

Appendix II: Comments from the Occupational Safety and Health Administration

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

U.S. Department of Labor

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



2011 14 1000

Mr. Robert E. Robertson
Director, Education, Workforce, and
Income Security Issues
United States General Accounting Office
441 G Street NW, Room 5930
Washington, DC 20548

Dear Mr. Robertson:

Thank you for the opportunity to respond to your report entitled "Workplace Safety and Health: OSHA Can Strengthen Enforcement Through Improved Program Management."

The report provides useful recommendations for the Agency to consider as OSHA moves forward in our efforts to improve the working conditions throughout the Nation. We wish to emphasize, however, that OSHA's primary goal is to reduce workplace fatalities, injuries, and illnesses – not merely to inspect worksites. The report should also acknowledge the demographics of the American workplace and how OSHA has chosen to target its enforcement actions, as well as the results those targeting efforts have produced. OSHA's responsibilities extend to over 6 million establishments, including 700,000 construction worksites, employing more than 120 million people. To cover this workforce, federal OSHA has fewer than 1,200 inspectors, supplemented by inspectors from the 23 states that operate their own OSHA programs.

Despite the huge increases in the U.S. workforce over the past 30 years, the number of occupational-related fatalities continues to decline. Last year (excluding those fatalities attributed to the events of September 11, 2001), fewer than 6,000 workers were killed on the job and over 40% of those were related to traffic accidents, events over which OSHA has limited responsibility. OSHA's enforcement system – which relies on a combination of site-specific targeting of establishments, National and Local Emphasis Programs, and local area office construction prioritization – has achieved striking results. Specifically, from 1992 to 2000, the nation's total injury/illness rate has decreased by 31.5%, from 8.9 to 6.1 cases per 100 workers. However, in the cover letter to Congress, GAO aggregates all the fatalities over the last 21 years to state that there were over 100,000 worker deaths since 1980, overlooking the dramatic decreases that have occurred in both fatality and injury/illness rates.

See comment 1.

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Even with the dramatic reduction, we acknowledge that the targeting system can be improved. Therefore, in Fiscal Year 2003, the Agency plans to evaluate the Site Specific Targeting Program and its Special Emphasis Programs.

See comment 2.

However, there are some statements in GAO's report that OSHA believes need to be corrected. For example, GAO claims the Agency does not effectively identify worksites for inspections, asserting OSHA's databases do not permit accurate identification of smaller worksites for inspection. GAO's recommendations for improving the national Construction Targeting System are based on the presumption that smaller construction sites are more hazardous than larger sites. Yet, GAO acknowledges that there is no conclusive data to demonstrate this and supports the concept of the Construction Project Survey that will allow OSHA to rate hazards by project size. GAO further states that prior to obtaining the results of the survey, OSHA should rely on Local Emphasis Programs (LEPs) and "informal criteria" used by area offices to identify and target smaller construction projects.

See comment 3.

Bureau of Labor Statistics (BLS) data pertaining to construction employer size show that medium-size employers experience the highest rates of injuries and illnesses, not the smallest employers (a lost workday case incidence rate of 4.8 for 50-249 employees versus 2.8 for 1-10 employees). The BLS quartile data also show that more than 75% of the smallest construction employers experience no injuries or illness during a given year.

See comment 4.

Also, in its analysis of the site-specific targeting (SST) program, GAO analyzed IMIS data and equated the number of serious violations cited to the relative hazardousness of the establishment. GAO's analysis did not control for OSHA interventions other than the SST inspection that may have contributed to the removal of hazards. Worksites with high injury/illness rates may experience multiple interventions from OSHA (receipt of high injury/illness letters, consultation visits, other inspections, including complaint or fatality). We believe these other interventions would cause an employer to correct unsafe conditions and help explain the lack of OSHA citations during SST visits.

See comment 5.

