

U.S. Department of Labor

Office of Inspector General—Office of Audit

**OCCUPATIONAL SAFETY AND
HEALTH ADMINISTRATION**



**OSHA HAS NOT DETERMINED IF STATE OSH
PROGRAMS ARE AT LEAST AS EFFECTIVE IN
IMPROVING WORKPLACE SAFETY AND HEALTH
AS FEDERAL OSHA'S PROGRAMS**

Date Issued:
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02-11-201-10-105

BRIEFLY...

Highlights of Report Number **02-11-201-10-105**, to the Assistant Secretary for Occupational Safety and Health

WHY READ THE REPORT

The role of the Occupational Safety and Health Administration (OSHA) is to promote workers' safety and health. Through its programs and partners, OSHA claimed it reduced work-related fatalities, injuries, and illnesses. The Bureau of Labor Statistics reported 4,340 fatalities and 965,000 non-fatal injuries and illnesses for 2009. Liberty Mutual Annual Workplace Safety Index reported over \$53 billion in workers compensation costs for 2008.

The Occupational Safety and Health Act of 1970 (OSH Act) authorizes States to assume some responsibilities to develop and enforce safety and health standards, and authorizes grants of up to 50 percent of costs to States with programs **at least as effective as** the Federal program. Since 1972, States were granted \$2.4 billion to develop and operate effective Occupational Safety and Health (OSH) programs.

WHY OIG CONDUCTED THE AUDIT

In 2009, complaints filed with OSHA and congressional interest prompted OSHA to conduct a special review of Nevada OSH. Prior to the review, Nevada OSH received favorable monitoring reports while it was sharply criticized in media coverage on the handling of 25 fatalities. The special review revealed significant operational issues. Subsequently, OSHA expanded monitoring of other States' programs to include on-site case reviews.

The objective of this audit was to answer the question: Has OSHA ensured that State Plans operate OSH programs that are **at least as effective as** Federal OSHA? The audit covered OSHA's monitoring of all 27 State Plan programs operating in Fiscal Year 2010.

READ THE FULL REPORT

To view the report, including the scope, methodology, and full agency response, go to:

<http://www.oig.dol.gov/public/reports/oa/2011/02-11-201-10-105.pdf>

March 2011

OSHA HAS NOT DETERMINED IF STATE OSH PROGRAMS ARE AT LEAST AS EFFECTIVE IN IMPROVING WORKPLACE SAFETY AND HEALTH AS FEDERAL OSHA'S PROGRAMS

WHAT OIG FOUND

OSHA has not yet designed a method to examine the impact of State OSH programs to ensure they are **at least as effective as** Federal programs. State officials generally believed their programs were effective, but there was no quantifiable data to demonstrate effectiveness. OSHA officials acknowledged that effectiveness measures would be desirable, but difficult to develop. As a result, OSHA lacks critical information needed to make informed decisions.

- Defining Effectiveness. State officials expressed concerns regarding the lack of clear expectations for effective programs and that some program changes required by OSHA may not necessarily increase effectiveness of their states' programs.
- Measuring Effectiveness. OSHA officials admitted OSHA does not have outcome measures to gauge effectiveness. States were evaluated on activity-based data, which OSHA officials stated would provide valuable operational information and proxy measures of effectiveness.
- Establishing Minimum Criterion. OSHA has not evaluated the impact of its own enforcement program in order to establish the minimum criterion to evaluate state programs.
- Monitoring Effectiveness. In 2009, OSHA expanded monitoring to include on-site case file reviews, but had neither changed nor expanded the measures it used to evaluate performance.

WHAT OIG RECOMMENDED

We made four recommendations to the Assistant Secretary for Occupational Safety and Health to define effectiveness, design measures to quantify impact, establish a baseline for State Plan evaluations, and revise monitoring to include an assessment of effectiveness.

In responding to our report, OSHA agreed with the intent of the recommendations, but had concerns that defining effectiveness by relying exclusively on impact or outcome measures would be extremely problematic.

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U.S. Department of Labor

Office of Inspector General
Washington, D.C. 20210



March 31, 2011

Assistant Inspector General's Report

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The role of the Occupational Safety and Health Administration (OSHA) is to promote workers' safety and health by setting and enforcing standards; providing training, outreach, and education; establishing partnerships; and encouraging continual process improvement. The Occupational Safety and Health Act of 1970 (OSH Act) authorizes States¹ to assume some responsibilities to develop and enforce safety and health standards, and provides for grants of up to 50 percent of operational costs to States with programs **at least as effective as** Federal OSHA. Over a period of nearly 40 years, OSHA granted \$2.4 billion to States to develop and operate effective Occupational Safety and Health (OSH) programs.

In Fiscal Year 2010, OSHA granted \$104 million for State OSH programs. We audited OSHA's monitoring of all 27 State Plan programs to answer the question:

- Has OSHA ensured that State Plans operate OSH programs that are **at least as effective as** Federal OSHA?

