to more than 60 days past the abatement deadline. Additionally, 11 percent of sampled inspection cases lacked documentation that OSHA received the abatement information from the employer. This occurred because OSHA did not establish controls to ensure the enforcement of FOM employer abatement documentation and deadline requirements. Without timely abatement, employees may be left unprotected for an extended period of time. Further, without documentation of hazard abatement, OSHA could not support that the employer complied with Section 5 of the OSH Act, which requires employers to furnish places of employment free from recognized hazards causing or likely to cause death or serious physical harm and further requires employers to comply with occupational safety and health standards promulgated under the OSH Act.

Section 5(a) of the Act states that each employer "shall furnish to each of his employees, employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees." This section also states that each employer

“shall comply with occupational safety and health standards promulgated under this Act.”

If a violation is identified during the inspection, OSHA provides the employer with a date by which the violation must be abated with supporting documentation provided. OSHA’s FOM requires an abatement certification or other required documentation be received from the employer within 10 calendar days (plus 3 days for delivery). Our review of the 70 sampled cases found 41 cases with violations requiring abatement.<sup>7</sup> Of the 41 cases, 8 case files did not contain employer abatement documentation. Seven additional case files had employer documentation that had been provided after the abatement deadline. Specifically, the employers’ abatement documentation was 4-7 days late in 4 cases, 23 days late in 1 case, and more than 60 days late in the other 2 cases.

For example, on February 4, 2020, OSHA received a complaint concerning workers not having cave-in protection to prevent them from being crushed by falling soil. OSHA instructed the employer to abate this condition by April 8, 2020. The employer did abate the condition, but did not supply documentation to verify the abatement until July 2, 2020, 85 days after the deadline. In total for this case, we found employees were possibly unprotected for 149 days from the receipt of the complaint until verification of the abatement.

Further, among these no abatement documentation or late abatement documentation cases, OSHA classified three violations as serious, which means these violations could result in limited injuries including broken bones:

1. not providing workers with a safe means of entering or leaving trench excavations greater than 4 feet in depth,
2. not protecting workers from water accumulation in the trenches to prevent them from being submerged in water, and
3. not protecting workers from cave-ins to prevent them from being crushed by falling soil [example provided in previous paragraph].

The FOM’s Chapter 7 Section IV. A.7.a states:

For uncontested citations, the abatement date is the later of the following dates:

- the abatement date identified in the citation;

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<sup>7</sup> Of the 41 cases requiring abatement, 16 cases were abated by the deadline; 8 did not contain employer abatement documentation; 7 had employer documentation provided after the abatement deadline; 5 were corrected during inspection; and 5 cases were being contested.

- the extended date established as a result of an employer's filing for a Petition for Modification of Abatement (see Review Commission Rule 37, §2200.37);
- the abatement date has been extended due to an amended citation; or
- the date established by an informal settlement agreement.

The FOM's Chapter 7 Section VIII. A.1.a – Employer Failure to Submit Required Abatement Certification – Actions Preceding Citation for Failure to Certify Abatement, states:

If abatement certification, or any required documentation is not received within 13 calendar days after the abatement date (the regulation requires filing within 10 calendar days after the abatement date; and another 3 calendar days is added for mailing), then the following procedures should be followed:

- a. Remind the employer by telephone of the requirement to submit the material and tell the employer that a citation will be issued if the required documents are not received within 7 calendar days after the telephone call.
- b. During the conversation with the employer, determine why the employer has not complied and document all communication efforts in the case file....
- c. Issue a follow-up letter to the employer the same day as the telephone call.
- d. The employer can be allowed to respond by fax or email where appropriate.

The FOM's Chapter 7 Section XV, Case File Management, states:

The closing of a case file without abatement certification(s) must be justified through a statement in the case file by the Area Director or his/her designee, addressing the reason for accepting each uncertified violation as an abated citation.

OSHA did not regularly enforce FOM employer abatement documentation and deadline requirements as established by a CSHO and as approved by an area director or assistant area director. In response to our numerous requests for information throughout the audit, OSHA did not provide evidence of abatement for 8 of 41 cases with violations nor the justification for closing the case files without abatement. Without timely abatement, employees may be left possibly unprotected for an extended period of time. Further, without documentation of hazard abatement, OSHA could not support that the employer complied with Section 5 of the OSH Act, which requires employers to furnish places of

employment free from recognized hazards causing or likely to cause death or serious physical harm.

## **RECOMMENDATIONS**

We recommend the Assistant Secretary for Occupational Safety and Health:

1. Modify the Field Operations Manual to include a policy for mandatory interviews of complainants and witnesses or document the rationale for lack thereof and provide training to Compliance Safety and Health Officers on the updated requirements.
2. Update the Field Operations Manual to require documented case file review and approvals by supervisors and provide training for Compliance Safety and Health Officers to ensure complete documentation of significant decisions and actions.
3. Establish controls and provide training of Field Operations Manual abatement certification and documentation requirements and create a monitoring process that is reviewed and approved by a supervisor.

