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Office of Inspector General—Office of Audit

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



**COVID-19: OSHA'S ENFORCEMENT
ACTIVITIES DID NOT SUFFICIENTLY
PROTECT WORKERS FROM PANDEMIC
HEALTH HAZARDS**

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BRIEFLY...

COVID-19: OSHA'S ENFORCEMENT ACTIVITIES DID NOT SUFFICIENTLY PROTECT WORKERS FROM PANDEMIC HEALTH HAZARDS

October 31, 2022

WHY OIG CONDUCTED THE AUDIT

The Occupational Safety and Health Administration (OSHA) is responsible for ensuring safe and healthful working conditions for 130 million workers employed at more than 8 million worksites. It does so by setting and enforcing standards and by providing training, outreach, education, and assistance to employers and employees.

The COVID-19 pandemic has presented OSHA with significant worksite enforcement and inspection challenges in its operations and efforts to safeguard workers. Previous OIG work identified a significant reduction in OSHA inspections during the pandemic while complaints significantly increased. Worksite inspections are an important part of OSHA's enforcement function and are integral to reducing worker injuries, illnesses, and fatalities.

WHAT OIG DID

We conducted this audit to answer the following question:

Did OSHA's enforcement activities help protect U.S. workers from COVID-19 health hazards?

To answer this question, we interviewed OSHA national and area office officials and reviewed OSHA guidance, public laws, and states' standards related to COVID-19.

We also analyzed OSHA's COVID-19 complaint and enforcement data and reviewed sampled inspections. In addition, we evaluated survey results from OSHA inspectors' experiences conducting inspections during the pandemic.

WHAT OIG FOUND

We found OSHA's enforcement activities did not sufficiently protect workers from COVID-19 health hazards because OSHA: (1) did not issue citations to enforce the standard for recording and reporting occupational injuries and illnesses in 15 percent of sampled fatality inspections, (2) lacks complete information on COVID-19 infection rates at worksites, and (3) closed inspections without ensuring it received and reviewed all items requested from employers to demonstrate alleged COVID-19 health hazards had been mitigated.

These issues occurred because OSHA had not established controls to ensure citations were issued or to document the rationale, does not require employers to report all COVID-19 cases among workers, and does not have a tool to ensure it receives and reviews all requested documentation prior to closing inspections. As a result, there is a heightened risk that workers suffered unnecessary exposure to the virus.

WHAT OIG RECOMMENDED

We made five recommendations to OSHA regarding improving its enforcement actions, standards, guidance, and training to better protect workers from exposure to COVID-19 and for future pandemics. OSHA agreed with three of the five recommendations and will take one other recommendation into account in its rulemaking.

READ THE FULL REPORT

<https://www.oig.dol.gov/public/reports/oa/2023/19-23-001-10-105.pdf>

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INSPECTOR GENERAL'S REPORT

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This report presents the results of the U.S. Department of Labor Office of Inspector General's (OIG) audit of the Occupational Safety and Health Administration's (OSHA) COVID-19 response. On January 31, 2020, the Secretary for Health and Human Services declared a nationwide public health emergency in response to the COVID-19 pandemic. As of July 25, 2022, the Centers for Disease Control and Prevention (CDC) reported approximately 90 million confirmed COVID-19 cases and more than 1 million COVID-19-related deaths in the United States.

OSHA has the overall responsibility for ensuring safe and healthful working conditions for 130 million workers employed at more than 8 million worksites in the United States by setting and enforcing standards and by providing training, outreach, education, and assistance. Worksite inspections are an important part of OSHA's enforcement function and are integral to reducing worker injuries, illnesses, and fatalities.

The COVID-19 pandemic has presented OSHA with significant worksite enforcement and inspection challenges in its operations and efforts to safeguard workers. Previous OIG work identified a significant reduction in OSHA inspections during the pandemic while complaints significantly increased. The OIG also expressed concern that guidance would not be enough to protect workers as businesses re-opened. Given these risks, we performed an audit to determine the following:

Did OSHA's enforcement activities help protect U.S. workers from COVID-19 health hazards?

We determined OSHA's enforcement activities did not sufficiently protect workers from COVID-19 health hazards. As a result, there is a heightened risk that workers suffered unnecessary exposure to the virus.

For our work, we interviewed OSHA national, regional, and area office officials; reviewed OSHA guidance, public laws, and states' standards related to COVID-19; and analyzed OSHA's COVID-19-related complaint and enforcement data. We also selected a sample of closed on-site and remote inspections using a random number generator for the period February 1, 2020, through January 31, 2021. Further, we evaluated survey responses from OSHA inspectors regarding their experiences conducting inspections during the COVID-19 pandemic (see Exhibit).

RESULTS

OSHA's enforcement activities did not sufficiently protect workers from COVID-19 health hazards because OSHA: (1) did not issue citations to enforce the standard for recording and reporting occupational injuries and illnesses in 15 percent of sampled fatality COVID-19 inspections, (2) lacks complete information on COVID-19 infection rates at worksites, and (3) closed inspections without ensuring it received and reviewed all items requested from employers to demonstrate alleged COVID-19 health hazards had been mitigated.

These issues occurred because OSHA had not established controls to ensure citations were issued or to document the rationale, does not require employers to report all COVID-19 cases among workers, and does not have a tool to ensure it receives and reviews all requested documentation prior to closing inspections. Due to the lack of citations, incomplete information on infection rates at worksites, and insufficient evidence of hazard mitigation, there is a heightened risk that workers suffered unnecessary exposure to the virus.

OSHA DID NOT ALWAYS ISSUE CITATIONS TO ENFORCE THE RECORDING AND REPORTING STANDARD NOR DOCUMENT ITS REASONS

OSHA did not issue citations to enforce the standard for recording and reporting occupational injuries and illnesses in 15 percent of sampled fatality COVID-19 inspections nor did it document its reasons for not issuing a citation. The

Occupational Safety and Health Act (OSH) Act Section 9(a) requires OSHA to issue a citation to any employer who has violated a standard established in the Code of Federal Regulations (C.F.R.). OSHA's guidance allows the Area Director discretion on whether or not to issue a citation in unique circumstances as long as the file contains adequate documentation to support that decision. This occurred because OSHA had not established controls to ensure citations were issued or to document unique circumstances to support the decision not to issue a citation.

