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Report to the Chairman, Subcommittee on Workforce Protections, Committee on Education and the Workforce, House of Representatives

June 2004

OSHA'S COMPLAINT RESPONSE POLICIES

OSHA Credits Its Complaint System with Conserving Agency Resources, but the System Still Warrants Improvement

GAO-04-658

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Highlights

Highlights of GAO-04-658, a report to the Chairman, Subcommittee on Workforce Protections, Committee on Education and the Workforce, House of Representatives

Why GAO Did This Study

Each year, OSHA receives thousands of complaints from employees alleging hazardous conditions at their worksites. How OSHA responds to these complaints—either by inspecting the worksite or through some other means—has important implications for both the agency's resources and worker safety and health. Responding to invalid or erroneous complaints would deplete inspection resources that could be used to inspect or investigate other worksites. Not responding to complaints that warrant action runs counter to the agency's mission to protect worker safety and health. Considering OSHA's limited resources, and the importance of worker safety, GAO was asked: (1) What is OSHA's current policy for responding to complaints in a way that conserves its resources, (2) how consistently is OSHA responding to complaints, and (3) to what extent have complaints led OSHA to identify serious hazards?

What GAO Recommends

The Secretary of Labor should take steps to improve the quality of information received from complainants and to ensure area offices comply with complaint practices established by the agency. Labor disagreed with our recommendation to take additional actions to improve the quality of complaint information, but generally it agreed with recommendations to ensure compliance with the agency's complaint practices.
www.gao.gov/cgi-bin/getrpt?GAO-04-658.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Robert Robertson, (202) 512-7215 robertsonr@gao.gov.

What GAO Found

In general, the Occupational Safety and Health Administration (OSHA) responds to complaints according to the seriousness of the alleged hazard, a practice that agency officials say conserves inspection resources. OSHA officials usually conduct on-site inspections for alleged hazards that could result in death or serious injury. For less serious hazards, OSHA officials generally investigate by phoning employers and faxing them a description of the alleged hazard. Employers are directed to provide the agency with proof of the complaint's resolution. OSHA officials said the availability of both options allows them to manage resources more effectively when responding to complaints. However, many agency officials we interviewed said some complainants provide erroneous information about the alleged hazard, which can affect the agency's determination of the hazard's severity. For example, some complainants lack the expertise to know what is truly hazardous and, as a result, file complaints that overstate the nature of the hazard. Others, particularly disgruntled ex-employees, may have ulterior motives when filing complaints and misrepresent the nature of the hazard.

In the 42 area offices where we conducted interviews (there are 80 area offices), OSHA officials described practices for responding to complaints that varied considerably. For example, the degree to which supervisors participated in decisions about which complaints would result in inspections and which would not varied across offices. While OSHA requires annual audits that would identify the extent to which its area offices are correctly employing the complaint policies, some regions are not conducting these audits, and agency officials have told us that OSHA does not have a mechanism in place to address agencywide problems.

To some extent complaints direct inspection resources where there are serious hazards. At half the worksites OSHA inspected in response to complaints, compliance officers found serious violations—those that posed a substantial probability of injury or death, according to OSHA's own data for fiscal years 2000-2001.

Potential Falls Are One of the Hazards OSHA Tries to Prevent

Source: OSHA.

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Abbreviations

BLS	Bureau of Labor Statistics
IMIS	Integrated Management Information System
NLRA	National Labor Relations Act
OSHA	Occupational Safety and Health Administration

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United States General Accounting Office
Washington, DC 20548

June 18, 2004

The Honorable Chairman, Charles Norwood
Chairman, Subcommittee on Workforce Protections,
Committee on Education and the Workforce,
House of Representatives

Dear Mr. Chairman:

In 1975, high levels of Kepone, a pesticide linked to liver damage, sterility, neurological disorders, and cancer, were found in the bloodstreams of approximately 70 workers at a company in Virginia. This was followed by another discovery: the Occupational Safety and Health Administration (OSHA), part of the Department of Labor (Labor), had received a complaint from a former employee of the company but had assigned it a low-priority status and had not responded with an inspection. The highly public controversy that followed led OSHA to focus on being more responsive to all types of complaints. In the wake of this case, the agency has changed and modified its complaint policy more than once. OSHA's first policy change, in 1975—to conduct an on-site inspection for virtually any complaint about unsafe conditions, even anonymous ones—resulted in a large and overwhelming backlog of complaints awaiting inspection. In 1996, OSHA instituted a new effort to balance resources with the need to respond to complaints by responding to less serious complaints through means other than on-site inspections. In view of this reform, and given OSHA's current ratio of one compliance officer for roughly every 6,000 worksites, you asked us to answer the following questions: (1) What is OSHA's current policy for responding to complaints in a way that conserves its resources? (2) How consistently is OSHA responding to complaints? and (3) To what extent have complaints led OSHA to identify serious hazards?

To answer these questions, we visited the three OSHA area offices that handled the largest number of complaints in their respective regions in fiscal years 2000 through 2002: Pittsburgh, Pennsylvania; Austin, Texas; and Denver, Colorado. In each of these offices, we examined a randomly selected sample of case files (34 in Pittsburgh, 30 in Austin, and 38 in Denver) and interviewed the area director and available compliance officers. In addition, we randomly selected and interviewed by telephone 52 OSHA officials: 20 of the agency's 80 area directors and 32 of its 1,200 compliance officers, (12 assistant area directors who are supervisory

compliance officers and 20 nonsupervisory compliance officers). These officials represented 42 of OSHA's 80 area offices. We also spoke to OSHA officials in the agency's 10 regional offices, as well as health and safety officials in 13 states that run their own programs. Finally, we examined data for fiscal years 2000 through 2002 related to complaints in OSHA's Integrated Management Information System (IMIS) and looked at data on injuries and illnesses collected and published by the Bureau of Labor Statistics (BLS) for calendar year 2001 as they related to complaints. We interviewed both OSHA and BLS officials to establish the reliability of the data. In addition, for the IMIS data we obtained and reviewed documentation of internal controls and manually tested the data. We also interviewed 15 randomly selected employers who had been the subject of an OSHA complaint and 6 employees who had filed complaints. For a more detailed explanation of our methodology, see appendix I. We conducted our work between September 2003 and January 2004 in accordance with generally accepted government auditing standards.

Results in Brief

In general, OSHA responds to complaints according to the seriousness of the alleged hazard, a policy credited with conserving agency resources, although its determinations of whether an inspection is warranted can be affected by the quality of information complainants provide. Initiated in 1996 to improve its complaint-handling process, OSHA's policy of prioritization largely requires that an on-site inspection be conducted when a complainant alleges a serious hazard that could result in death or serious injury. OSHA will also conduct an on-site inspection if a current employee provides a written and signed complaint establishing reasonable grounds that a specific safety or health standard has been violated. Generally, however, for complainants not alleging a serious hazard, OSHA officials respond by phone, contacting employers and faxing them a description of the complaint. For these "phone/fax investigations," employers must determine if the complaint is valid and submit documentation to demonstrate that the hazard has been removed. The phone/fax option for the less than serious hazards has helped to improve efficiency, according to OSHA officials with long-standing experience at the agency, who said it has saved time and also eliminated their inspection backlog. Most agency officials we interviewed also acknowledged, however, that this efficiency can be affected by the accuracy or validity of the information they receive from complainants. A complainant may misidentify a hazard, for example, or a competitor may misrepresent conditions at a competitor's worksite to disrupt its operation, according to OSHA compliance officers. When asked, compliance officers and supervisors, as well as officials from states that run their own health and

safety programs, offered some suggestions for improving the validity of incoming complaints.

Although OSHA has policies for responding to complaints in a systematic and timely manner, we found inconsistencies in practices across area offices. Some of these practices involved departures from agency policy, while others were practices that varied to a degree that could undermine the agency's goal of consistent treatment of complainants and employers. In terms of policy, office practices departed, in particular, with regard to who evaluated complaints and how written and signed complaints were handled. With regard to uniform practice, we found some variation among the 42 offices we contacted in terms of their follow-up practices after an investigation, how they verified the employment status of complainants, how they treated e-mail complaints, and how they pursued certain complaints for which the agency has no specific standard. Since issuing its new directive for handling complaints in 1996, OSHA has issued no guidance to reinforce, clarify, or update those procedures. And while OSHA requires the regional administrators to annually audit their area office operations, only 5 of the 10 regions do so. Furthermore, for the regions that do conduct these audits, OSHA currently does not have a mechanism in place to recognize or address problems that have been identified at an agencywide level.