For the audit, we evaluated internal controls over the monitoring of State Plan programs. We reviewed OSHA policies and procedures, and related audit reports from OIG and Government Accountability Office (GAO), and OSHA internal monitoring reports. We tested compliance with monitoring procedures through interviews and examination of documents in two regions (New York City and Philadelphia). We interviewed officials at OSHA National and 10 Regional Offices, and the states of New Jersey and Maryland. We surveyed all 27 State Plan administrators regarding OSHA monitoring.

¹ Includes the District of Columbia, Puerto Rico, U.S. Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands

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

RESULTS IN BRIEF

OSHA is responsible for ensuring the effectiveness of State OSH programs. While it collects statistics on program activities, this is not sufficient to assess a state's effectiveness in protecting workers. OSHA has not designed a method to determine that State Plans are at least as effective as Federal OSHA in reducing injuries and illnesses. Moreover, OSHA has not evaluated the impact of its own enforcement program in order to arrive at minimum criterion to evaluate state programs. State officials generally believed their programs were effective, but there was no quantifiable data to demonstrate program effectiveness. OSHA required States to make program changes, but did not explain how the changes would improve effectiveness.

In an attempt to ensure quality State programs, OSHA made several revisions to its monitoring procedures and measures reviewed. Monitoring was enhanced to include on-site reviews of case files. OSHA's enforcement programs (both State and Federal OSHA) were evaluated on (1) injury and illness data, and (2) fatality data. Individual States were evaluated on activity-based data including inspection counts, penalty amounts, injury and fatality rate trends, Integrated Management Information System (IMIS) and recordkeeping, measures for timeliness and completion of inspections, violation classification, staffing benchmarks, and timely adoption of standards. Officials stated these activity-based measures can be valuable in assessing program operations – especially when coupled with on-site reviews. However, OSHA has not developed measures to address the core issue of whether State Plans are or are not at least as effective as Federal OSHA. State-level injury and illness data were not sufficient for comparing outcomes for State Plans with outcomes for states covered by Federal OSHA. Also, according to OSHA, injury, illness, and fatality data are unpredictable and may be impacted by economic and other factors.

As a result, OSHA lacks evidence to demonstrate the effectiveness of State Plans and the merits of any program changes which may impact its decisions on policies, enforcement priorities, and funding. OSHA officials admitted to not currently having extensive, quantitative performance measures to evaluate the State Plans. They acknowledged these measures would be desirable, but difficult to develop. Officials agreed that many measures were, by necessity, activity-based rather than outcome measures. This was, in part, because outcome data were lacking.

We made four recommendations to the Assistant Secretary for Occupational Safety and Health: (1) define effectiveness; (2) design measures to quantify impact; (3) establish a baseline using Federal OSH programs to evaluate State Plans; and (4) revise

monitoring processes to include assessments about whether State Plans are at least as effective as Federal OSHA programs.

In response to the draft report, the Assistant Secretary for Occupational Safety and Health agreed with the intent of the recommendations, and stated OSHA will continue to develop additional impact measures for both Federal OSHA and the States. However, the Assistant Secretary expressed concern that attempting to define the effectiveness of State Plans by relying exclusively on a system of impact or outcome measures is not only extremely problematic, but would not fulfill the more specific and extensive requirements of the OSH Act.

We agree with the Assistant Secretary that OSHA should continue to develop impact measures to ensure that State programs are effective, and that these measures should be used in conjunction with activity-based measures to ensure compliance with OSH Act requirements. The Assistant Secretary's response is included in its entirety as Appendix D.

RESULTS AND FINDINGS

Objective — Has OSHA ensured that State Plans operate OSH programs that are at least as effective as Federal OSHA?

OSHA has not determined the effectiveness of State OSH programs.

Finding — OSHA Has Not Determined If State OSH Programs Are at Least as Effective in Improving Workplace Safety and Health as Federal OSHA Programs.

Through FY 2010, OSHA granted \$2.4 billion to States to develop and operate effective OSH programs. Section 23(g) of the OSH Act authorizes grants for up to 50 percent of total operational costs to States with standards and enforcement programs that are at least as effective as the Federal OSHA program. However, OSHA has not yet designed a method to examine the impact of State programs on workplace safety and health to ensure they are effective, and to fully evaluate the merits of any program changes. This was identified as an issue by 70 percent of States surveyed. As a result, OSHA lacks critical information on performance, which may impact its decisions on policies, enforcement priorities, and funding.