An employer reporting a fatality late, not evaluating work-relatedness of exposure, or failing to report a fatality altogether impacts OSHA's ability to provide prompt assistance to identify the hazard and confirm the hazard has been timely abated to prevent further illness or loss of life. Failing to promptly report a fatality violates the standard, and OSHA should issue citations when an employer violates a standard or document its reasons for not issuing citations. OSHA citations are public record and may, therefore, also encourage employers to promptly report fatalities and prevent and correct hazards voluntarily. Moreover, evidence of previous violations is a determining factor when OSHA decides whether to schedule a follow-up inspection. If OSHA improves its enforcement for recording and reporting fatalities, it may better protect workers from serious hazards such as COVID-19 exposure.

**OSHA DID NOT ISSUE CITATIONS TO ENFORCE
THE STANDARD FOR RECORDING AND
REPORTING OCCUPATIONAL INJURIES AND
ILLNESSES IN 15 PERCENT OF SAMPLED
COVID-19 FATALITY INSPECTIONS**

OSHA did not issue citations to enforce the standard for recording and reporting occupational injuries and illnesses in 15 percent (6 of 41) of sampled fatality COVID-19 inspections. This occurred because OSHA had not established controls to ensure citations were issued. OSH Act Section 9(a) requires OSHA to issue a citation to any employer who has violated a standard established in the C.F.R.

We selected a sample of 66 on-site and remote inspections from the universe of 643 closed federal inspections using Audit Command Language Analytics to generate random numbers for the period February 1, 2020, through January 31, 2021. Of the 66 inspections, 41 were prompted by fatalities, 5 were prompted by hospitalizations, and 20 were prompted by allegations related to lack of Personal Protective Equipment (PPE), routine cleaning, PPE training, respirator fit testing, mass COVID-19 positive cases, or not following CDC guidelines for social distancing and face coverings.

In addition to the OSH Act requirement for citation issuance, OSHA's standard requires the reporting of work-related fatalities within a specified time frame. In accordance with 29 § C.F.R. 1904.39(a)(1), employers are required to report work-related fatalities to OSHA within 8 hours. Per OSHA's Revised Enforcement Guidance for Recording Cases of Coronavirus Disease 2019, dated May 19, 2020 (Revised Enforcement Guidance), an employer must consider an injury or illness to be work-related if an event or exposure in the work environment either caused or contributed to the condition or significantly aggravated a pre-existing injury or illness.

Furthermore, per OSHA's standard for recording and reporting occupational injuries and illnesses,¹ employers must evaluate the employee's work duties and environment to decide whether one or more events or exposures in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing condition.

OSHA's Revised Enforcement Guidance requires that, when determining whether an employer made a reasonable determination of work-relatedness, Compliance Safety and Health Officers (CSHO) should apply the following considerations:

- the reasonableness of the employer's investigation into work-relatedness,
- the evidence available to the employer, and
- the evidence that a COVID-19 illness was contracted at work.

Per the OSH Act, OSHA shall with reasonable promptness issue a citation to any employer who has violated a requirement of the OSH Act. However, OSHA did not issue citations to enforce the standard for recording and reporting occupational injuries and illnesses in 15 percent (6 of 41) of sampled fatality COVID-19 inspections. Among the six inspections, three employers reported the fatalities two days late, two employers did not follow the standard to determine whether the event or exposure occurred in the work environment, and one employer failed to report the fatality at all (see Table 1).

¹ 29 C.F.R. § 1904.5(b)(3)

Table 1: Citations Not Issued for Recording and Reporting Violations

Recording and Reporting Violation	Number of Recording and Reporting Violations	Percentage of Total Recording and Reporting Violations
Fatality reported late	3	50%
Employer not evaluating the work-relatedness of exposure	2	33%
Fatality not reported	1	17%
TOTAL	6	100%

Source: OIG analysis of OSHA inspection files

Furthermore, in our evaluation of survey results, we noted 52 percent of OSHA inspectors indicated it has been harder to issue citations for COVID-19 work-related hazards than non-COVID-19 work-related hazards during the pandemic (see Exhibit, Figure 2).

Any employer that violates OSHA standards shall be issued a citation and potentially be assessed a penalty. Penalties issued to employers provide incentives for preventing and correcting hazards voluntarily, not only to the cited employer but also to other employers. By not issuing citations and not assessing penalties to employers for reporting fatalities late, failing to evaluate work-relatedness of exposure, or failing to report fatalities, OSHA did not enforce the standard for recording and reporting occupational injuries and illnesses designed to keep workers safe. Further, if an employer is not cited for failing to report a fatality, they may not be scheduled for follow-up inspections.

OSHA DID NOT DOCUMENT ITS REASONS FOR NOT ISSUING A CITATION

In addition, for those six fatality inspections, OSHA did not document its reasons for not issuing a citation. OSHA's guidance allows Area Director discretion on whether or not to issue a citation in unique circumstances as long as the file contains adequate documentation to support that decision.² We found the six inspection files did not contain reasons for not issuing a citation, indicating a lack of supervisory oversight. This occurred because OSHA had not established controls to ensure documentation of unique circumstances. An OSHA official

² OSHA, "Additional Guidance for Case File Documentation," memorandum, December 21, 2018

stated that the idea that OSHA inspectors would document everything is overly burdensome.

In one of the six cases, an employee died from COVID-19 and the employer failed to report the fatality to OSHA. According to the file, the employer's Public Health Emergency Officer determined the "COVID-19 infection and subsequent death was 50 percent more likely a workplace exposure and the most likely exposure route was inhalation of infective droplets during a shared lunch break with coworkers less than 6 feet apart." Nonetheless, OSHA did not issue a citation for lack of reporting nor did the file contain documentation of the rationale for not doing so.

OSHA LACKS COMPLETE INFORMATION ON COVID-19 INFECTION RATES AT WORKSITES

OSHA lacks complete information on COVID-19 infection rates at worksites because it does not require employers to report all COVID-19 cases among workers. OSHA only requires employers to report a work-related fatality, inpatient hospitalization, amputation, or loss of an eye. Also, it is up to employers to determine if an injury or illness is work-related, which is generally far simpler in an amputation case than in the case of an airborne illness. However, COVID-19 is spreadable regardless of the origin of infections; no matter where an employee contracted the virus, COVID-19 cases in the worksite endanger workers. Requiring employers to notify all employees of positive cases at the worksite is necessary to ensure safe and healthful working conditions.