Complaints have, to some extent, directed OSHA compliance officers to sites with serious hazards. According to OSHA's own database for fiscal years 2000 and 2001, compliance officers found serious violations—hazards that pose a substantial probability of injury or death—at half the worksites inspected in response to complaints. This 50 percent "success" rate for complaint-driven inspections is comparable to the agency's success rate for some of its planned inspections—specifically those conducted at worksites targeted because of their high injury and illness rates. However, in one of our earlier reports on how OSHA targets inspections, we expressed concern that a 50 percent success rate may indicate that the agency is directing inspection resources to sites that have no serious violations.[1] In addition to this similarity, we also found that 7 of the 10 violations cited most frequently during complaint-driven inspections were also among the 10 most frequently cited during planned

[1]See U.S. General Accounting Office, *Workplace Safety and Health: OSHA Can Strengthen Enforcement through Improved Program Management*, GAO-03-45 (Washington, D.C.: November 22, 2002).

inspections. Through our analysis, we also found some correlation between hazardous industries and complaint inspections. Specifically, those industries that, according to BLS data, had higher rates of injuries and illnesses also generally had higher rates of complaint inspections, according to OSHA's data. For example, industries that fabricate metal products had the highest rate of complaint inspections and the third highest rate of injuries and illnesses in 2001. For a handful of industries, this pattern did not apply, with the number of complaints being either higher or lower than might have been expected, given the number of injuries, illnesses, and lost workdays.

We are making recommendations that the Secretary of Labor direct the Assistant Secretary for Occupational Safety and Health to take steps to improve the quality of information elicited from complainants and take steps to ensure that practices carried out by area offices in response to complaints comply with those procedures established by the agency. In responding to a draft of this report, Labor agreed that it is important to screen out unwarranted and ill-founded complaints, but it stated that its current actions were sufficient and that it would not want to pursue actions that could discourage employees from exercising their right to request an inspection when they feel their workplace is unsafe. We maintain that OSHA could do more to improve the quality of complaint information and believe that better information could be collected without discouraging complaints. With regard to our recommendation to revise the directive on complaint policies, the agency stated that it has initiated a revision and that our recommendations would be thoroughly considered and incorporated where appropriate. Labor did not address our recommendations to develop a system for ensuring the regions complete audits and use the audit results to improve consistency of the complaint process.

Background

OSHA was established after the passage of the Occupational Safety and Health Act in 1970. In the broadest sense, OSHA was mandated to ensure safe and healthful working conditions for working men and women. The act authorizes OSHA to conduct "reasonable" inspections of any workplace or environment where work is performed by an employee of an employer.[2] The act also requires that OSHA conduct investigations in response to written and signed complaints of employees alleging that a violation of health or safety standards exists that threatens physical harm, or that an imminent danger exists at their worksites, unless OSHA

[2]29 U.S.C § 657(a).

determines that there are no reasonable grounds for the allegations.[3] OSHA inspections fall into two broad categories: those that are "programmed" and those that are "unprogrammed." Programmed inspections are those the agency plans to conduct because it has targeted certain worksites due to their potential hazards. Unprogrammed inspections are not planned; instead, they are prompted by things such as accidents or complaints.

How OSHA responds to complaints has changed over time. In the wake of the Kepone case, OSHA started to inspect virtually any complaint, which led to a backlog of complaint-driven inspections, according to interviewed officials. In its early response to the backlog, OSHA adopted a complaint process whereby each complaint was categorized based on whether or not it was written and signed by complainants. "Formal" complaints met both conditions, while "nonformal" complaints were oral or unsigned. OSHA further categorized complaints by the seriousness of the hazard alleged. Formal complaints were inspected regardless of whether the hazard alleged was serious, although offices were given longer time frames for responding to those that were other than serious. The agency generally handled nonformal complaints by sending the employer a letter.[4] Agency officials said that as a result of these distinctions, the agency was able to reduce some of its backlog.

A new effort to reform the complaint procedures was made through the Complaint Process Improvement Project, which was part of the Department of Labor's overall reinvention effort from 1994 to1996.[5] In January 1994, two area offices were selected as pilot sites to develop and test new procedures for handling complaints. Their work focused on an effort to (1) reduce the time needed for handling complaints, (2) speed the abatement of hazards, (3) allow OSHA to focus its inspections resources on workplaces where they were needed most, and (4) ensure consistency. The new procedures placed a greater emphasis on the seriousness of the alleged hazard as a factor for determining how the office would respond to a complaint. In addition, they introduced the use of telephones and fax machines as the means to notify employers of an alleged hazard instead of

[3]29 U.S.C. § 657(f).

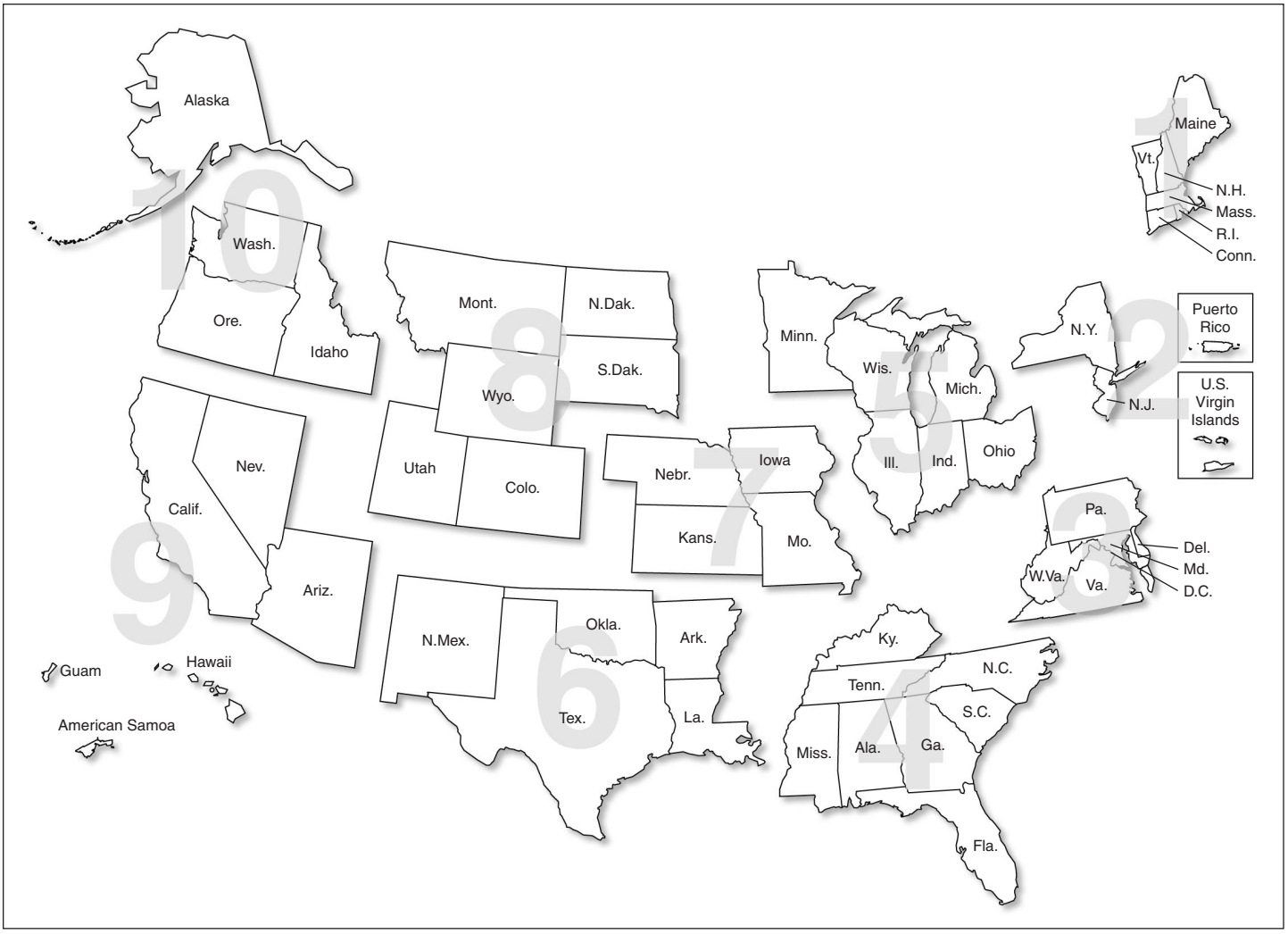
[4]Nonformal complaints classified as other than serious could also be investigated by telephone.