Occupational injuries and illnesses significantly impact worker lives in addition to profits and employment. The Bureau of Labor Statistics (BLS) reported 4,340 work-related fatalities and 965,000 major non-fatal injuries and illnesses for 2009. According to the 2010 *Liberty Mutual Annual Workplace Safety Index*, the cost of the most disabling workplace injuries and illnesses in 2008 amounted to \$53.42 billion in workers compensation costs, averaging more than one billion dollars per week.² Through its

² *Annual Workplace Safety Index* is published by Liberty Mutual Research Institute for Safety to provide scientific, business-relevant knowledge in workplace and highway safety, and work disability.

programs and partners, OSHA claimed it impacted workplace safety and health by reducing work-related fatalities, injuries, and illnesses. However, OSHA has not quantified the extent of impact, and therefore lacks the requisite information needed to make informed decisions.

States need to maintain valuable and efficient OSH programs with the current strain on resources. Both state and local governments are facing budget crises, and must target resources more efficiently without sacrificing quality. The majority of the states (63 percent) are concerned about recent challenges over budgets and resources. The association representing the State Plan states reported for 2009 that the budget for State Plans has remained stagnant since 2001 and the ‘real dollars’ available to states significantly decreased considering inflation. According to OSHA officials, 2010 State Plan funding was increased by \$11.8 million in response.

Defining Effectiveness

OSHA has not defined effectiveness in the context of State Plan programs. Without qualitative factors defining effectiveness, OSHA cannot ensure that State Plans are operating in an effective manner. Moreover, OSHA needs to define when State programs would be deemed as performance failures, to serve as a basis for using its ultimate authority to revoke State Plan approval.

State Plan Administrators are concerned about a lack of clear expectations, which has led to confusion. Federal OSHA has not provided the states the evidence to show that their activity-based framework (i.e. number of inspections) correlates to effectiveness. Although states think their plans are effective, without an outcome-based framework, they cannot show that their activities have improved workplace safety and health.

GAO had already highlighted many of these issues in their 1988 report, *OSHA’s Monitoring and Evaluation of State Programs*, report number GAO/T-HRD-88-13:

OSHA Needs to Know the Impact of State Programs on Worker Safety and Health

OSHA’s legislation does not specifically define ‘effectiveness,’ but it does require that the states’ standards and their enforcement should be at least as effective as those of the federal government ‘in providing safe and healthful employment and places of employment.’ OSHA, however, defines the effectiveness of state programs in terms of program activities, giving little attention to determining what characteristics of state programs have contributed to the reduction (or lack of reduction) in workplace injuries and illnesses so that program improvements could be made.

According to OSHA’s State Plan Policies and Procedures Manual, a State OSH program is judged to be at least as effective as Federal OSHA if the State is making reasonable progress toward meeting its established performance goals and is fulfilling its mandated responsibilities. OSHA officials stated that effectiveness “... *is not a static*

expectation but rather one that changes as the Federal OSHA program changes. Whenever a new standard, a new policy, a new emphasis program is implemented, the States must respond.” OSHA (1) has not developed fundamental principles of effectiveness, and (2) is not required to justify program changes imposed on states, while requiring states to do so. In comments to the Federal Register, OSHA stated:

OSHA believes it would not be practicable or advisable to issue guidance defining the term ‘at least as effective.’ ... OSHA must and should continue to rely on the States to demonstrate that particular State-developed alternative standards or procedures are ‘at least as effective.’ ... if OSHA disagrees, it must institute an adjudicatory rejection proceeding in which the burden of proof rests with OSHA, not the State.³

State Plan Administrators expressed concerns that OSHA’s “moving target” approach resulted in a lack of clear expectations for programs to be at least as effective, and that some of OSHA’s required program changes, such as increasing penalty amounts, may not necessarily increase the effectiveness of their states’ programs. Officials for 21 of 27 states generally believed their programs were effective, based on comprehensive knowledge of local employers. (See Exhibit 1 for detailed survey responses from the State officials.)

Most of the States (63 percent) questioned the impact of some of OSHA’s required program changes – whether the changes necessarily increased effectiveness. Many states claimed to have created unique safety and health initiatives; however, they, along with OSHA, lack the data to adequately evaluate the merits of these innovations. As one state administrator commented:

State programs believe that a national dialogue must be undertaken about the OSHA paradigm itself, including how OSHA and the state programs can come to a clearer understanding of what it means for a state program to be at least as effective as OSHA, and how to move cooperatively forward to improve workplace safety and health. ... If state programs and Federal OSHA have disparate views of effectiveness, and what constitutes effectiveness, then a significant philosophical disagreement exists.