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## **SUMMARY OF OSHA'S RESPONSE**

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OSHA disagreed with the report's recommendations and provided comments, which we considered. However, OSHA's response did not change the conclusions and we made no changes to the recommendations.

In its comments, OSHA stated the OIG declined to provide criteria used to select the sample case files. This information was shared with OSHA and is detailed in Appendix A of this report. Pertaining to OSHA's concerns regarding the sample size, we stated in the same appendix that this report does not project the audit results of the sampled cases to either the total population of unprogrammed complaint- and referral-initiated inspections or to the total population of cases that did not result in an inspection. Furthermore, the sample size does not diminish or impact the audit results and corresponding recommendations, which largely align with OSHA's policies and procedures.

In OSHA's response regarding Recommendation 1, it stated the CSHO must have the discretion to determine what interviews are necessary. Our recommendation clearly states the need for either mandatory interviews of complainants and witnesses or documented rationale for lack thereof. In cases



where a CSHO determines interviews are not necessary, the CSHO needs to document the reasoning. OSHA also stated that the report's analysis of the relationship between interviews and citations confuses correlation and causation. We agree that this is potentially a correlative relationship, rather than a causative one, and clarified this point within the report.

In regards to Recommendation 2, OSHA stated 10 of the 11 cases that the report points to as lacking justification for not conducting an inspection were non-formal complaints or referrals. However, for non-formal complaints or referrals, the FOM also requires documentation, stating "justification for not inspecting or conducting an inquiry will be noted in the case file." OSHA agrees documentation is important and stated it will provide additional training to supervisors to reinforce case file documentation as required. OSHA did not agree to provide training to CSHOs or to update current policy to ensure complete documentation of significant decisions and actions.

For Recommendation 3, OSHA stated that the audit confuses the date of abatement documentation with the date abatement occurred. In the example of a complaint concerning workers not having cave-in protection to prevent them from being crushed by falling soil, we noted the employer did abate the condition but did not supply documentation to verify the abatement until 85 days after the abatement deadline. OSHA's response stated the report erroneously suggests that employees could have been exposed for up to 149 days, from the date of receipt of the complaint. The auditors must rely on the evidence available, and no evidence was provided to support a different date for when abatement occurred.

We appreciate that OSHA is reviewing how to improve the customer service aspect of the inspection process to be more responsive to workers' concerns and is exploring ways to improve its case file documentation to provide greater clarity on decisions made during the investigative and inspection processes.

Management's response to the draft report is included in its entirety in Appendix B. We appreciate the cooperation and courtesies OSHA extended us during this audit.



Richard M. Lopez, CPA  
Partner

The Lopez Group, LLP  
Temecula, CA  
March 2, 2023

**EXHIBIT**

**Table 1: Complainant and Witness Interviews for 100 Sampled OSHA Cases**

Case Type	Number of Cases	Complainant Interview Only	Witness Interview Only	Complainant & Witness Interview	No Interview	Missing Files
<b>COMPLAINTS</b>						
Inspection	49	2	18	24	2	3
No Inspection	27	12	0	0	15	0
Complaints Total	76	14	18	24	17	3
<b>REFERRALS</b>						
Inspection	21	N/A*	21	0	0	0
No Inspection	3	N/A	0	0	3	0
Referrals Total	24	0	21	0	3	0
<b>TOTAL</b>	<b>100</b>	<b>14</b>	<b>39</b>	<b>24</b>	<b>20</b>	<b>3</b>

Source: Lopez's analysis of sampled case files; \*N/A = Not Applicable

**APPENDIX A: SCOPE, METHODOLOGY, AND CRITERIA**

**SCOPE**

The audit scope covers 62,595 complaint and referral cases that were opened and closed between FY 2019 and FY 2020. We used a random number generator to select 100 complaint and referral cases from OSHA Regions 5, 6, and 7 for review. The 100 included 30 complaints and referrals that did not result in an inspection and 70 complaints and referrals that did result in an inspection. Of the 100 sample cases selected, OSHA could not locate 3 case files (see Table 2).

**Table 2: Case Files that OSHA Was Unable to Locate**

Sample #	Complaint or Referral #	Case Outcome
74	1605291	OSHA could not provide documentation of an inspection occurring.
92	1545947	
98	1632868	

Source: Lopez’s analysis of selected case files

**METHODOLOGY**

To accomplish our audit objectives, we obtained an understanding of OSHA’s policies and procedures for conducting investigations or inspections initiated by complaints and referrals and other correspondence and related documents. We identified criteria key to the administration and performance of investigations and inspections and reviewed applicable OSHA policies and procedures. Further, we conducted procedural walkthroughs with OSHA to obtain an understanding of administration and performance of investigations and inspections. We also reviewed case file documentation supporting the activities performed by OSHA in compliance with its policies, procedures, and guidance. The work performed was conducted remotely.