[5]The reinvention was part of Vice President Gore's efforts to streamline government and better serve customers.

regular mail and provided specific procedures for following up with employers to make sure hazards were abated. These new policies were adopted and outlined in an OSHA directive dated June 1996.

Policies regarding complaints are established by the Office of Enforcement Directorate in Washington, D.C.. Regional administrators in each of OSHA's 10 regional offices oversee the enforcement of these policies within their own regions (see fig. 1). Each region is composed of area offices—there are 80 in total—each under an area director. The area directors oversee compliance officers—there can be as many as 16 in an office—some of whom play a supervisory role. Compliance officers play a key role in carrying out the directive. At almost all area offices, compliance officers take turns answering the phones, and taking and processing complaints, a collateral responsibility in addition to their duties in the field.

Figure 1: OSHA's 10 Regions



Source: OSHA.

Seriousness of Alleged Hazards Drives Complaint Response, although Erroneous Information Can Affect These Determinations

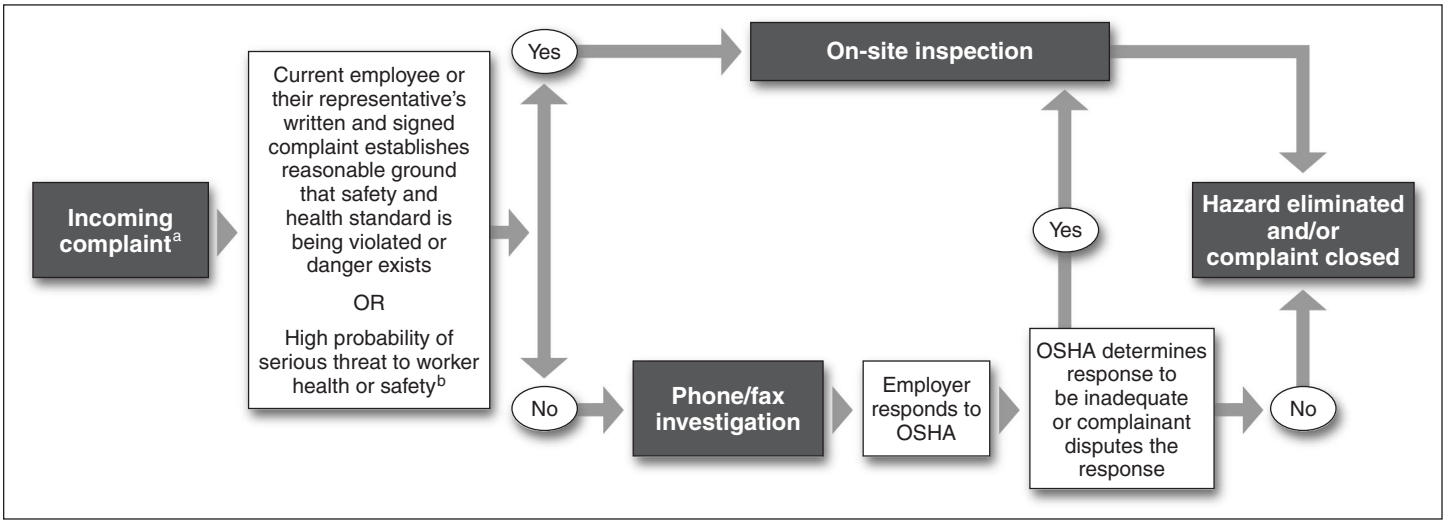
OSHA primarily responds to complaints based on the seriousness of the alleged hazard using a priority system that the agency credits with having improved its efficiency. However, its determinations can be affected by inadequate or inaccurate information. OSHA officials usually conduct an on-site inspection if an allegation is of a serious nature. Agency policy also requires on-site inspections in cases where a written and signed complaint from a current employee or their authorized representative provides reasonable grounds to believe that the employer is violating a safety or health standard. In general, OSHA officials conduct an inquiry by phone and fax—referred to as a phone/fax investigation—for complaints of a less serious nature. Many OSHA officials, especially compliance officers, told us this priority-driven system has been more effective in conserving their time and resources. Nevertheless, many of the compliance officers also said that some inspections may occur that are not necessarily warranted because complainants have inadequately or inaccurately characterized the nature of the hazard. On the other hand, almost everyone with whom we spoke said the agency prefers to err on the side of caution so as not to overlook a potential hazard. Many of the OSHA officials we interviewed, as well as officials from states that run their own safety and health programs, suggested approaches to improve the validity of the information accompanying the complaints.

OSHA Prioritizes Its Response to Complaints according to the Level of Hazard

According to policy, OSHA initially evaluates all incoming complaints (whether received by fax, e-mail, phone, letter, or in person) to decide whether to conduct an on-site inspection or a phone/fax investigation (see fig. 2). OSHA conducts on-site inspections for alleged serious violations or hazards and makes phone/fax inquiries for allegations of a less serious nature. OSHA considers serious violations or hazards to be those that allege conditions that could result in death or serious physical harm. Specifically, OSHA initiates on-site inspections when the alleged conditions could result in permanent disabilities or illnesses that are chronic or irreversible, such as amputations, blindness, or third-degree burns. As seen in figure 2, though, OSHA will also go on-site when a current employee or his representative provides a written and signed complaint that provides reasonable grounds for believing that a violation of a specific safety and health standard exists. While immediate risks to any employee's health or safety are the primary factors driving OSHA's complaint inspections, additional criteria can also prompt an on-site inspection. For example, if an employer fails to provide an adequate

response to a phone/fax investigation, OSHA's policy is to follow up with an on-site inspection.[6]

Figure 2: Summary of OSHA's Complaint Protocol



Source: GAO, based on OSHA's Complaint Policies and Procedures Directive.

[a]Complaints are received by phone, fax, e-mail, in person or in writing.

[b]In addition, OSHA considers the criteria for an on-site inspection that are established in the Complaint Policies and Procedures Directive, CPL 2.115.

Area office supervisors or compliance officers may call the complainant, if needed, to help understand the nature of the hazard. OSHA officials told us they might ask complainants to estimate the extent of exposure to the hazard and report how long the hazard has existed. If an area office supervisor decides that an on-site inspection will be conducted, OSHA's policy is to limit the inspection to the specific complaint. A violation or another hazard that is in clear sight may be considered, but compliance officers cannot expand the scope of their inspection to look for other violations—a specification that underscores the importance of the complaint's accuracy.

[6]Other criteria that would prompt an on-site inspection are (1) the complaint identifies an establishment or an alleged hazard that OSHA has identified as a priority, (2) the company that is the subject of the complaint has a history of violations, (3) an employee alleges that he or she was discriminated against for complaining about or for refusing to do a dangerous job, or (4) if an inspection is scheduled or has begun at a worksite and another complaint is received that would normally be done by phone/fax is received.

Phone/fax investigations, meanwhile, afford an opportunity to resolve a complaint without requiring a compliance officer to visit the worksite. Instead, the compliance officer contacts the employer by telephone and notifies him or her of the complaint and each allegation. The employer is also advised that he or she must investigate each allegation to determine whether the complaint is valid. The employer can resolve the complaint, without penalty, by providing OSHA with documentation such as invoices, sampling results, photos, or videotape to show that the hazard has been abated. Upon receiving documentation from the employer, the area office supervisor is required to review it and determine whether the response from the employer is adequate.