Measuring the Effectiveness of State Plan Programs

Refining the expectation for effectiveness, the Federal Chief Performance Officer (CPO) in September 2010 emphasized that government needed to work better, faster, and more efficiently. To achieve these goals the CPO stated that “Empirical evidence is an essential ingredient for assessing whether government programs are achieving their intended outcomes and guiding continuous improvement.” The current administration’s strategy for performance management was described in the FY 2012 Analytical

³ Federal Register, volume 67, number 186, 25 Sep 2002, pp 60123

Perspectives Budget Chapter 7 – Delivering High Performance Government,⁴ as follows:

... Federal agencies must adopt an evidence-based culture in which decisions are made using information collected in a timely and consistent manner about the effectiveness of specific policies, practices, and programs. Strategies for developing evidence exist along a continuum from the basic collection of program and outcomes information, to more sophisticated performance measurement and formative evaluation methods, to rigorous evaluation techniques that measure program and practice impacts against a comparison group.

Transparent, coherent performance information contributes to more effective, efficient, fair, inclusive, and responsive government. Communicating performance information can support public understanding of what government wants to accomplish and how it is trying to accomplish it. It can also support learning across government agencies, stimulate idea flow, enlist assistance, and motivate performance gain.

In an attempt to measure the quality of state programs, OSHA evaluates individual states using activity-based data including inspection counts, penalty amounts, injury and fatality rate trends, IMIS/recordkeeping, measures for timeliness and completion of inspections, violation classification, staffing benchmarks, and timely adoption of standards. However, OSHA has not developed measures to address the core issue of whether State Plans are or are not at least as effective as Federal OSHA. This was identified as an issue by 70 percent of States surveyed. (See Exhibit 2 for details on data collected during OSHA's annual review of State Plans.)

OSHA needs to develop measures that can quantify the effect of State Plan programs activities on occupational safety and health. OSHA officials admitted to not currently having extensive, quantitative performance measures to evaluate the State Plans. The officials agreed that many measures were by necessity activity-based because outcome data were lacking. Officials stated that activity measures provided valuable information on State program operations and were helpful proxy measures of effectiveness.

Officials from 17 states (63 percent) commented that OSHA's performance measures needed to be re-evaluated. As one state plan administrator stated:

In the end, the gold standard for success is the reduction of workplace fatalities, injuries, and illnesses, as well as fostering concrete changes in workplace behavior to increase safety performance, and we will not be able to address effectiveness adequately until we have metrics in place that tell us how much progress we are making in these areas. ...neither

⁴ Source – http://www.whitehouse.gov/omb/budget/Analytical_Perspectives/ Chapter 7-2012

OSHA nor any of the state plans have yet progressed to the point of having metrics like these in place.

Establishing a Minimum Criterion for State Plan Effectiveness

OSHA has not evaluated the impact of its own enforcement program in order to arrive at a minimum criterion to evaluate state programs. Since 1993, the Federal Government required effectiveness to be measured through the Government Performance Results Act (GPRA) where Federal agencies had to establish objective quantifiable performance goals and to measure program results. With its goal to improve workplace safety and health, OSHA measures its results using rates for injuries and illnesses, and fatalities. However, these measures are not sufficient to conclude on program effectiveness because the data are incomplete, unverified, and may be impacted by economic factors. OSHA has incomplete information on Federal OSHA states, and consequently lacks the requisite baseline against which to gauge state performance.

For 2009 GPRA reporting, OSHA used two nationwide measures for performance – the Bureau of Labor Statistics (BLS) – *Days Away, Restricted, or Transferred (DART)*⁵ rate from the Annual Survey of Occupational Injuries and Illnesses; and a fatality rate using data from the OSHA Integrated Management Information System (IMIS) and BLS' Current Employment Statistics. For 2010, OSHA used measures from their IMIS on fatalities associated with the four leading causes of workplace death.

However, 2009 and 2010 GPRA data are not adequate measures to determine effectiveness.

- State-level DART rate data is not sufficient to present a complete picture of injuries and illnesses for comparing outcomes for State Plans with outcomes for states covered by Federal OSHA. Private sector state-level DART data was not available for 10 states – 20 percent of workplaces and employees covered by Federal OSHA. According to BLS, the number of States with available data varies from year to year because not all States have sample sizes sufficient to generate specific estimates of workplace injuries and illnesses. Industry specific data within states also varies, primarily due to the differences in industry concentration and sample size from one State to the next.
- Fatalities are also not adequate measures. As stated by OSHA in the FY 2010 Performance Report, fatalities cannot be predicted and lower fatality numbers may be related to economic conditions.

GAO reported on the lack of program impact data in their 1994 report, *Changes Needed in the Combined Federal-State Approach*, report number GAO/HEHS-94-10:

⁵ Source – <http://www.bls.gov/iff/oshState.htm>. Data set included 41 states and 3 territories for 2009.

The experience in these states, as well as the results of several empirical studies, lead us to believe that using worksite-specific data in addition to industry-aggregated data could improve OSHA's inspection targeting, education and training efforts, and evaluations of program impact.

Since OSHA has not established a baseline to evaluate its own program, OSHA's current measures to conclude on state program effectiveness are not sufficient. Consequently, OSHA lacks the clear understanding of the impact of State programs on safety and health.