Establishing whether COVID-19 cases are work-related is difficult, and, per OSHA guidance, the employer has an obligation to determine if a COVID-19 illness is work-related. OSHA's guidance states:

If, after the reasonable and good faith inquiry..., the employer cannot determine whether it is more likely than not that exposure in the workplace played a causal role with respect to a particular case of COVID-19, the employer does not need to record that COVID-19 illness.

When a COVID-19 case is determined to be work-related, the employer must record the case on the Form 300 Log of Work-Related Injuries and Illnesses. Form 300-A is the Summary of Work-Related Injuries and Illnesses, which is to be posted in the worksite annually. It must be posted for 3 months, from February 1 until April 30. Because of the difficulty of determining

work-relatedness, however, employers may not post notification, putting other employees at risk. CSHOs also had difficulty in determining work-relatedness for COVID-19 hospitalizations and fatalities. Therefore, requiring employers to notify all employees of positive cases at the worksite is, in our view, necessary to ensure safe and healthful working conditions.

In contrast to OSHA not requiring employers to report all COVID-19 cases, New Mexico's Environment Department implemented a practice that aids this issue by requiring employers to report all employee cases of COVID-19, within 4 hours of being notified, to the New Mexico Occupational Health and Safety Bureau, regardless of whether the infection was contracted at work. Noting its rationale as that it is "typically very difficult to determine the origin of infections," New Mexico implemented this solution through an emergency amendment to its injury and illness reporting regulation, which, thereafter, was adopted as a permanent rule by the Environmental Improvement Board.³

Further, the New Mexico Environment Department also highlighted that the presence of the virus itself in the worksite is a worker safety problem, stating that "COVID-positive employees may be infectious to others regardless of where the infection originated, making a rapid response critical." New Mexico's reporting requirement enables rapid response, which is critical to timely reduce or eliminate additional worker exposure and also ensures the public is informed.

Similarly, California addressed the challenge of worker information regarding COVID-19 cases in the worksite by requiring employers to report all cases to the local public health agency in the jurisdiction of the worksite (California Assembly Bill 685).⁴ On November 15, 2021, the state announced a first-of-its-kind stipulated judgment requiring one company to end harmful labor practices that concealed COVID-19 case numbers from workers and to provide key information on worksite protections in line with California's "right-to-know" law.

According to a press release issued by California's Attorney General, the complaint leading to the stipulated judgment asserted that, throughout the pandemic, the company had "failed to adequately notify warehouse workers and local health agencies of COVID-19 case numbers, often leaving them in the dark and unable to effectively track the spread of the virus." Further, as the attorney general stated at a news conference:

³ Amendment to 11.5.1 New Mexico Administrative Code (NMAC), Section 16, effective January 26, 2021

⁴ California Assembly Bill (AB) 685, imminent hazard to employees: exposure: notification: serious violations, Sec. 4 adding Section 6409.6(b) to California's Labor Code. (September 18, 2020), last accessed January 25, 2022, available at: https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB685

[The company's] practices led to workers not knowing if they had been potentially exposed to 2, 20, or even 200 cases of COVID-19. This left many workers understandably terrified and powerless to make informed decisions to protect themselves and to protect their loved ones.⁵

California Assembly Bill 685 implemented a COVID-19 imminent hazard provision, with the legislature finding and declaring that, “as COVID-19 continues to ravage California, one of the best tools available for limiting exposure and minimizing spread is to gather thorough and accurate data.” The bill stated, in part,

If an employer or representative of the employer receives a notice of potential exposure to COVID-19, the employer shall take all of the following actions within one business day of the notice of potential exposure:

- (1) Provide a written notice to all employees, and the employers of subcontracted employees, who were on the premises at the same worksite as the qualifying individual within the infectious period that they may have been exposed to COVID-19 in a manner the employer normally uses to communicate employment-related information. Written notice may include, but is not limited to, personal service, email, or text message if it can reasonably be anticipated to be received by the employee within one business day of sending and shall be in both English and the language understood by the majority of the employees.⁶

Furthermore, the CDC has previously encouraged employers to inform employees that the health department would contact people diagnosed with COVID-19 or those who have had close contact with someone with COVID-19.⁷ The CDC states employers should encourage employees to work with the health

⁵ State of California Department of Justice, “In Nationwide First, Attorney General Bonta Secures Judgment Requiring Amazon to Comply with ‘Right-to-Know’ Law to Help Protect Workers Against COVID-19,” press release, November 15, 2021, last accessed February 17, 2022, available at <https://oag.ca.gov/news/press-releases/nationwide-first-attorney-general-bonta-secures-judgment-requiring-amazon-comply>

⁶ AB-685, Section 4 Labor Code, § 6409.6 (a) and § 6409.6 (a)(1)

⁷ CDC, COVID-19 Case Investigation and Contact Tracing in Non-healthcare Workplaces: Information for Employers Updated October 20, 2021

department to discuss their illness, exposures, and people exposed to COVID-19 so the health department can limit further spread.

OSHA lacks complete information on COVID-19 infection rates at worksites because it does not require employers to report all COVID-19 cases among workers. While OSHA does not require employers to report all cases of COVID-19 in the worksite, the adjustments made by New Mexico and California are practices that provide critical information to better ensure workers' safety and health.

The OIG recognizes that OSHA collecting all data on positive COVID-19 cases in worksites would be challenging due to resource constraints. OSHA could collaborate with external agencies, such as the CDC and local public health agencies, that may already collect this data to maximize its rapid response and enforcement actions in worksites exposed to any pandemic or epidemic.

Due to the nature of the COVID-19 virus, it is difficult to establish the origin of infection. Survey results indicated that 53 percent of CSHO respondents encountered such challenges (see Exhibit, Figure 3). If employers are not required to notify employees of COVID-19 cases, employees will be unaware if their worksite has infections. With knowledge of infections at the worksite, employees can take measures to decrease their risk of contracting the virus and spreading it to their family and communities and thereby increase overall worker safety and health.