For both on-site inspections and phone/fax investigations, OSHA's policy is to keep the complainants informed of events by notifying them by letter that an on-site inspection has been scheduled, the outcome of either the inspection or the phone/fax investigation, and the employer's response. In the case of a phone/fax investigation, the complainant has the right to dispute the employer's response and request an on-site inspection if the hazard still exists. OSHA can also determine that the employer's response is inadequate and follow with an on-site inspection.

Officials Credited the Option of Phone/Fax Investigations with Improving Efficiency

Of the 15 officials who told us they worked for OSHA prior to 1996, and whom we asked about past practices, nearly half said the agency's current complaint policy has allowed them to better conserve their resources. For example, one 26-year veteran said phone/fax investigations have relieved his compliance officers of traveling to every complaint site for inspections that once averaged as many as 400 per year. Because the employer investigates the allegation first, the phone/fax inquiry is an efficient use of time, according to this supervisor. Of the 20 compliance officers that we asked about this topic, 18 said phone/fax investigations took less time to conduct than on-site inspections. Nearly one-half of these compliance officers told us the phone/fax investigation procedures reduced travel time or eliminated time spent writing inspection reports. The agency handled about two-thirds of all complaints it received in fiscal years 2000 through 2002 through phone/fax investigations.

Several OSHA officials we interviewed said OSHA's phone/fax investigation procedures ease the burden on employers because the employers have an opportunity to resolve the problem. As a result, these officials told us that their interaction with employers has improved. While few of the employers we interviewed had the complaints against them resolved through phone/fax investigations, the three that did expressed

satisfaction with the way the allegation was handled. These employers reported that responding to phone/fax investigations required 3 hours, 5 hours, and 2 to 3 days respectively. Only the employer reporting the greatest amount of time believed that the time he invested was inappropriate given the nature of the alleged hazard.

A 1995 internal OSHA report, which reviewed the new complaint procedures implemented in two area offices as part of a pilot project, also credited phone/fax investigations with improving efficiency, specifically by reducing the time it took to notify employers of alleged hazards and to correct them, as well as with reducing the offices' complaint backlog. The report found that using phone/fax investigations reduced notification time by at least a week, reduced the average number of days to correct hazards by almost a month in the two offices, and eliminated one office's backlog and reduced the other's backlog by almost half during its involvement in the pilot project. The report attributed these gains to compliance officers being able to phone and fax employers to inform them of the allegations instead of relying on mail, promptly contacting employers to clarify allegations and to offer feasible methods for correcting hazardous conditions, and more employees choosing to have their complaints resolved with phone/fax investigations.

Erroneous Information Can Affect OSHA Hazard Assessments

More than half of the 20 nonsupervisory compliance officers we interviewed told us that complainants' limited knowledge of workplace hazards and their reasons for filing complaints can affect the quality of the information they provide, which, in turn, can affect OSHA's determination of the hazard's severity. They said complainants generally have a limited knowledge of OSHA's health and safety standards or may not completely understand what constitutes a violation; consequently, they file complaints without knowing whether a violation exists. As a result, the level of hazard can be overstated. For example, one nonsupervisory compliance officer said he received a complaint that alleged a construction company was violating the standards for protecting workers from a potential fall, but found upon arriving at the site that the scaffolding in question was well within OSHA's safety standard. Over half of the nonsupervisory compliance officers (13 of 20) said that there were "some or great" differences between what complainants allege and what is ultimately found during inspections or investigations, because complainants may not completely understand what constitutes an OSHA violation or they have a limited knowledge of OSHA's standards.

Complainants' limited knowledge of OSHA's health and safety standards can also result in compliance officers not knowing which potential hazards to look for when conducting on-site inspections. For example, one compliance officer noted that employees might complain about an insufficient number of toilets but not about machinery on the premises that could potentially cause serious injury. In addition, another compliance officer noted that many times complainants' descriptions of hazards are too vague, a circumstance that prevents her from locating the equipment that was alleged in the complaint, such as a drill press, and OSHA's rules preclude her from expanding the scope of the inspection in order to locate the hazard.

The quality of the information complainants provide to OSHA can also be influenced by their motives for filing a complaint. For example, half (27 of 52) of the area office directors and compliance officers we interviewed said they have received complaints from employees who filed them as retribution because they were recently terminated from their jobs or were angry with their employers. Although this practice was described as infrequent, OSHA officials said that in some instances complainants intentionally exaggerated the seriousness of the hazard or reported they were current employees when in fact they had been fired from their jobs. One official asserted that disgruntled ex-employees have taken advantage of OSHA's complaint process to harass employers by having OSHA conduct an on-site inspection. Several of the employers we interviewed (4 of the 15) also claimed that disgruntled employees have used the complaint process to harass them. They expressed the view that OSHA should improve its procedures for evaluating the validity of complaints.

Some of the compliance officers we interviewed said it is not unusual to experience an increase in the number of complaints during contract negotiations. One official told us that in a region where he once worked, union workers filed multiple complaints in order to gain leverage over the employer. A union official acknowledged that this occurred but noted that it was infrequent. Other OSHA officials told us that competitors of companies sometimes file complaints when they lose a competitive bid for a work contract. One official said that while company representatives do file complaints against each other to disrupt the other company's work schedule, such tactics are not typical in his region.

Despite these problems, several of the OSHA officials we interviewed said OSHA's obligation is to evaluate whether there are reasonable grounds to believe that a violation or hazard exists, rather than trying to determine a complainant's motives for filing the complaint. In fact, 34 of the 52 officials

we interviewed told us that almost all of the complaints they see warrant an inspection or an investigation, and as a result, many of the area offices inspect or investigate most of the complaints that are filed. One official said he would prefer to conduct an inspection or do a phone/fax investigation for an alleged hazard, rather than not address the complaint and have it result in a fatality.

State and Federal OSHA Officials Suggested a Number of Ways to Elicit Better Information from Complainants

When asked during interviews about ways OSHA could improve its process for handling complaints, officials from OSHA and from states that run their own health and safety programs suggested approaches the agency could take to improve the information they receive from complainants. Although some offices were actively engaging in these practices, others reported that they were being used only to some or little extent.

Their recommendations were of three types; the first was in regard to strategies for improving the validity of complaints that OSHA considers. Many OSHA area directors and compliance officers said the agency could warn complainants more explicitly of penalties for providing false information, which could be as much as $10,000 or imprisonment for as long as 6 months, or both.[7] This warning is printed as part of the instructions on the complaint form available on OSHA's Web site. However, OSHA's complaint policies and procedures directive states that area offices will not mail the form to complainants; consequently, complainants primarily receive the penalty warning only if they access the Web-based form.[8] In contrast, an official from one of the state programs reported that his state's program requires complainants to sign a form with penalty information printed in bold above the signature line. According to the state official, this policy has reduced by half the number of invalid complaints.

Several OSHA supervisors and directors expressed reservations about having compliance officers make verbal warnings to complainants about providing false information while taking their complaints, saying it could prevent some complainants who are already fearful from reporting hazards. Of the 52 OSHA officials we interviewed, 23 said the extent to

[7]29 U.S.C. §666(g)

[8]In the absence of an OSHA complaint form, complaints can send their complaints to OSHA as a letter sent through the mail or via e-mail, or by phone, fax, or in person.

which they remind complainants of the penalty for providing false information is "little or none at all." Furthermore, several officials said complainants report hazards based on a perceived violation; therefore, they doubted a hazard that turned out to be invalid would result in a penalty.

To further improve the validity of complaints, one official pointed to his state's practice of generally conducting on-site inspections only for a current employee or an employee's representative. According to the state health and safety official, this policy improves the validity of information because current employees can more accurately describe the hazard than an ex-employee who has been removed from the environment for some time and whose relationship with the employer may be strained. Another state's health and safety official said her state has a policy that allows its managers to decline any complaint they determine is intended to willfully harass an employer, which also helps improve the reliability of complaints. According to this official, however, managers seldom find that a complaint was filed to willfully harass an employer. The state also has a policy that allows managers to dismiss any complaint they determine is without any reasonable basis.