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 objective.

We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

We reviewed OSHA's investigation and inspection process and determined if OSHA inspectors followed procedures in accordance with its FOM. We stratified OSHA's regions by large, medium, and small counts, and used a random number generator to select one region from each stratification. Regions 5 (Chicago), 6 (Dallas), and 7 (Kansas City) were selected. We then used a random number generator to select 70 unprogrammed complaint- and referral-initiated inspections. The 3 regions represented 6,078 of OSHA's 18,063 (33.65 percent) total unprogrammed complaint- and referral-initiated inspections. We also used a random number generator to select 30 complaints and referrals to review that did not result in an inspection.

We requested and received the selected case files from OSHA, and, per instructions from OSHA, the documentation in the case files represented all case information. This report does not project the audit results of the sampled cases to either the total population of unprogrammed complaint- and referral-initiated inspections or cases that did not result in an inspection.

We assessed the reliability of performance and case file data. For the performance data, we obtained an understanding of the systems and methods used to collect, document, and report complaints, investigations, and inspections. We compared case file documentation to the data in the OSHA Information System and, based on our understanding and review of the documentation, we considered the case files were reliable for our audit purposes. In addition, OSHA asserted the case files were the official file of record.

To verify the completeness of the population of unprogrammed complaint- and referral-initiated inspections within OSHA's Information System, we compared the total number of cases received against the total cases reported on OSHA's website. The difference in total cases was less than 6 percent and was an acceptable variance for our audit purposes.

## **INTERNAL CONTROLS**

In performing the audit, we evaluated internal controls used by OSHA for reasonable assurance that OSHA conducted complaint and referral investigations in accordance with federal and internal requirements. Our consideration of internal controls for conducting these investigations would not necessarily disclose all matters that might be reportable conditions. Because of inherent limitations in internal controls, misstatements, losses, or noncompliance may nevertheless occur and not be detected.

Because this was a performance audit, our audit was not designed to provide an opinion on the internal controls of OSHA. Accordingly, we provide no such opinion.

**CRITERIA**

- Occupational Safety and Health Act of 1970, Public Law 91-596
- OSHA Field Operations Manual:
  - Directive Number CPL 02-00-163, Effective Date 09/13/2019; and
  - Directive Number CPL 02-00-164, Effective Date 04/14/2020


**APPENDIX B: AGENCY'S RESPONSE TO THE REPORT**

U.S. Department of Labor

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



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

FROM: DOUGLAS L. PARKER 

SUBJECT: Response to Office of the Inspector General Report  
*OSHA Needs to Better Address Complaints and Referrals for  
Increased Worker Safety No. 02-23-001-10-105*

This memorandum is in response to the Office of Inspector General's (OIG) contracted audit, conducted by the Lopez Group, to address the question: "To what extent did OSHA ensure complaints and referrals were adequately and timely addressed?" We take the OIG's findings seriously and appreciate the opportunity to address them. However, we continue to have serious concerns, many of which were brought to your attention in our response to the Lopez Group's preliminary results (See Response from August 13, 2022, to Office of Inspector General's Results on OSHA's Complaints and Referrals 109-P20-021-10-105 attached and incorporated here by reference).

The principal limitation of the audit is stated in the audit itself: "This report does not project the audit results of the sampled complaints and referrals to either the total population of unprogrammed complaint- and referral-initiated inspections or to those that did not result in an inspection" (OIG Report p. 4). The audit analyzed 100 sample case files in 3 of OSHA's 10 Regions, less than .2 percent (0.159 percent) of the 62,595 complaints and referrals OSHA received during the audit period (FY 2019-FY 2020). The OIG has declined to provide the criteria used to select the sample case files, leaving OSHA in the difficult position of being unable to do its own follow up to determine how representative the samples may be of larger issues, while having to respond to an audit report that concedes it does not provide a basis for the sweeping recommendations it contains.

Despite asserting the report does not project outcomes to the more than 62,000 files that the Lopez Group did not review, the final report Results do exactly that. We address the Results and the lack of support for these conclusions below.

**Result 1: OSHA Did Not Sufficiently Involve Complainants and/or Witnesses in the Investigation or Inspection Process.**

Throughout the audit there has been a misunderstanding regarding the role of witnesses and complainants in the OSHA process. The Lopez Group/OIG confuse the importance of good communication with complainants, which OSHA concedes it can improve, with the importance of identifying and obtaining information from witnesses that will advance the investigation, which for a variety of reasons may not include the complainant. The audit also discounts the fact that if an inspection has been initiated, the complainant has already provided significant relevant information to OSHA that has prompted and will guide the inspection.