OSHA CLOSED INSPECTIONS WITHOUT ENSURING EMPLOYERS DEMONSTRATED THE ALLEGED COVID-19 HEALTH HAZARDS HAD BEEN MITIGATED

In 20 percent of sampled inspections, OSHA closed inspections without ensuring it received and reviewed all items it requested from employers to demonstrate the alleged COVID-19 health hazards had been mitigated. Per the Government Accountability Office (GAO), documentation is a necessary part of an effective internal control system.⁸ This lack of complete documentation occurred because, although OSHA uses a tracking tool to monitor when it receives documentation to address citations, no similar tool exists to ensure OSHA receives and reviews requested documentation when a citation is not issued. When OSHA closes inspections without receiving all items it requests, it may not have ensured the

⁸ GAO, Standards for Internal Control in the Federal Government, Appendix I: Requirements, September 10, 2014

alleged COVID-19 health hazards were mitigated. As a result, there is a risk CSHOs may make less informed decisions, leaving open the possibility that hazards will go uncorrected and furthering workers' safety risks.

OSHA's recordkeeping has been especially important during the pandemic. From February 1, 2020, to January 31, 2021, OSHA relied more on remote inspections rather than on-site inspections. These inspections to verify that the hazard(s) no longer existed relied more on employers providing documentation rather than on CSHOs' on-site observations. In evaluating survey results, we noted 26 percent of CSHOs indicated remote inspections they conducted during the pandemic did not allow them to effectively help safeguard workers as much as on-site inspections prior to the pandemic (see Exhibit, Figure 4).

For all 66 inspections we sampled (43 remote and 23 on-site), OSHA requested employers provide documentation supporting that the alleged COVID-19 health hazards had been mitigated.⁹ While employers provided complete responses in 53 inspections, the remaining 13 employers¹⁰ (20 percent) provided only partial documentation. For the sampled inspections where OSHA did not ensure employers provided complete documentation, examples of missing documentation include a written exposure control plan, a COVID-19 management training guide, and a training record for COVID-19 infectious control.

GAO specifies some of the ways in which documentation supports an effective internal control system:

- transactions are promptly recorded to maintain their relevance and value to management in controlling operations and making decisions,
- management designs appropriate types of control activities for the entity's internal control system,
- control activities help management fulfill responsibilities and address identified risk responses in the internal control system, and
- establishing controls over information processing is essential in developing an effective internal control system.¹¹

Without an effective internal control system such as a formal tool to track documentation submitted by the employer, CSHOs may not be able to ensure they are receiving and reviewing all requested items to address the alleged

⁹ CSHOs either formally initiated requests via an official letter or informally initiated requests during interviews or walkthroughs or by email or phone.

¹⁰ Of these 13 inspections, 7 were remote inspections and 6 were on-site inspections.

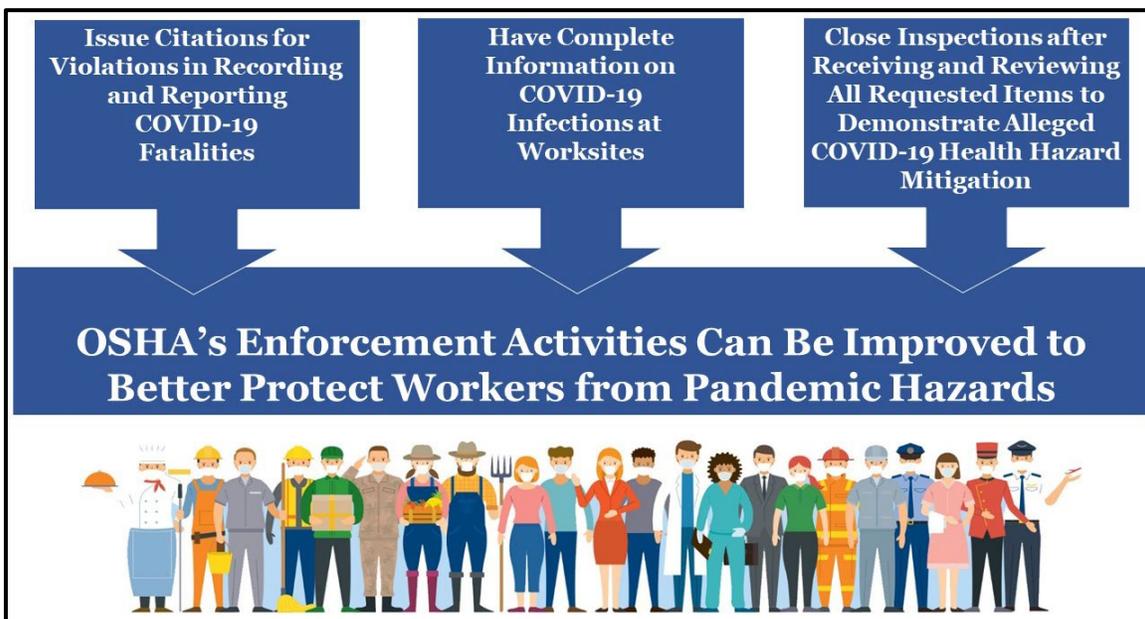
¹¹ GAO: Standards for Internal Control in the Federal Government, Principle 10, September 10, 2014

hazard. OSHA needs to ensure its recordkeeping procedures require CSHOs to capture the most accurate and complete information on worksite hazards so that CSHOs can make well-informed decisions on how to protect workers.

CONCLUSION

OSHA’s enforcement activities did not sufficiently protect workers from pandemic health hazards. These issues occurred because OSHA had not established controls to ensure citations were issued or to document the rationale, does not require employers to report all COVID-19 cases among workers, and does not have a tool to ensure it receives and reviews all requested documentation prior to closing inspections. Due to the lack of citations, incomplete information on infection rates at worksites, and insufficient evidence of hazard mitigation, there is a heightened risk that workers suffered unnecessary exposure to the virus. To protect workers from pandemic health hazards, OSHA’s enforcement activities can be improved (see Figure 1).

Figure 1: OSHA’s Enforcement Activities Can Be Improved



Source: OIG analysis

OIG'S RECOMMENDATIONS

We recommend the Assistant Secretary for Occupational Safety and Health:

1. Provide additional training to CSHOs to enforce the recording and reporting standard for fatalities.
2. Update guidance or policy to include supervisory review of inspection files to ensure they contain adequate support for the reasons regarding citation issuance decisions before closing inspections.
3. Develop a plan for a future pandemic or epidemic to collaborate with external agencies on worksite case data and to use this data to maximize rapid response and enforcement actions in worksites.
4. As part of OSHA's rulemaking on infectious diseases, require employers to notify all employees of all known positive cases of infectious diseases at the worksite.
5. Develop and implement a tracking tool to ensure OSHA receives and reviews all items CSHOs request during inspections to ensure alleged hazards have been mitigated.