Monitoring for Effectiveness

The Act does not specifically require OSHA to monitor for effectiveness, but it is implied in its requirements, such as the criterion that grants are to be awarded to States with plans at least as effective as Federal OSHA. The State Plan Policies and Procedures Manual states the purpose of Chapter 9 -- Evaluation of State Performance and Annual Reports, is to describe the methods used to evaluate States' effectiveness. However, these guidelines require that States progress toward their activity goals, and these goals are not tied to maintaining effective programs. As a result, OSHA lacks procedures to evaluate the effectiveness of State Plans and the merits of any program changes.

The OSH Act required continuing evaluations of states operating under approved plans to ensure that the programs are at least as effective as Federal OSHA. Additionally, the Assistant Secretary will determine whether the State plan provides an adequate method to assure that its standards will continue to be at least as effective as Federal standards, including Federal standards relating to issues covered by the plan, which become effective subsequent to any approval of the plan. OSHA is required to determine potential outcomes of departures from the Federal program, and if the differences have an adverse impact on the "at least as effective as" status of state programs.

Over the years, OSHA's monitoring has changed from a system of measuring the states against Federal performance on various indicators to the current reviews that measure state performance against the state's own goals. OSHA also varied its level of oversight between desk and on-site reviews. In the 1970s, monitoring was on-site, intensive, and included reviews of state enforcement case files, accompanying inspectors to observe their work, and manual data gathering. In the mid-1980s, OSHA discontinued routine accompanied visits and case file reviews. In the mid-1990s, oversight was again reduced to a goal-based system whereby states developed 5-year strategic and annual performance plans that included goals of reducing workplace injuries, illnesses and fatalities. OSHA evaluated state performance in relation to the planned goals by performing the following tasks: (1) verifying state-supplied data with data from BLS; (2) tracking timely adoption of new Federal OSH standards by the States; and (3) meeting quarterly with State OSH officials.

In 2009, OSHA initiated significant changes in monitoring to increase comprehensive oversight of all state programs due to problems found in the Nevada program. In 2008, Nevada OSH received favorable monitoring reports. While in media coverage, Nevada OSH was sharply criticized on the handling of 25 fatalities. Complaints filed with OSHA and congressional interest prompted OSHA to conduct a special on-site review of the state program, which revealed significant operational issues. Congressional staffers expressed concern that OSHA's Federal monitoring reports were inadequate since Nevada OSH received glowing reviews despite having serious problems.

Subsequently, OSHA decided to conduct special on-site reviews of the other State Plans. These Enhanced Federal Annual Monitoring and Evaluation (EFAME) reviews provided detailed findings and more than 650 recommendations on the structure and processes for 25 of the 27 State Plan OSH programs.⁶ The EFAME reviews required more on-site monitoring that focused on compliance with Federal OSHA program structure and procedures. Generally, State officials considered OSHA recommendations to be feasible, but some commented on the substance of the recommendations.

RECOMMENDATIONS

We recommend that the Assistant Secretary for Occupational Safety and Health:

1. Define effectiveness in terms of the impact of State OSH programs on workplace safety and health.
2. Design measures to quantify the impact of State OSH on workplace safety and health.
3. Measure Federal OSH program to establish a baseline to evaluate State OSH effectiveness.
4. Assure effectiveness by revising the monitoring processes to include comparison of the impact of State OSH and Federal OSHA.

We appreciate the cooperation and courtesies that OSHA personnel extended to the Office of Inspector General during this audit. OIG personnel who made major contributions to this report are listed in Appendix E.



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Assistant Inspector General for Audit

⁶ Illinois was excluded from the process due to the fact that it is a developmental program. Nevada was excluded due to the fact that the EFAME process was triggered by issues discovered in the State.

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Exhibits

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Exhibit 1

Comments of State OSH Officials on OSHA Monitoring

A. Narrative Comments Expressed by the Majority of State Officials Surveyed

	Comment	Number of States	Percent of States
State OSH Program Background			
1	State plans are more tailored / responsive to needs of the State.	21	78%
2	Concern over recent challenges with staffing/training/funding.	17	63%
Federal Monitoring			
3	Federal OSHA does not define effectiveness.	19	70%
4	Mandated activities have little impact/no added-value to program effectiveness.	17	63%
5	Findings and recommendations were either not supported; not applicable to the State; or changed in post-monitoring process.	16	59%
Suggestions for Improving Federal Monitoring			
6	OSHA's effectiveness measures need to be re-evaluated and more outcome, rather than, output-oriented.	17	63%
7	Federal OSHA should be more knowledgeable of State Plans, so that monitors can be flexible and account for their uniqueness.	15	56%
8	States want more consistency/direction in monitoring, so expectations are made clear.	12	44%

B. Selected Answers to Survey Multiple Choice Questions

For questions 1, 2, and 4, only the top (over 50 percent) answers for advantages, disadvantages and challenges are summarized below. For questions 3 and 5 rating the feasibility of recommendations and overall opinion of monitoring, all answers are included.