GAO also claims OSHA acts on faulty and inaccurate employer injury and illness information. However, OSHA performs ongoing evaluations of the quality of employer injury and illness records in its Audit and Verification Program of Occupational Injury and Illness Records. This program has been in place for five years and will continue. The audit program is designed to estimate the percent of establishments that maintain accurate records (at-or-above the 95 percent confidence threshold). In all five years of the program, the audit findings have shown that approximately 90 percent of employers accurately record injuries and illnesses for both total recordable and lost workday injury and illness cases. Based on the audit findings, OSHA has concluded and reported to OMB that the accuracy of employer injury and illness recordkeeping represents reasonable quality for OSHA's targeting and performance measurement

See comment 6.

purposes. In fact, GAO, in an earlier report entitled, "Program Evaluation: Studies Helped Agencies Measure or Explain Program Performance," cited the recordkeeping audit program as an example of an excellent quality control program.

See comment 7.

Furthermore, GAO misunderstood the constraints placed on OSHA's targeted inspection system by law. According to the Supreme Court decision, *Marshall v. Barlow, Inc.*, 436 US 307 (1978), OSHA must have either a reasonable belief that cause for inspection exists (e.g., a fatality, a complaint, a referral) or an unbiased administrative plan for selecting construction work sites for inspection. The key element of an acceptable plan under law is a neutral and objective selection system, not a capricious and arbitrary procedure. In the late 1980's, the Agency, after considerable research and study, decided to implement a system of random, neutral, computer-generated selections from among the universe of active construction sites contained in the F.W. Dodge Reports (the most complete listing of active construction work sites known to the Agency) to be performed by an objective third party.

See comment 8.

The draft report also inadequately distinguishes general industry from construction, obscuring differences in how work is done in these two major industry subdivisions and detracting from the report's usefulness as a guide for future efforts to improve inspection targeting. Methodology and data sources OSHA uses for targeting inspections of fixed workplaces, where working conditions change relatively little from year to year, are far less useful in construction.

The majority of construction projects are completed in less than a year. And, also, there are no requirements for a project log. Moreover, the employment relationship is more fluid in construction, where workforce turnover, the roster of active subcontractors on a particular project, and changes in the corporate identity of employers make it much more difficult to identify unsafe construction establishments in advance.

We recognize, as does GAO, that the Dodge System may not be the most effective way to identify dangerous worksites. The Agency has investigated alternatives to the Dodge Report. We are considering possible alternative schemes for construction that seek to identify problem worksites based on characteristics such as the size and cost of particular projects, the construction methods and materials used, the locality of the project, and other such variables. OSHA's Construction Project Survey is intended as a first step in developing such an alternative.

See comment 9.

GAO also reports that OSHA misstates its accomplishments by using the wrong baseline for measurements. Yet, in this case, it is impossible for OSHA to avoid setting an arbitrary baseline. Given that the baseline is by definition arbitrary, and keeping in mind that 1995 injury/illness data are not available until December 1996 (i.e., Fiscal Year 1997), it was reasonable to choose a time period immediately before implementation of the strategic plan. Moreover, the three-year-average baseline was

See comment 10.

chosen for the valid statistical purpose of avoiding year-to-year fluctuations. Injury/illness rates did not decline consistently in the chosen industries between 1993-1995 and actually increased or stayed the same in 1997 compared to 1996, for all industries except shipyards. Finally, GAO seems to conclude that the decline between 1993-1995 would have continued even without OSHA's strategic plan efforts. This assumes that the future will be like the past, which is a common assumption, but one which is often incorrect. It is impossible to say what would have happened without OSHA's strategic plan efforts.

See comment 11.

GAO also states in its report that OSHA takes credit for reductions in injury and illness rates without acknowledging that its efforts were just one of many factors that affect workplace safety. This statement is inaccurate. OSHA's annual reports have never claimed that OSHA's efforts alone caused the reductions. Instead, OSHA has also given credit to employers and workers for the decline.