SUMMARY OF OSHA'S RESPONSE

OSHA agreed with three of five recommendations. OSHA agreed to provide additional training to CSHOs and to update guidance or policy to include supervisory review of inspection files to ensure they contain adequate support for the reasons regarding citation issuance decisions before closing inspections. While OSHA also agreed it would be beneficial to have access to worksite case data, management officials said they would need to explore the feasibility of this recommendation because they need to determine (a) if the specific infectious disease case data is in a form to allow for analysis and prioritization, (b) the appropriate timeline for effective intervention, and (c) an agency's willingness to make data available to OSHA.

With regard to Recommendation 4, OSHA disagreed and stated,

OSHA notes, as reflected in its Regulatory Agenda, that the planned scope of the infectious disease rule is limited to health care

and the social assistance sectors. While OSHA will consider the appropriate scope of the rule in the rulemaking process based on public comments, an infectious disease rule covering all employers would, as a practical matter, be a whole new rulemaking and significantly slow down the infectious disease rulemaking process, leaving healthcare and social assistance sector workers at risk, including at risk of hazards related to pandemics.

However, management officials stated they will take the recommendation of broad and inclusive reporting and employee notification into account in the proposed infectious disease rule.

While the scope of OSHA's planned infectious disease rule may be limited to health care and the social assistance sectors rule making process, it is important for all employees in all industries to be aware of worksite infections. Without knowledge of infections at the worksite, employees are unable to take measures to decrease their risk of contracting the virus and spreading it to their family and communities. OSHA's response does not change our conclusion for this recommendation.

OSHA disagreed with Recommendation 5, maintaining essentially that the OIG should have to prove a material impact on inspection effectiveness such as unmitigated hazards to warrant use of a tracking tool. However, OSHA also cited that CSHOs can determine a hazard or violation does not exist based on additional factors such as physical inspection and employee interviews. Additional factors considered should be documented, especially if the additional factors eliminate the necessity for receipt of any additional requested documents. OSHA's objective is to ensure safe and healthful working conditions for 130 million workers employed at more than 8 million worksites. Implementing a tool to ensure OSHA receives and reviews all items it requests from employers to demonstrate alleged hazards have been mitigated is necessary for OSHA to meet its objective and reduce the possibility that worksite hazards will go uncorrected, furthering workers' safety risks.

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

EXHIBIT: HIGHLIGHTS OF SURVEY RESULTS

We surveyed 710 OSHA inspectors to evaluate their experiences conducting inspections during the pandemic; 235 responded. Highlighted results follow.

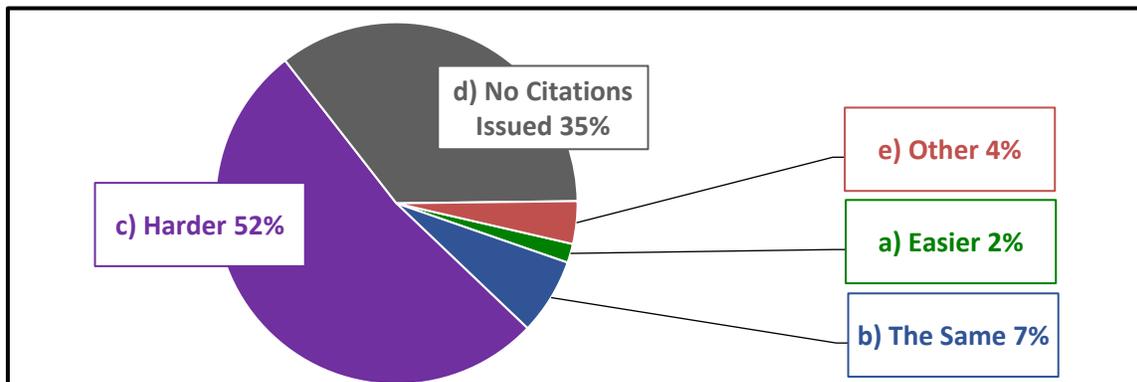
Question 1: What has been your experience issuing citations for COVID-19 work-related hazards compared to issuing citations for non-COVID-19 work-related health hazards during the pandemic?

Possible Answers:

- a) **EASIER** – It has been easier to issue citations for COVID-19 work-related hazards than non-COVID-19 work-related hazards during the pandemic.
- b) **THE SAME** – It has been the same to issue citations for COVID-19 work-related hazards and non-COVID-19 work related hazards during the pandemic.
- c) **HARDER** – It has been harder to issue citations for COVID-19 work-related hazards than non-COVID-19 work related hazards during the pandemic.
- d) **NOT APPLICABLE** [N/A] – I have not issued any citations for COVID-19 work-related hazards during the pandemic.
- e) **OTHER**

Results Summary: While a few respondents indicated it was easier or the same, most respondents (52 percent) indicated it has been harder to issue citations for COVID-19 work-related hazards than non-COVID-19 work-related hazards during the pandemic or that they have not issued any citations for such hazards during the pandemic (35 percent) (see Figure 2).

Figure 2: CSHO Question 1 Responses, COVID-19 versus Non-COVID-19 Citation Issuance Experience