Survey Multiple Choice Questions	Number of States	Percent of States
1. What are the advantages to having your own State OSH? (Check all that apply)		
More flexibility in response to specific needs of the workforce in the state.	27	100%
Maintaining state autonomy over worker safety and health programs.	25	93%
Federal funding to assist with program costs	21	78%
More comprehensive safety and health program in comparison to Federal OSHA.	21	78%
Federal technical assistance in setting enforcing standards	14	52%
Creating employment within state	14	52%
2. What are the disadvantages to having your own State OSH? (Check all that apply)		
Mandated activities and programs do not apply to state needs	17	63%
3. From the most recent annual report, how feasible are recommendations from Federal OSHA? (Check one)		
Very feasible (i.e. feasible 75% - 100% of the time)	5	19%
Usually feasible (i.e. feasible 50% - 74% of the time)	15	56%
Usually not feasible (i.e. feasible 25% - 49% of the time)	4	15%
Unacceptable (i.e. feasible 1% - 24% of the time)	1	4%
Unfeasible (i.e. never feasible)	1	4%
No Response	1	4%
4. What challenges does your State face in addressing the recommendations? (Check all that apply)		
Not necessary - disagree with OSHA about problem	17	63%
5. What is your overall opinion of Federal OSHA monitoring of your State OSH program? (Check one)		
Excellent	2	7%
Very Good	5	19%
Neutral opinion	4	15%
Needs improvement	13	48%
Needs a total revamp	3	11%

Exhibit 2**Data Used by OSHA in Annual Review of State Plans**

A. Enforcement Activity – Compare the State; all state plans; and Federal OSHA**1. Total Inspections - Number**

- a. Safety Inspections – Number and Percent
- b. Health Inspections – Number and Percent
- c. Construction Inspections – Number and Percent
- d. Public Sector Inspections – Number and Percent
- e. Programmed Inspections – Number and Percent
- f. Complaint Inspections – Number and Percent
- g. Accident Inspections - Number
- h. Inspections with Violations Cited – Number and Percent
- i. Inspections with Violations Cited – Percent with Serious Violations

2. Total Violations - Number

- a. Serious Violations – Number and Percent
- b. Willful Violations - Number
- c. Repeat Violations - Number
- d. Serious/Willful/Repeat Violations – Number and Percent
- e. Failure to Abate - Number
- f. Other than Serious – Number and Percent
- g. Average # Violations per Initial Inspection

3. Total Penalties – Dollar Value

- a. Average Current Penalty/Serious Violation
- b. Average Current Penalty/Serious Violation -Private Sector Only
- c. Percent Penalty Reduced

4. Percent Inspections with Contested Violations

- a. Average Case Hours per Inspection - Safety
- b. Average Case Hours per Inspection - Health
- c. Lapsed Days from Inspection to Citation Issued – Safety
- d. Lapsed Days from Inspection to Citation - Health
- e. Open, Non-Contested Cases with Incomplete Abatement Over 60 days

B. State Activity Mandated Measures – Compare State with standard/negotiated goal

1. Average number of days to initiate Complaint Inspections
2. Average number of days to initiate Complaint Investigations
3. Percent of Complaints where Complainants were notified on time
4. Percent of Complaints/Referrals responded to within 1 day –Imminent Danger
5. Number of Denials where entry not obtained
6. Percent of Serious/Willful/Repeat Violations verified (Private/Public)
7. Average calendar days from Opening Conference to Citation Issue (Safety/Health)
8. Percent of Programmed Inspections with Serious/Willful/Repeat Violations (Safety/Health)
9. Average Violations per Inspection with Violations (Serious/Willful/Repeat and Other)

10. Average Initial Penalty per Serious Violations (Private Sector Only)
11. Percent of Total Inspections in Public Sector
12. Average Lapse Time from Receipt of Contest to First Level Decision
13. Percent of 11c (Whistleblower) Investigations Completed Within 90 Days
14. Percent of 11c (Whistleblower) Complaints that are Meritorious
15. Percent of Meritorious 11c Complaints that are Settled

C. State Indicator Report – Compare State against Federal OSHA

1. Enforcement (Private Sector)

- a. Programmed Inspections – Safety/Health (number and percent)
- b. Programmed Inspections with Violations – Safety/Health (number and percent)
- c. Serious Violations – Safety/Health (number and percent)
- d. Abatement Period for Violations – Safety > 30 days and Health > 60 days
- e. Average Penalty – Other than Serious – Safety/Health
- f. Inspections per 100 hours – Safety/Health
- g. Violations Vacated (number and percent)
- h. Violations Reclassified (number and percent)
- i. Penalty Retention (number and percent)

2. Enforcement (Public Sector)

- a. Programmed Inspections – Safety/Health (number and percent)
- b. Serious Violations – Safety/Health (number and percent)

3. Review Procedures

- a. Violations Vacated (number and percent)
- b. Violations Reclassified (number and percent)
- c. Penalty Retention (number and percent)

D. BLS Rates/Data

1. Days, Away, Restricted, or Transferred (DART) rate and related trends.
2. On-the-job Total Recordable Case rate and related trends.