A second approach suggested by many OSHA officials was to improve complainants' ability to describe hazards accurately. Of the 52 officials that we interviewed, 14 said OSHA could, for example, conduct more outreach to educate both employees and employers about OSHA's health and safety standards. Although OSHA area offices already participate in outreach activities, such as conducting speeches at conferences or making presentations at worksites, several of the officials we interviewed said the agency could do more. For example, one compliance officer suggested developing public service announcements to describe potential hazards, such as trenches without escape ladders, and to provide local OSHA contact information for reporting such hazards. One official expressed the opinion that if OSHA were to conduct more outreach to employees, the quality of complaints would likely improve. Another compliance officer suggested that OSHA engage in more preconstruction meetings with employers to discuss OSHA's regulations and requirements and share ideas for providing safer working environments. One interviewee said if employers were more knowledgeable about hazards, there would be less need for workers to file complaints.

Finally, OSHA officials said the agency could take steps to improve the ability of employers and employees to resolve complaints among themselves before going to OSHA. Many of the officials that we

interviewed said their offices could encourage employers to form safety committees or other internal mechanisms to address safety concerns. Ten of the 52 officials we interviewed told us the extent to which their offices promote or encourage safety committees was "little to none at all." Only some of these officials said that this lack of promotion stemmed from the requirements of the National Labor Relations Act (NLRA), which some believe may prohibit or hinder the establishment of safety committees.[9]

Although Consistent Handling of Complaints Is a Key OSHA Principle, Practices in Some Area Offices Varied

OSHA's policy for responding to complaints requires compliance officers to address complaints in a systematic and timely manner; however, we found practices used by area offices to respond to complaints varied considerably. While some of these practices involved departures from OSHA policy, others were practices that varied to such a degree that they could result in inconsistent treatment of complainants and employers. In particular, we found several instances where area offices departed from the directive by persuading complainants to choose either an on-site inspection or a phone/fax investigation, and by having nonsupervisory compliance officers evaluate complaints. We also found several instances where practices were inconsistent. Among the 42 offices we contacted, we found that some conducted follow-up inspections on a sample of closed investigation cases to verify employer compliance, and others did not. Since issuing its new directive for handling complaints in 1996, however, OSHA has issued no guidance to reinforce, clarify, or update those procedures. In addition, while OSHA requires its regional administrators to annually audit their area office operations, some administrators do not, and further, for those who do, OSHA does not have a mechanism in place to review the results and address problems on an agencywide level.

Some Practices and Procedures Departed from Agency Policies

In our interviews with 52 randomly selected supervisory and nonsupervisory officials in 42 of the 80 area offices, we found practices that appeared to depart from OSHA's official policies. In particular, agency policy calls for supervisors to evaluate each complaint. However, 22 of the 52 officials to whom we talked said nonsupervisory compliance officers in their offices are sometimes the decision makers for whether complaints are inspected or pursued through phone/fax investigations. In some of

[9]Under the NLRA employers may not dominate committees that are considered "labor organizations." *See Electromation, Inc.*, 309 NLRB 990 (1992), *enforced*, 35 F.3d 1148 (7th Cir. 1994).

these offices, compliance officers make the decision if the complaint is less than serious. In addition, some officials told us that if the case was earmarked for an inspection or was challenging, the supervisor would then review it. While OSHA's directive addresses supervisory review within the context of inspections, an OSHA national director informed us that it is agency policy to have supervisors review each and every complaint. In addition, agency policy prescribes that compliance officers explain to complainants the relative advantages of both phone/fax investigations and inspections, if appropriate. However, 16 of the 52 officials to whom we spoke said they encourage complainants, in certain circumstances, to seek either an inspection or an investigation. For example, one official said that his office "sells" phone/fax investigations because they are faster to conduct and lead to quicker abatement than on-site inspections. However, an OSHA national director stressed to us that duty officers should not attempt to persuade complainants. Another practice that appeared inconsistent with policy was the treatment of written, signed complaints. Current employees and their representatives have the right to request an inspection by writing and signing a complaint, but before an inspection may take place, OSHA must determine that there are reasonable grounds for believing there is a violation of a safety or health standard or real danger exists. Area office supervisors are to exercise professional judgment in making this determination. Of the 52 officials with whom we spoke 33 said their offices exercise professional judgment by evaluating written and signed complaints. However, most of the remainder were about equally split in reporting that they evaluate these complaints "sometimes" (7 of 52) or forgo evaluation altogether and automatically conduct on-site inspections (8 of 52).

Finally, while we found that complaint policy was generally followed at the three OSHA offices where we reviewed case files, we did find that one office had not been sending a letter to complainants to notify them of a scheduled inspection. According to the OSHA directive, complainants should be notified of inspections.

Some Practices Varied Significantly among Area Offices

During telephone interviews, officials described practices that, while they did not depart from agency policy, varied significantly from office to office. For example, offices differed in whether they treated e-mails as phone calls or as written and signed complaints. Of the 52 officials with whom we spoke, 12 said they treated complaints received via e-mail as written and signed complaints, while 34 said they treated them as phone complaints. While agency policy is silent on how to classify e-mail complaints, this inconsistency is important because written and signed

complaints are more likely to result in on-site inspections. Offices also differed in whether or not they performed random follow-up inspections for phone/fax investigations. While 10 of the 52 officials said they did not know if their offices conducted follow-up inspections, most of the remainder were about equally split in reporting that either they did (18 of 52) or did not (20 of 52) do them. Although the directive does not require follow-up inspections, the OSHA letters sent to employers says they may be randomly selected for such inspections. This inconsistency in practice across offices is significant insofar as follow-up inspections can be seen either as an added burden to employers or as an important safeguard for ensuring abatement. We also found variation in how offices determined whether a complainant was a current employee. The employment status of a complainant is important, as it is often a factor in evaluating the complaint. Of the 52 OSHA officials with whom we spoke, 30 said their offices determine whether a complainant is a current employee simply by asking the complainant; 11 said they asked probing questions of the complainant, and 5 said they asked the complainant for some type of documentation, such as a pay stub. While the directive does not specify how compliance officers are to verify employment status, the methods used to obtain this information can affect its accuracy.

Finally, we found that some area offices differ significantly in how they respond to complaints for which OSHA has no standard, specifically those involving substance abuse in the workplace.[10] For example, during a site visit to one area office, an official explained that his office would not do a phone/fax investigation in response to complaints alleging drug use at a workplace, but would refer them to the police instead. However, another area office conducted a phone/fax investigation for a complaint about workers drinking alcoholic beverages while operating forklifts and mechanical equipment. An official in a third area office told us that his office has sometimes referred complaints about drug use at a workplace to the local police and at other times has responded to similar complaints with a phone/fax investigation. An OSHA national director told us that

[10]Even where there is no established standard, OSHA may determine that a hazard exists, under the Occupational Safety and Health Act's general duty clause, and take enforcement action. The general duty clause refers to section 5(a)(1) of the Act, which generally requires employers to maintain workplaces that are free of recognized hazards that can result in death or serious injuries. See 29 U.S.C. §654(a)(1). So, for example, even though there is no standard for acceptable levels of mold in the workplace, a citation might be issued if an inspection determines that the presence of mold in a particular workplace constitutes a hazard in accordance with the statutory criteria.

area offices are obligated to do phone/fax investigations for alleged drug use in the workplace.

Some Regional Administrators Meet OSHA's Requirement to Annually Audit Area Office Operations, but OSHA Does Not Utilize Results

OSHA policy requires that regional administrators annually audit their area offices and that audit results be passed on to the Assistant Secretary. However, this is not current practice. Regional administrators are required to focus the audits on programs, policies, and practices that have been identified as vulnerabilities, including the agency's complaint-processing procedures. However, according to OSHA's regional administrators, only 5 of the agency's 10 regions conduct these audits annually, while 3 conduct the audits, but only for a proportion of their area offices each year, and 2 do not conduct the annual audits at all. In addition, according to one national director, all of the regional administrators are to submit the results of their audits to a Program Analyst in the Atlanta area office for review. The results of this review are to be reported to the Deputy Assistant Secretary for Enforcement, as well as to the responsible directorate, and they are responsible for addressing issues of noncompliance and determining what, if any, policy changes are needed. However, the Program Analyst in Atlanta said he does not receive all of the audits from each region as required, and an official from one of OSHA's directorates told us his office does not receive such reports.