Especially in straightforward cases, if a Compliance Safety and Health Officer (CSHO) has interviewed employees on site and has established a violation through evidence such as a physical inspection, document review, or employer admission, the CSHO may decide additional witness interviews are not necessary. Every complaint is not the same and the CSHO must have the discretion to determine what interviews are necessary. Where a case is contested, there may be additional engagement with relevant witnesses. While we are always looking for opportunities to make inspections, including employee and other witness interviews, more effective, we are concerned that rote interview requirements will not advance that cause.

OSHA is reviewing how to improve the “customer service” aspect of the inspection process to be more responsive to workers’ concerns about feeling excluded from the process so that we do not discourage worker participation in health and safety matters. However, the audit has not demonstrated a need or rationale for mandating complainant interviews in *every* complaint/referral situation. Therefore, OSHA does not agree with Recommendation 1.

The Lopez Group also concluded that “for the 70 inspection cases sampled, interviewing both complainants and witnesses may have resulted in a higher rate of citations and/or penalties” (OIG Report p. 7). As pointed out in our prior response, this analysis of the relationship between interviews and citations confuses correlation and causation. The OIG/Lopez Group did not make any inquiry to determine a causal link between lack of interviews and lack of citations. In our experience, the more reasonable explanation is that more interviews occur on inspections when violations are observed as the CSHO conducts witness interviews to gather evidence on key elements of the citation such as employer knowledge of the violation, how long the violation has existed, and how many workers have been exposed to the hazard; conversely, as a general matter, fewer interviews occur when no violation is observed simply because there is less to inquire about.

**Result 2: OSHA Did Not Provide Evidence That an Inspection was Conducted When a Complaint/Referral Met the Criteria.**

This result is based on, and limited to, 11 out of 30 sample cases that did not include documentation to support why OSHA determined an inspection was not warranted. Under the procedures in OSHA’s Field Operations Manual (FOM), if a *formal* complaint has been submitted, an inspection is normally warranted. However, ten of the eleven cases that the report points to as lacking justification for not conducting an inspection were *non-formal* complaints or referrals. In each of those ten cases, OSHA conducted an inquiry per the FOM’s procedures. The example in the report relates to a non-formal complaint in April 2020 regarding inadequate

personal protective equipment (PPE) in a retail setting. OSHA properly conducted an inquiry per Chapter 9 of the FOM and received a satisfactory response from the employer.

It is notable that while the report identified documentation issues, the audit did not reveal any evidence that a documentation issue resulted in a hazard not being addressed. However, OSHA agrees documentation is important. The agency will provide additional training to supervisors to reinforce case file documentation as required under 29 CFR 1903.14(a) and in Chapter 5 of the FOM. The report does not support a need to change or update current policy.

**Result 3: OSHA Did not Ensure Violations from Complaints and Referrals Were Corrected in a Timely Manner and Did Not Adhere to Documentation Requirements.**

OSHA interprets this result as relating to whether violations were timely abated. OSHA's abatement verification regulation, 29 CFR 1903.19, outlines detailed requirements related to abatement dates, abatement certification, abatement verification, abatement plans, and progress reports, among other requirements. OSHA's FOM contains additional guidance and procedures related to abatement.

The report states that "our review of the 70 sampled cases found 41 cases with abatement violations." However, the Lopez group included in that count cases where abatement documentation was provided, cases where abatement was observed during the inspection, and cases where no inspection took place. It also included five cases where OSHA had no authority to require employers to abate the hazards because the cases were being contested.

This result also assumes without adequate substantiation that late abatement documentation meant that employees may have been exposed to the hazard. The audit confuses the date of abatement documentation with the date abatement occurred. In the single example provided, the Lopez Group noted that the employer *had* abated the trenching violation but had simply not sent in the documentation. The report erroneously suggests that employees could have been exposed for up to 149 days – from the date of receipt of the complaint – even though the job was complete (the trench no longer existed), and no one had been exposed to the hazard.

Though OSHA raised this issue in response to the preliminary results, this Result continues to fail to recognize and consider that there are several reasons why abatement may be extended beyond the default deadline of 30 days after issuance of a citation. The audit team did not assess whether hazards were mitigated in any way, whether a work process was no longer active or whether OSHA had the authority to require abatement of a hazard at the time. The report does not support a need to create new procedures or policies, and therefore, OSHA does not agree with Recommendation 3.

OSHA appreciates the opportunity to improve the way that we carry out our programs in support of our mission. We remain open to a continued dialogue and a cooperative approach between the OIG and OSHA, and we will explore ways to improve our case file documentation to provide greater clarity on decisions made during the investigative and inspection processes.



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