E. Information Management

1. Types of reports and frequency of use for IMIS generated forms.
2. Quantification of the upkeep of IMIS forms.

F. Staffing Benchmarks and Training

1. Staffing levels for both safety and health personnel (actual versus goal).
2. Compliance with OSHA's training requirements for OSH personnel.

G. Standards adoption tracking

1. Time elapsed by state to adopt new OSHA standards.
2. Tracking of standards not adopted within the requisite 6 months.

Appendices

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Appendix A

Background

The role of OSHA is to promote the safety and health of workers by setting and enforcing standards; providing training, outreach and education; establishing partnerships; and encouraging continual process improvement in workplace safety and health. The OSH Act of 1970 authorizes States to assume some responsibilities to develop and enforce safety and health standards, and provides for grants of up to 50 percent of operational costs to States with programs **at least as effective as** Federal OSHA. With OSH Act funding match, Congress encouraged States to operate effective OSH programs and develop innovative approaches to safety and health. By 2011, 22 States and Territories operated OSH plans covering public and private employees, while 5 States and Territories operated OSH plans covering only public employees.

Table 1: State Plans – Covered Sectors and Approval Dates

State Plans	Covered Sectors		Initial Approval	Date Certified ⁷	Final Approval ⁸
	Public / Private	Public Only ⁹			
Alaska	X		7/31/73	9/09/77	9/28/84
Arizona	X		10/29/74	9/18/81	6/20/85
California ¹⁰	X		4/24/73	8/12/77	
Connecticut		X	10/02/73	8/19/86	
Hawaii	X		12/28/73	4/26/78	4/30/84
Illinois		X ¹¹	9/01/09		
Indiana	X		2/25/74	9/24/81	9/26/86
Iowa	X		7/20/73	9/14/76	7/02/85
Kentucky	X		7/23/73	2/08/80	6/13/85
Maryland	X		6/28/73	2/15/80	7/18/85
Michigan ¹⁰	X		9/24/73	1/16/81	
Minnesota	X		5/29/73	9/28/76	7/30/85
Nevada	X		12/04/73	8/13/81	4/18/00
New Jersey		X	1/11/01		
New Mexico ¹⁰	X		12/04/75	12/04/84	
New York		X	6/01/84	8/18/06	
North Carolina	X		1/26/73	9/29/76	12/10/96
Oregon	X		12/22/72	9/15/82	5/12/05
Puerto Rico ¹⁰	X		8/15/77	9/07/82	
South Carolina	X		11/30/72	7/28/76	12/15/87
Tennessee	X		6/28/73	5/03/78	7/22/85
Utah	X		1/04/73	11/11/76	7/16/85
Vermont ¹⁰	X		10/01/73	3/04/77	
Virgin Islands		X ¹²	7/01/03		
Virginia	X		9/23/76	8/15/84	11/30/88
Washington ¹⁰	X		1/19/73	1/26/82	
Wyoming	X		4/25/74	12/18/80	6/27/85

⁷ OSHA determined that developmental steps were satisfactorily completed.

⁸ OSHA relinquished concurrent Federal jurisdiction.

⁹ Plan covered State and local government employees only.

¹⁰ OSHA accepted operational status agreement and suspended concurrent Federal jurisdiction.

¹¹ State received developmental plan covering State and local government employees only.

¹² State granted final approval in 1984, but voluntarily withdrew from private sector jurisdiction (68 FR 43457, 7/23/03)

The following describes the basic steps for developing and approving State Plans.

Developmental Plans – States must assure that all the structural elements for an operational OSH program will be in place within 3 years. These elements include: appropriate legislation; standards and procedures for standard setting, enforcement, appeal of citations and penalties; and a sufficient number of competent enforcement personnel. Appropriate state legislation must be enacted and matching Federal funds available prior to OSHA approval.

Certified Plans – States have completed and documented its developmental steps. Certification does not include decisions on actual performance.

Operational Status Agreement – OSHA may offer to States that appear capable of independently enforcing standards. OSHA voluntarily limits discretionary Federal enforcement in all or certain activities covered by the plan.

Final Approval Plans – OSHA relinquishes its authority to cover OSH matters covered by the plan. After at least 1 year of certification, the state may request final approval. OSHA determines whether the State program is providing worker protection **at least as effective as** the Federal program. State also must meet established staffing benchmarks¹³ and participate in IMIS.