Source: OIG analysis of CSHO survey results

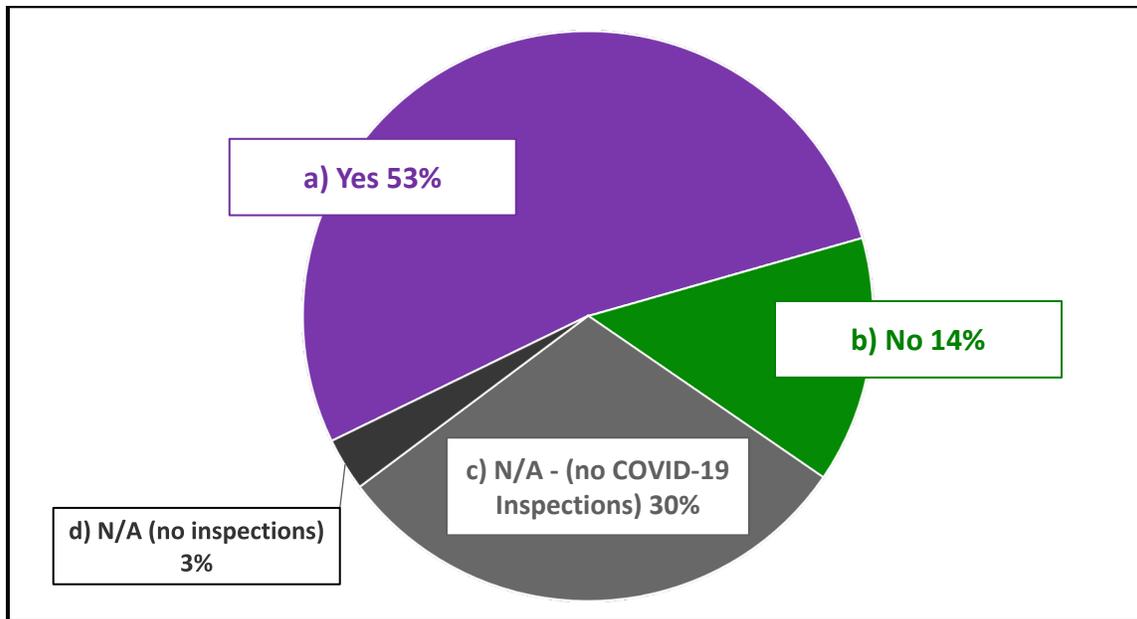
Question 2: Did you encounter challenges establishing work-relatedness for COVID-19 hospitalizations and/or fatalities? If yes, please explain the reason(s) in the comments.

Possible Answers:

- a) **YES** – I encountered challenges establishing work-relatedness for COVID-19 hospitalizations and/or fatalities.
- b) **NO** – I did not encounter challenges establishing work-relatedness for COVID-19 hospitalizations and/or fatalities.
- c) **NOT APPLICABLE** [N/A] – I did not conduct any inspections which involved COVID-19 hospitalizations and/or fatalities.
- d) **NOT APPLICABLE** [N/A, no inspections] – I have not conducted any inspections during the pandemic.

Results Summary: Most respondents indicated they encountered challenges establishing work-relatedness for COVID-19 hospitalizations and/or fatalities (53 percent) or that the question was not applicable (33 percent) while only 14 percent indicated they experienced no such challenges (see Figure 3).

Figure 3: CSHO Question 2 Responses, Challenges Experienced in Establishing Work-Relatedness for COVID-19 Hospitalizations and/or Fatalities



Source: OIG analysis of CSHO survey results

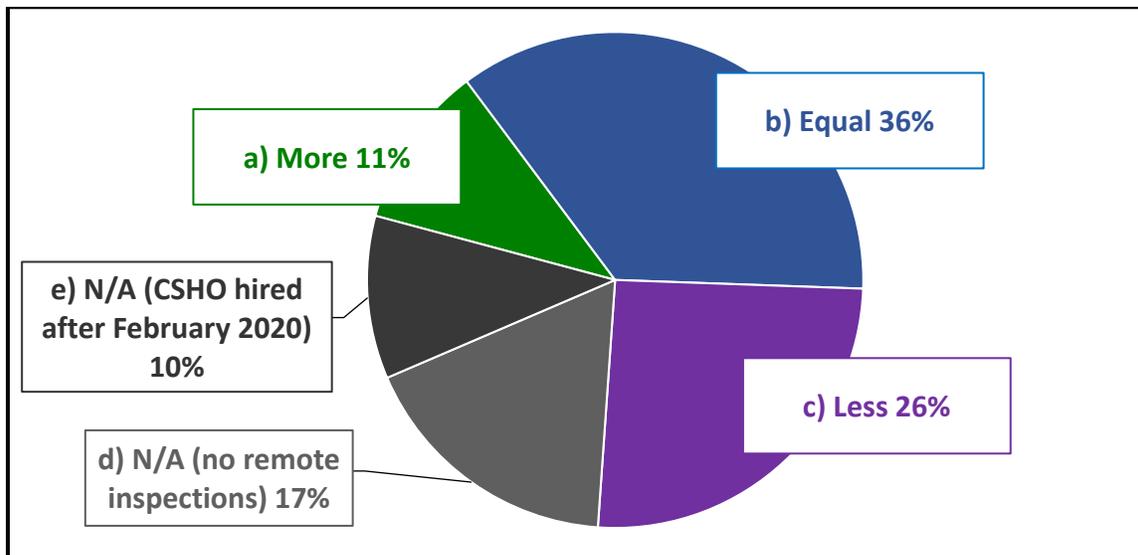
Question 3: Overall, did the **remote** inspections that you conducted during the pandemic allow you to effectively safeguard workers at the same level you did during **on-site** inspections prior to the pandemic?

Possible Answers:

- a) **MORE** – The remote inspections I conducted during the pandemic allowed me to more effectively help safeguard workers than during on-site inspections prior to the pandemic.
- b) **EQUAL** – The remote inspections I conducted during the pandemic equally allowed me to effectively help safeguard workers as during on-site inspections prior to the pandemic.
- c) **LESS** – The remote inspections I conducted during the pandemic did not allow me to effectively help safeguard workers as much as during on-site inspections prior to the pandemic.
- d) **NOT APPLICABLE** [N/A, no remote inspections] – I have conducted no remote inspections during the pandemic.
- e) **NOT APPLICABLE** [N/A] – I was hired after February 2020.

Results Summary: Twenty-six percent of respondents indicated remote inspections they conducted during the pandemic did not allow them to effectively safeguard workers as much while 36 percent indicated it was about equal, 11 percent indicated they were able to more effectively help safeguard workers, and 27 percent indicated it was not applicable (see Figure 4).