RECOMMENDATIONS

Response to Recommendations:

1. *Encourage all area offices to supplement inspections of large construction with locally planned efforts to inspect smaller worksites.*

OSHA agrees with this recommendation. The mechanism and procedures already exist and occur for area offices to supplement the programmed inspection targeting lists provided by the National Office with worksites identified through an approved local emphasis program (LEPs). LEPs must be implemented in a manner consistent with the neutral administrative selection of worksites required by the Supreme Court's Barlow decision. A new Construction Targeting Task force, initiated last spring, will give guidance to area offices on how to better use the Dodge Report and to ensure that LEPs are consistent with the Barlow decision. In the new strategic plan (2003-2008), OSHA plans to include approaches that emphasize local efforts to inspect smaller worksites. The plan is expected to be published in March 2003.

2. *Strengthen the validity of the data used to identify worksites in the site-specific targeting program by addressing the data weaknesses identified in this report.*

OSHA systematically addresses the validity of the data collected for targeting purposes. The collection process has quality controls. Audits are conducted to ascertain the accuracy of employer recordkeeping. However, OSHA plans to evaluate the effectiveness of the SST in FY 2003. As part of that evaluation, OSHA will examine data validity issues raised in the GAO report.

3. *Assess the site-specific targeting program's impact on workplace injuries and illnesses in light of the resources expended.*

OSHA recognizes the importance of evaluating the effectiveness of its enforcement programs and plans to evaluate and consider changes to the SST program in Fiscal Year 2003.

4. *To enhance OSHA's ability to more precisely measure its impact from the strategic planning process, we recommend that the Secretary of Labor encourage OSHA and BLS to work together to obtain the necessary data to better understand those injuries, illnesses, and fatalities occurring in areas covered by the strategic plan or under OSHA's authority. This could include exploring additional ways of analyzing existing BLS data to derive estimates for federal OSHA states, or exploring the costs for collecting additional information that would allow state-level estimates.*

OSHA has discussed these ideas with BLS. Improving the data would require BLS to redesign the Annual Survey sample at considerable cost. In addition, lead-time would be required to implement changes. BLS officials have stated that the current BLS industry estimation software for the injury and illness survey was not designed to produce estimates for State aggregates below the National level. A major software development effort would be required to modify the industry estimation system to support industry estimates for State aggregates. OSHA will, however, work with BLS to identify precise costs for producing state estimates in order to determine the cost-effectiveness of such action.

5. *Update OSHA's training directive to reflect its current training strategy.*

OSHA plans to update its training directive to reflect its current training strategy after the details of its new training strategy are developed, staffed and approved. The Agency is currently analyzing its safety specialist, health specialist and safety engineer positions to identify specific job competencies. These will be merged with competencies required for professional certification and clustered into courses for new inspectors. Additionally, these new courses will be delivered by traditional classroom training, satellite delivered training, and by web-based training technologies. Guidance will be established for specific areas such as workplace violence, ergonomics, silica, lead, construction and other strategic plan and high hazard areas that will allow inspectors to share inspection practices and experiences across the Agency. OSHA anticipates this analysis and revision will be completed in FY 2003, at which time the training directive will be updated.

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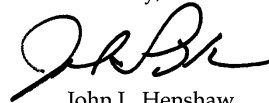
6. *Develop an information system to track and assess training and skills obtained by the inspection staff. This could include developing a new system or adapting existing systems.*

See comment 12.

OSHA recommends this be written to have the Secretary of Labor direct the Office of the Assistant Secretary for Administration and Management (OASAM) at the Department of Labor to develop an information system to assess training and skills obtained by Departmental personnel. Other organizations such as MSHA and OFCCP also have inspectors and would benefit from such an information system.

Thank you for the opportunity to comment on your draft report. If you have questions, please contact Frank Frodyma, Acting Director for the Directorate of Evaluation and Analysis, on (202) 693-2400.

Sincerely,



John L. Henshaw