The findings from the seven audits we reviewed underscore their value for monitoring consistency. These audits showed that most of the audited offices were (1) not correctly following procedures for meeting the time frames for initiating on-site inspections, (2) closing phone/fax investigation cases without obtaining adequate evidence that hazards had been corrected, and (3) not including all required documentation from the case files.

Complaints Have, to Some Extent, Drawn OSHA to Serious Hazards at Worksites

To some extent, complaints have drawn OSHA compliance officers to sites with serious hazards. According to OSHA's data for fiscal years 2000 and 2001, compliance officers found serious violations at half the worksites inspected in response to complaints, a figure comparable to inspections conducted at worksites targeted for their high injury and illness rates. However, in one of our earlier reports, we expressed concern that for targeted inspections a 50 percent success rate may raise questions about whether inspection resources are being directed at sites with no serious

hazards.[11] Complaint-driven inspections shared other similarities with planned inspections; specifically, compliance officers cited similar standards during both types of inspections. On the other hand, complaint inspections often required more time to complete. Finally, we found a correlation between hazardous industries and complaints inspections. Specifically, those industries that, according to BLS data, had more injuries and illnesses also generally had a larger number of complaint inspections according to OSHA data.

From Fiscal Year 2000 to 2001, Half the Worksites Inspected for Complaints Had Serious Violations

OSHA compliance officers found serious violations in half of the worksites they inspected when responding to complaints alleging serious hazards according to OSHA's data for fiscal years 2000 and 2001 combined. These are hazards that pose a substantial probability of injury or death. During some planned inspections—those conducted at worksites targeted for their high injury and illness rates—OSHA compliance officers found serious violations, such as those involving respiratory protection and control of hazardous energy, in a similar percentage of worksites. Specifically, as shown in table 1, OSHA compliance officers found serious violations in 50 percent of the 17,478 worksites they inspected during complaint-driven inspections. Likewise, they found serious violations in 46 percent of the 41,932 worksites they targeted during planned inspections. In a previous report we noted that this percentage might indicate that inspection resources are being directed to worksites without serious hazards. According to OSHA, many complaints come from the construction industry, where the work is often dangerous and of a short duration. As a result, even if an inspection begins immediately, "citable" circumstances may no longer exist, a fact that according to the agency, might explain why the number of serious violations that result from complaints is not higher.

[11]See GAO-03-45.

Table 1: Number and Percentage of Inspected Worksites with Serious Violations, by Type, Fiscal Years 2000 and 2001

Inspection type	Number of inspections with serious violations	Number of inspections[a]	Percentage of inspections with serious violations
Complaints	8,699	17,478	50
Planned	19,438	41,932	46

Source: GAO analysis of data from OSHA's IMIS, fiscal years 2000 and 2001.

[a]Numbers do not include other unprogrammed inspections, such as those OSHA conducted in response to worksite fatalities.

We found that, in contrast to planned inspections, complaint-driven inspections require, on average, more hours per case to complete. Table 2 shows that OSHA compliance officers have required about 65 percent more time for complaint-driven inspections in comparison to planned inspections—29.7 hours on average compared with 18.1 hours—suggesting that while outcomes are similar, complaint-driven inspections are more labor intensive than planned inspections. Compared with planned inspections, complaint-driven inspections have a higher rate of health inspections, which, according to an OSHA national director, place extra time demands on compliance officers to obtain samples, test them, and document the results. In comparison with inspections, phone/fax investigations require, on average, far less time than either complaint-driven or planned inspections.

Table 2: National Average for Hours per Inspection, by Type of Inspection or Investigation, Fiscal Years 2000 to 2002

Response to complaint	National average in hours
All complaint-driven inspections[a]	29.7
Phone/fax investigation only	1.4
Planned inspection	18.1

Source: GAO analysis of data from OSHA's IMIS, fiscal years 2000 through 2002.

[a]These exclude other unprogrammed inspections, such as those OSHA conducted in response to worksite fatalities.

In terms of the types of hazards they uncover, complaint-driven inspections shared some similarities with planned inspections that target the most hazardous sites. Of the 10 standards OSHA compliance officers cited most frequently for violations during complaint-driven inspections, 7 were also among the 10 most frequently cited during planned

inspections. Table 3 shows the rank ordering of hazards cited most frequently during planned inspections and complaint-driven inspections. However, table 3 also shows that there were some differences in the frequency with which compliance officers cited particular hazards during planned inspections, compared with complaint-driven inspections. For example, the standard most frequently cited during planned inspections, general requirements for scaffolds, is the 18th most frequently cited standard during complaint-driven inspections. Likewise, the standard cited with the second highest frequency in planned inspections, "fall protection," is not within the 10 standards most frequently cited for complaint-driven inspections. Such examples indicate that some differences exist in the type of hazards compliance officers found at worksites about which workers have complained and at those OSHA targeted for inspection.

Table 3: Most Frequently Cited OSHA Standards for Complaint-Driven and Planned Inspections, Fiscal Years 2000 to 2002

OSHA standard	Planned inspections	Complaint inspections
	Rank	Rank
General requirements for scaffolds	1	18
Fall protection	2	25
Hazard communication	3	1
Control of hazardous energy	4	3
Wiring methods, components, and equipment for general use	5	4
Respiratory protection	6	2
General requirements, for all machines	7	7
Electrical, general requirements	8	8
Mechanical power transmission apparatus	9	11
Bloodborne pathogens	10	10
Powered industrial trucks	17	5
Personal protective equipment, general requirements	26	6
Portable fire extinguishers	31	9

Source: GAO's analysis of IMIS data, fiscal years 2000 through 2002.

Hazardous Industries Had a Preponderance of Complaints in Calendar Year 2001

Our analysis found a correlation between injuries and illnesses reported in industries and the rate at which complaints were inspected. As shown in figure 3, industries associated with higher rates of injuries and illnesses also tended to have a higher rate of complaint inspections than did industries with lower injury and illness rates, according to OSHA's data.

Figure 3: Correlation between an Industry's Injury and Illness Rate and Its Complaint Inspection Rate, Calendar Year 2001

Source: GAO's analysis of BLS and IMIS data.

Note: To correct for factors that could influence the relationship between complaint inspections and injuries and illness, we used rates instead of numbers.

For example, one industry, transportation equipment, had 12.6 injuries and illnesses per 100 full-time workers in 2001 and had a relatively high rate of complaint inspections, .016 per 100 full-time workers. Conversely, the motion picture industry, which had only 2.5 injuries and illnesses per 100 full-time workers in 2001, had a relatively low incidence rate for complaint inspections, .0015 complaint inspections per 100 full-time workers.

For a handful of industries the pattern of high injury and illness rates associated with high complaint inspection rates did not apply. For these industries, the number of complaint inspections per 100 full-time workers was either far higher or far lower than might have been expected given the number of injuries and illnesses per 100 full-time workers. For example, the air transport industry had the highest injury and illness rate for 2001, but its complaint inspection rate was lower than those for all but 1 of the 10 industries with the highest injury and illness rates. In another example, while the general building contractors industry had the highest complaint inspection rate of any industry, over a third of all industries had higher injury and illness rates. Table 4 shows industries that were highest

or lowest in terms of injuries and illness and their corresponding rates of complaint inspections.

Table 4: Ten Industries with Highest Rates and Ten Industries with Lowest Rates of Injuries and Illnesses and Corresponding Rate of Complaint Inspections, Calendar Year 2001

	Injuries and illnesses per 100 full-time workers	Complaint inspections per 100 full-time workers
Industries with highest injury/illness rates		
Transportation by air[a]	13.3	0.0073
Transportation equipment[a]	12.6	0.0160
Fabricated metal products	11.1	0.0383
Furniture and fixtures	11.0	0.0210
Food and kindred products	10.9	0.0157
Primary metal industries	10.7	0.0283
Lumber and wood products	10.6	0.0262
Stone, clay, and glass products	10.1	0.0280
Local and interurban passenger transit	9.8	0.0110
Agricultural production-livestock	9.2	0.0061
Industries with lowest injury/illness rates		
Business services	2.7	0.0038
Motion pictures	2.5	0.0015
Insurance carriers	1.7	0.0006
Engineering and management services	1.6	0.0017
Depository institutions	1.4	0.0007
Holding and other investment offices	1.4	0.0004
Nondepository institutions	1.0	0.0006
Insurance agents, brokers, and service	0.8	0.0011
Legal services	0.8	0.0005
Security and commodity brokers	0.5	0.0006

Source: GAO analysis of BLS and OSHA's IMIS data for 2001.