Figure 4: CSHO Question 3 Responses, Effectiveness of Remote Inspections during the Pandemic versus On-site Inspections Prior to the Pandemic



Source: OIG analysis of CSHO survey results

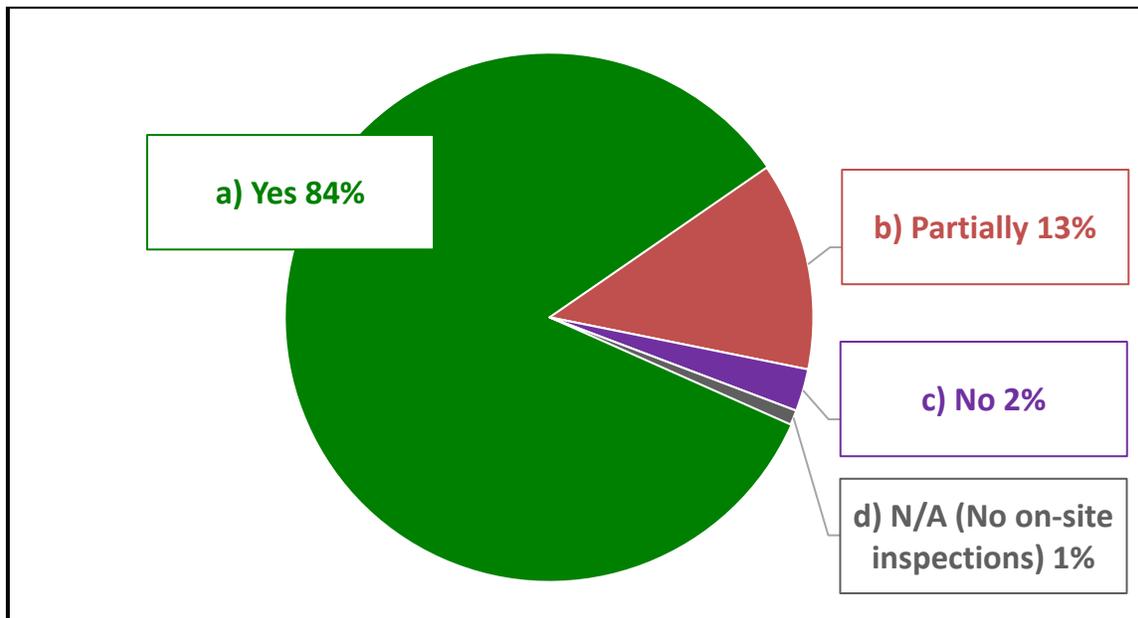
Question 4: Did OSHA provide you with sufficient equipment (i.e., personal protective equipment (PPE)) to protect you from contracting COVID-19 when you conducted on-site inspections during the pandemic?

Possible Answers:

- a) **YES** – OSHA provided me with sufficient equipment to safely conduct on-site inspections during the pandemic.
- b) **PARTIALLY** – OSHA provided me with partially sufficient equipment to safely conduct on-site inspections during the pandemic.
- c) **NO** – OSHA did not provide me with sufficient equipment to safely conduct on-site inspections during the pandemic.
- d) **NOT APPLICABLE [N/A]** – I have not conducted on-site inspections during the pandemic.

Results Summary: Most respondents (84 percent) indicated OSHA provided them with sufficient equipment to safely conduct on-site inspections during the pandemic; 13 percent indicated they were provided with partially sufficient equipment and only 2 percent indicated the equipment was insufficient (see Figure 5).

Figure 5: CSHO Question 4 Responses, Sufficient Equipment Provided to Safely Conduct On-site Inspections during the Pandemic



Source: OIG analysis of CSHO survey results

APPENDIX A: SCOPE, METHODOLOGY, & CRITERIA

SCOPE

Our audit covered COVID-19 complaints and referrals and inspections data from February 1, 2020, to January 31, 2021.

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

We confirmed our understanding of OSHA’s complaint and inspection processes through interviews and document reviews. We reviewed laws, regulations, policies, guidance, procedures, documents, and audit reports. We interviewed two OSHA directorates: (1) Enforcement Programs and (2) Cooperative and State Programs. We also interviewed OSHA officials to determine their roles and responsibilities for COVID-19. Our judgmental selection included OSHA regions and area offices (New York, Chicago, and Kansas City). We also interviewed CSHOs based on the number of regional inspections, violations issued, and National Emphasis Program-targeted industries.

We designed a checklist to identify whether OSHA addressed the allegation set forth in the complaint or referral. We selected a random sample of 66 closed inspections, 23 on-site and 43 remote, using Audit Command Language Analytics random numbers for the period February 1, 2020, through January 31, 2021. We also selected a judgmental sample of 10 cases from a random sample of 82 closed complaints and referrals that did not receive an inspection to determine if OSHA addressed the allegation set forth in the complaint or referral. In addition, we designed a checklist to determine if OSHA ensured employers took adequate and timely abatement actions during COVID-19 inspections. OSHA provided the total number of complaints/referrals and inspections from February 1, 2020, through January 31, 2021, and we analyzed this data. Finally, we conducted a 13-question survey of 710 OSHA inspectors, to which 235 (33 percent) responded, to evaluate their experiences conducting inspections during the COVID-19 pandemic.

RELIABILITY ASSESSMENT

We performed a data reliability assessment in which 13,067 complaints and referrals and 643 federal COVID-19 inspection records were validated and are considered reliable to support our audit objective and data can support audit findings, conclusions, or recommendations.

INTERNAL CONTROLS AND RISK ASSESSMENT

In planning and performing our audit, we considered OSHA's internal controls relevant to our audit objective by obtaining an understanding of those controls and assessing control risks relevant to our objective. We considered the internal control elements of control environment, risk assessment, control activities, information and communication, and monitoring during our planning and substantive phases and evaluated relevant controls. The objective of our audit was not to provide assurance of the internal controls; therefore, we did not express an opinion on OSHA's internal controls. Our consideration of internal controls for administering the accountability of the program would not necessarily disclose all matters that might be significant deficiencies. Because of the inherent limitations on internal controls, or misstatements, noncompliance may occur and not be detected.

CRITERIA

1. Code of Federal Regulations

- 29 C.F.R. §1904.39(a) – Reporting fatalities, hospitalizations, amputations, and losses of an eye as a result of work-related incidents to OSHA
- 29 C.F.R. §1904.5(a) – Determination of work-relatedness
- 29 C.F.R. §1904.5(b)(3) - Evaluate the employee's work duties and environment
- 29 C.F.R. §1910.1000(e) – Air Contaminants
- 29 C.F.R. §1910 Subpart I – Personal Protective Equipment
- 29 C.F.R. §1910.134 – Respiratory Protection

2. OSHA's Field Operations Manual, effective April 14, 2020

- Chapter 9, Complaint and Referral Processing
3. Memorandum from OSHA's Deputy Assistant Secretary, "Additional Guidance for Case File Documentation," December 21, 2018
 4. Revised Enforcement Guidance for Recording Cases of Coronavirus Disease 2019, dated May 19, 2020
 5. Government Accountability Office, Standards for Internal Control in the Federal Government, Section 3, Factors of Effective Internal Control

APPENDIX B: AGENCY'S RESPONSE TO THE REPORT

U.S. Department of Labor

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



October 13, 2022

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

FROM: DOUGLAS L. PARKER 

SUBJECT: Response to Office of Inspector General Report: *COVID-19 OSHA's Enforcement Activities Did Not Sufficiently Protect Workers from Pandemic Health Hazards*

This is OSHA's responses to the OIG's Audit Report *COVID-19: OSHA's Enforcement Activities Did Not Sufficiently Protect Workers from Pandemic Health Hazards*. We take the OIG's results and recommendations seriously and appreciate the opportunity to address them below.