[a]OSHA stated that it does not pursue many of the complaints in these areas because its jurisdiction is limited.

Conclusion

Since 1975, OSHA has had to balance two competing demands: the need to use its inspection resources efficiently and the need to respond to complaints about alleged hazards that could seriously threaten workers' safety and health. In light of this ongoing challenge, OSHA has adopted complaint procedures that, according to agency officials, have helped

OSHA conserve its resources and promptly inspect complaints about serious hazards. Nonetheless, in deciding which complaints to inspect, OSHA officials must depend on information provided by complainants whose motives and knowledge of hazards vary. Many OSHA officials do not see the quality of this information as a serious problem. However, considering that serious violations were found in only half of the workplaces OSHA officials inspected when responding to complaints, it seems likely that the agency, employers, and workers could all be better served if OSHA improved the quality of information it receives from complainants.

When OSHA conducts inspections of complaints based on incomplete or erroneous information, it potentially depletes inspection resources that could have been used to inspect or investigate other worksites. In addition, employers may be forced to expend resources proving that their worksites are safe when no hazard exists. OSHA should certainly not discourage workers from making complaints or pursuing a request for an OSHA inspection. Indeed, the correlation we found between those industries designated as hazardous and those that generate complaints inspections suggests that using complaints to locate hazardous worksites is a reasonable strategy for the agency to pursue. However, to the extent that OSHA officials could glean more accurate information from complainants, such as by deterring disgruntled employees from misrepresenting hazards or their employment status, the agency could benefit in several ways. With better information, OSHA could better conserve its inspection resources, minimize the burden on employers, and further enhance the agency's credibility in the eyes of employers. In addition, if the strategies described by OSHA officials as effective means to improve the quality of complaints are not being fully utilized, OSHA may miss opportunities to maximize the efficiency its complaint process might afford.

Some variation in how OSHA officials respond to complaints is inevitable, particularly considering that there are 80 area offices with as many as 16 compliance officers in each office. Nevertheless, the inconsistencies that we found have ramifications when considering the size of the agency and the judgment that comes into play when handling complaints. Moreover, OSHA has much to gain by upholding a reputation for fairness among employers. When employers buy into OSHA's standards and comply voluntarily, the agency can better use its 1,200 compliance officers to ensure worker safety at the more than 7 million worksites nationwide. However, OSHA's credibility could be damaged by procedural inconsistencies if, for example, they resulted in different treatment and

disposition of similar complaints. While OSHA requires regional audits for monitoring consistency, the failure to maximize the value of this information limits the agency's ability to ensure one of the underlying principles of its complaint policy.

Recommendations for Executive Action

We are making recommendations that the Secretary of Labor direct the Assistant Secretary for Occupational Safety and Health to instruct area offices to pursue practices to improve the quality of information they receive from complainants, such as

- reminding complainants of the penalties for providing false information,
- conducting outreach to employees regarding hazards, and
- encouraging employers to have safety committees that could initially address complaints.

We are also recommending that the Secretary direct the Assistant Secretary for Occupational Safety and Health to take steps to ensure that area offices are consistently implementing the agency's policies and procedures for handling complaints. As a first step, the agency should update and revise the 1996 directive.

In revising the directive, the agency should update and clarify

- who evaluates complaints,
- how complainants are advised of the process,
- how written and signed complaints are evaluated,
- how to verify the employment status of complainants,
- how to treat e-mail complaints, and
- how to address complaints involving hazards for which the agency has no specific standard.

In addition, we are recommending that the Secretary direct the Assistant Secretary for Occupational Safety and Health to

- develop a system for ensuring the regions complete audits and
- develop a system for using the audit results to improve consistency of the complaint process.

Agency Comments

We received comments on a draft of this report from Labor. These comments are reproduced in appendix II. Labor also provided technical clarifications, which we incorporated where appropriate.

Although Labor recognized in its comments that most complaints are anonymous and unsigned—a fact that makes it difficult to find employees to obtain their views about the complaint process—the agency recommended that we acknowledge in the report the limited number of employees we interviewed. At the beginning of the report and again at the end, we acknowledged that we interviewed 6 employees. Further, Labor questioned whether the number of employees we interviewed was an adequate number on which to base the conclusions reached in this report. Our conclusions about OSHA's complaint process were not based solely on employee interviews but were based on a variety of data, including interviews with 52 OSHA officials. In determining which OSHA officials to interview, we deliberately included area directors, assistant area directors, and compliance officers, which resulted in us obtaining information from officials at various levels in 42 of OSHA's 80 area offices.

Labor also noted that our findings from OSHA's database which showed that only half of complaint inspections result in citations for serious violations do not recognize that many complaints come from the construction industry, where the work is often dangerous and of a short duration so that even if an inspection begins immediately, "citable" circumstances may no longer exist. We added language to the body of the report to reflect this information.

In responding to our first recommendation about improving the quality of information received through complaints, Labor stated that OSHA has taken many steps, both in its online and office-based complaint-taking procedures, to provide guidance to employees to ensure that all complaints are valid and accurate. We maintain, however, that OSHA can do more to improve the validity and accuracy of the complaints it receives.

Labor did not comment on our recommendations that OSHA develop a system for ensuring that the regions complete audits of the complaint process and for using the results of these audits to improve the consistency of the process.

We will make copies of this report available upon request. In addition, the report will be available at no charge on GAO's Web site at http://www.gao.gov.

If you or any of your staff has any questions about this report, please contact me at (202) 512-7215 or Revae Moran, Assistant Director, at (202) 512-3863.

Sincerely yours,

Robert E. Robertson, Director
Education, Workforce, and
Income Security Issues

Appendix I: Scope and Methodology

Our criteria for selecting our site visits were geographical diversity and volume of complaints. We received data from the Occupational Safety and Health Administration (OSHA) regarding the number of complaints each of its area offices processed in 2000, 2001 and 2002. On the basis of these data, we selected the three sites with the largest number of complaints processed in their respective regions and which roughly approximated the east, south and western regions. Those sites were Pittsburgh, Pennsylvania; Austin, Texas; and Denver, Colorado. In each of these offices, we examined a statistical sample of case files. We used a standard set of questions, pretested on case files in the Philadelphia, Pennsylvania office, to conduct the case file reviews. In addition, we interviewed compliance officers—both supervisory and nonsupervisory. We randomly selected 38 cases in Denver, 30 cases in Austin, and 34 cases in Pittsburgh from the available list of complaint files processed by these offices in 2000, 2001, and 2002. Austin and Pittsburgh had disposed of their case files for phone/fax investigations for 2000, according to area directors there, who said this was allowed by agency rules for how long files must be kept. As a result, our random selections for Austin and Pittsburgh were selected from lists that did not include phone/fax investigations for 2000.

In addition to our site visits, using standard sets of questions, we interviewed by telephone randomly selected area directors, assistant area directors, and compliance officers in 42 area offices. We obtained from OSHA a list of area directors, assistant area directors (who are supervisory compliance officers), compliance officers, and regional administrators. We randomly selected 20 of the agency's 80 area directors and 32 of its 1,200 compliance officers (12 assistant area directors and 20 nonsupervisory compliance officers). We also interviewed officials in all 10 regional offices. Additionally, we conducted telephone interviews with health and safety officials from 13 states that operate health and safety programs apart from OSHA. We selected these 13 states, in part, based on discussions with OSHA.

In addition to OSHA officials, we also interviewed employers whose worksites were the subject of a complaint and employees who had filed complaints. OSHA provided us with a database of all employers who in 2000, 2001, or 2002 had worksites that were the subject of complaints and employees who had filed complaints in the same year. From the database we randomly selected 90 employers and 90 employees. We took steps to make sure that employers' and employees' contact information was kept separate from their identity and any information collected from them during their interviews. We also obtained a guarantee of confidentiality from the report's requester. Of the 90 employers randomly selected, we

succeeded in interviewing 15. Of the 90 employees, we succeeded in interviewing 6. Some of the employee complaints randomly selected had been filed anonymously, so contact information was not available. In most cases, those selected could not be reached.

Finally, we examined data for fiscal years 2000 through 2002 related to complaints in OSHA's Integrated Management Information System (IMIS) and looked at data on injuries and illnesses collected and published by the Bureau of Labor Statistics (BLS) for calendar year 2001 as they related to complaints.[1] In addition, for the IMIS data we obtained and reviewed documentation of internal controls and manually tested the data. We interviewed both OSHA and BLS officials to establish the reliability of the data. We found the data to be reliable for our purposes.

[1]These data are collected for the calendar year.

Appendix II: Comments from the Department of Labor

U.S. Department of Labor

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

MAY 21

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 the General Accounting Office (GAO) report on *OSHA's Complaint Response Policies: OSHA Credits Its Complaint System with Conserving Agency Resources, but the System Still Warrants Improvement* (GAO-04-658). We are pleased that GAO recognizes that the Agency's complaint process is effective. Throughout its history, OSHA has striven to improve this process in order to effectively administer these important provisions and requirements of the Occupational Safety and Health Act of 1970 (OSH Act).

See comment 1.

The recommendations for executive action made in your report advise the Secretary of Labor to direct that the Director of Enforcement take specified actions. However, administrative procedures within the Department dictate that the Secretary should direct her instructions to the Assistant Secretary for Occupational Safety and Health, who in turn will determine organizationally how these instructions should be implemented, and we suggest the GAO's report be revised accordingly.

See comment 2.

OSHA also takes issue with some of the methodology employed by GAO in preparing this report. As the majority of complaints are anonymous and unsigned, only six employees were interviewed; the Agency questions whether this is an adequate number of employees on which to base the conclusions reached in this report. We recommend that there be greater acknowledgement in the report by GAO of this limited number of employee interviews on which the report is based. (Please note that there are two minor discrepancies in the report. On page 2, *six* employees are mentioned as being interviewed and Appendix III is referenced as to where GAO's methodology is presented. Actually, the methodology is presented in Appendix I, and on page 27 of that appendix *eight* employees are mentioned as being interviewed.)

See comment 3.

The Agency does believe that, in developing its conclusions, GAO did not give adequate consideration to the particular circumstances often present in the construction industry. A large number of the complaints that OSHA receives allege potential

imminent danger situations, such as a trench, fall hazard from a height greater than six feet (often far greater), or working near energized power lines. Such work is usually of short duration, and because worksite conditions are constantly changing, even if the inspection begins immediately, "citable" circumstances may no longer exist. In addition, often work is not ongoing or concludes before the inspector can visit the worksite. In other words, GAO's conclusion that only half of the workplaces that undergo complaint inspections result in serious violations may not have the weight ascribed to it by the GAO report. OSHA believes that GAO should distinguish the type of complaint inspections that were considered—construction, general industry, maritime or federal agency—so that better conclusions can be made.

See comment 4.

Furthermore, Table 4 on page 22 of the report is misleading. It concludes that two of the industries with the highest injury/illness rates are transportation by air and local passenger transit. OSHA has extremely limited jurisdiction for these industries and therefore, does not pursue many of the complaints in these areas. In addition, the table states that it was based on OSHA's Integrated Management Information System data; however, as IMIS does not track injury rates, it cannot be cited as the source of these statistics.

See comment 5.

As stated above, Section 8(f)(1) of the OSH Act provides that workers have the right to request an inspection of a workplace if they believe that a violation of a safety or health standard exists that threatens physical harm, or when an imminent danger exists. As such, any action taken by the Agency that discourages the exercise of this right could deter employees from requesting workplace inspections and thus would need to be considered in recognition of the fundamental right established by the Act. The challenge is to pursue administrative efficiency while assuring that the rights of workers, as provided by the statue, are not eroded.

The Agency has a variety of procedures in place to screen out unwarranted and ill-founded complaints, and OSHA's anecdotal evidence suggests that, as a rule, the Agency is successful in identifying such complaints. Statistics cited in the report support this fact, in that a higher percentage of complaint-initiated inspections result in the finding of serious violations than do programmed (i.e., targeted) inspections. This indicates that a significant number of employee complaints are valid in identifying serious workplace hazards that must be corrected. However, ultimately, in any given case the Agency cannot know if the information provided by a complainant is incomplete or inaccurate until a compliance officer inspects the worksite.

OSHA has taken many steps, in both its online and Area-Office-based complaint-taking procedures, to provide guidance to employees to ensure that all complaints are valid and accurately reflect potential workplace hazards. These steps support administrative efficiency while assuring that the statutory rights of workers to file a complaint are protected.

In response to your recommendation regarding safety committees, OSHA does believe that labor-management cooperation should be encouraged. However, OSHA does not, and should not, specify the manner in which such cooperation takes place.

GAO also recommends OSHA conduct outreach to employees regarding hazards. OSHA presently conducts a wide variety of outreach programs and activities through its extensive compliance-assistance program. Much of this outreach is specifically directed to employees and focuses on supporting the Agency's mission of assuring safe and healthful working conditions for working men and women by providing both employers and employees with information useful in preventing occupational injuries and illnesses. Workers can also access more information on the Agency's compliance-assistance activities on our website at http://www.osha.gov/dcsp/compliance_assistance/index.html

Lastly, as stated at the opening conference, the Agency has already initiated a revision of its Directive on Complaint Policies and Procedures. Your recommendations will be thoroughly considered and will be incorporated, where appropriate, in the revised directive, which should be completed in the next fiscal year. Again, thank you for the opportunity to respond to this report.

Sincerely,

John L. Henshaw

GAO Comments

The following are GAO comments on Labor's letter dated May 21, 2004.

1. We rephrased our recommendations to reflect Labor's administrative procedures.

2. Our conclusions are based on site visits to 3 area offices processing large numbers of complaints, reviews of case files in those offices, interviews with 52 OSHA officials—area directors, assistant area directors, and compliance officers—who represented 42 of OSHA's 80 area offices, interviews with officials in all 10 of OSHA's regional offices, interviews with the director of the Office of Enforcement, interviews with officials in 13 states that have their own safety and health programs, analysis of data on complaints from OSHA's Integrated Management Information System, analysis of BLS data on injuries and illnesses, interviews with 15 employees whose companies were the subject of complaints, interviews with 6 employees who filed complaints, and the review of agency documents related to the complaint process.

   In the appendix on scope and methodology, we corrected the number of employee interviews, changing it to 6 from 8.

3. We have included the agency's explanation in the final version of the report.

4. We added a note to table 4 acknowledging that OSHA's jurisdiction is limited in the transportation area and corrected the source of the data in the table.

5. On the basis of our interviews with OSHA officials who said the agency could do more to improve the quality of information received from complainants, we continue to believe that adopting our recommendation would help the agency better manage its inspection resources. Moreover, we believe that the agency could take such actions without discouraging employees from filing legitimate complaints.

Appendix III: Staff Acknowledgments

Staff Acknowledgments

Carl Barden, Sue Bernstein, Karen Brown, Amy Buck, Patrick di Battista, Barbara Hills, Mikki Holmes, Cathy Hurley, Julian Klazkin, Jim Lawrence, Luann Moy, Corinna Nicolaou, Sid Schwartz, and Michelle Zapata made key contributions to this report.

Related GAO Products

Workplace Safety and Health: OSHA's Voluntary Compliance Strategies Show Promising Results, but Should Be Fully Evaluated Before They Are Expanded. GAO-04-378 March 19, 2004.

Workplace Safety and Health: OSHA Can Strengthen Enforcement through Improved Program Management. GAO-03-45 November 22, 2002.

Worker Protection: Labor's Efforts to Enforce Protections for Day Laborers Could Benefit from Better Data and Guidance. GAO-02-925 September 26, 2002.

Workplace Safety and Health: OSHA Should Strengthen the Management of Its Consultation Program. GAO-02-60 October 12, 2001.

Worker Protection: OSHA Inspections at Establishments Experiencing Labor Unrest. HEHS-00-144 August 31, 2000.

Occupational Safety and Health: Federal Agencies Identified as Promoting Workplace Safety and Health. HEHS-00-45R January 31, 2000.

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