Result 1 – OSHA did not always issue citations to enforce the recording and reporting standard nor document its reasons.

The OIG found OSHA did not issue citations under its recording and reporting regulations in six out of the forty-one cases it sampled, and states "this occurred because CSHOs [(OSHA's Compliance Safety and Health Officers)] used their discretion whether to issue a citation." While OIG might take issue with the policy, OSHA was applying the applicable policy guidance for enforcement of recording requirements in place at the time and referenced in the report. OSHA's Revised Enforcement Guidance for Recording Cases of Coronavirus Disease 2019, dated May 19, 2020, acknowledged employers' challenges in determining work-relatedness and provided for Compliance Safety and Health Officers (CSHOs) to use discretion in analyzing cases, based on employer efforts.

To the extent OIG determined staff did not adequately document the rationale for not issuing those six citations, as required in OSHA policy "Additional Guidance for Case File Documentation" (Memorandum, December 21, 2018), OSHA agrees documentation should have been included in the file. Therefore, OSHA agrees with Recommendations 1 and 2, which, recommend that OSHA "[p]rovide additional training to CSHOs to enforce the recording and reporting standard for fatalities," and "[u]pdate guidance or policy to include supervisory review of inspection files to ensure they contain adequate support for the reasons regarding citation issuance decisions before closing inspections[.]" respectively.

Result 2 – OSHA lacks complete information on COVID-19 infection rates at worksites.

The conclusion that OSHA lacked complete information on COVID-19 infection rates at worksites is accurate. The need for better information about the spread of COVID-19, especially earlier in the pandemic, has been a persistent issue for government and public health authorities. Fixing this issue, however, will require significant regulatory changes and investment in public and occupational health infrastructure as well as better data collection and analysis capabilities across a range of government agencies that go beyond OSHA’s ability to commit to finding a solution in the OIG audit process.

The OIG acknowledges that OSHA’s reporting regulation is limited to requiring employers to report *work-related* fatalities, inpatient hospitalizations, amputations, or loss of an eye. OSHA cannot expand its requirements without going through rulemaking. OSHA thus interprets the OIG’s suggestions in this result – that OSHA require reporting of *all* positive COVID-19 cases at a worksite, regardless of work relatedness, and require employers to notify employees of all positive COVID-19 cases – as a policy recommendation rather than an assessment of OSHA’s performance.

As to the recommendations related to this result, Recommendation 3 recommends that OSHA “[d]evelop a plan for a future pandemic or epidemic to collaborate with external agencies on worksite case data and to use this data to maximize rapid response and enforcement actions in worksites.” This recommendation is similar to a recommendation the OIG made in a separate audit – “*COVID-19: To Protect Mission Critical Workers, OSHA Could Leverage Inspection Collaboration Opportunities with External Federal Agencies*.” OSHA certainly agrees it would be beneficial to have access to worksite case data. However, OSHA would need to explore the feasibility of this recommendation because it is dependent on worksite specific infectious disease case data being collected (a) in a form that allowed analysis and prioritization; (b) in a timely enough manner for effective intervention; and (c) by an agency willing to make it available to OSHA. Accordingly, to the extent OSHA can identify agencies with data that meet these criteria, OSHA agrees with this recommendation.

In Recommendation 4, OIG recommends that OSHA, “[a]s part of its infectious disease rulemaking, require all employers to notify employees of all known positive cases at the worksite.” OSHA notes, as reflected in its Regulatory Agenda, that the planned scope of the infectious disease rule is limited to health care and the social assistance sectors. While OSHA will consider the appropriate scope of the rule in the rulemaking process based on public comments, an infectious disease rule covering all employers would, as a practical matter, be a whole new rulemaking and significantly slow down the infectious disease rulemaking process, leaving healthcare and social assistance sector workers at risk, including at risk of hazards related to pandemics. Because of the scope and scale of this recommendation and feasibility concerns, the agency disagrees with Recommendation 4, but will take the recommendation of broad and inclusive reporting and employee notification into account in the proposed infectious disease rule.

Result 3 – OSHA closed inspections without ensuring employers demonstrated the alleged COVID-19 health hazards had been mitigated.

After conducting its review, the OIG found thirteen cases in which OSHA received partial responses to information requests. Based on this small number of cases, OIG concluded the reason OSHA only received partial responses to information requests was because, “although OSHA uses a tracking tool to monitor when it receives documentation to address citations, no similar tool exists to ensure OSHA receives, and reviews requested documentation when a citation is not issued.”

As the agency explained to OIG during the audit, an alleged hazard does not automatically mean the existence of a hazard or existence of a violation. If OSHA does not issue a citation, then there is no requirement for an employer to provide documentation of hazard abatement to OSHA. On any inspection, CSHOs determine whether a hazard and/or violation exists or does not exist based on additional factors, such as physical inspection and employee interviews, entirely separate from documentation. For example, if a CSHO requests documents a, b, and c during an inspection, receives documents a and b but concludes, as a health and safety professional, based on additional factors, that there is not a hazard or a violation, then document c is no longer needed or relevant and there is no reason to obtain it or track its request.

The OIG does not indicate that in the thirteen cases in which the employer partially responded to document requests, any hazard went unmitigated or violation uncited. Although OSHA is always open to recommendations to improve the efficiency or effectiveness of the inspection process, given that the audit has not shown the lack of a tracking system has a material impact on inspection effectiveness, OSHA is not persuaded it should prioritize creating and mandating use of a uniform tracking tool for all investigatory documentation requests. Accordingly, OSHA disagrees with Recommendation 5.

APPENDIX C: ACKNOWLEDGMENTS

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