For FY 2010, States were granted funding between \$201,000 (Virgin Islands) and \$23,013,900 (California). Total funding over the last 5 years is summarized below.

Table 2: State Plan Funding

FY	Funding ¹⁴
2010	\$104.4 million
2009	\$92.6 million
2008	\$89.5 million
2007	\$91.1 million
2006	\$91.1 million

According to OSHA officials, State Plans were originally approved and funded at whatever level the State requested. Over a period of time, some States increased their funding contribution, but OSHA no longer had sufficient grant funds to match the States' expanded contribution. A funding formula was developed by a Federal/State task group with the goal of moving toward more equitable, consistent funding nationwide – to establish a uniform base and help the "under-funded" without taking money away from the other states. OSHA used the DART rate as objective criterion and granted the largest allocations to "under-funded" states with highest rates. The funding formula was used on rare occasions when Congress allocates additional funds, beyond a cost-of-living adjustment, and was applied only to the increase.

¹³ In the 1978 decision AFL-CIO v. Marshall, U.S. Court of Appeals for the District of Columbia, the court ruled that States must provide sufficient compliance personnel for a "fully effective" program.

¹⁴ Excludes Recovery Act funds of \$1.5 million to 7 States for ARRA-related inspections (7/09-9/10)

Appendix B**Objective, Scope, Methodology, and Criteria**

Objective

Has OSHA ensured that State Plans operate OSH programs that are ***at least as effective as*** Federal OSHA?

Scope

The audit covered 27 States with OSH programs in FY 2010 – 22 States cover both public and private sectors employers, and 5 States cover only public sector employers. OSHA granted \$2.4 billion to develop and operate State OSH programs since 1972. FY 2010 funding totaled \$104 million.

Methodology

A performance audit includes an understanding of internal controls considered significant to the audit objective and testing compliance with significant laws, regulations, and other requirements. In planning and performing our audit, we considered internal controls significant to the audit were properly designed and placed in operation. This included reviewing OSHA's policies and procedures for monitoring State Plan programs. We confirmed our understanding of these controls and procedures through interviews and documentation review.

Specifically, we reviewed OSHA policies and procedures, related OIG and GAO reports, and OSHA internal monitoring reports. We tested compliance with monitoring procedures through interviews and examination of documents in two regions (New York and Philadelphia) and two states within the regions (New Jersey and Maryland) selected judgmentally based on characteristics of the state program including workers covered, injury rates, and funding. We interviewed officials at OSHA National and all 10 Regional Offices. We surveyed all 27 State Plan Administrators regarding OSHA monitoring.

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

Criteria

- Occupational Safety and Health Act of 1970, Public Law 91-596, December 29, 1970, as amended, Sections 6, 18, and 23

- Code of Federal Regulations, 29 CFR Parts 1902 and 1952 thru 1956
- OSHA's State Plan Policies and Procedures Manual, OSH directive nos. STP 2-0.22B and STP 2-0.22A, Change 3
- Government Performance Results Act (Public Law 103-62, August 3, 1993) and GPRA Modernization Act (Public Law 111-352, January, 4, 2011)

Appendix C

Acronyms and Abbreviations

BLS	Bureau of Labor Statistics
CPO	Federal Chief Performance Officer
DART	Days Away, Restricted, or Transferred
DOL	U.S. Department of Labor
EFAME	Enhanced Federal Annual Monitoring and Evaluation
GAO	U.S. Government Accountability Office
GPRA	Government Performance Results Act of 1993
IMIS	Integrated Management Information System
OIG	Office of Inspector General
State OSH	State Plan Occupational Safety and Health Programs
OSH Act	Occupational Safety and Health Act of 1970
OSHA	Occupational Safety and Health Administration

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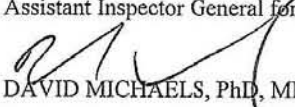
OSHA Response to Draft Report

U.S. Department of Labor

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

MAR 31 2011

MEMORANDUM FOR: ELLIOT P. LEWIS
Assistant Inspector General for Audit

FROM: 
DAVID MICHAELS, PhD, MPH

SUBJECT: Response to OIG's Draft Audit Report
02-11-201-10-105
"OSHA Had Not Determined if State OSH Programs Were at
Least as Effective in Improving Workplace Safety and Health As
Federal OSHA's Programs"

This memorandum is in response to your March 21, 2011, transmittal of the Office of Inspector General (OIG) Draft Audit Report No. 02-11-201-10-105, "OSHA Had Not Determined if State OSH Programs Were at Least as Effective in Improving Workplace Safety and Health As Federal OSHA's Programs." We appreciate the opportunity to respond to the findings and recommendations of the OIG. While we agree with the intent of the recommendations, we are also concerned that attempting to define the effectiveness of State plans by relying exclusively on a system of impact or outcome measures is not only extremely problematic, but would not fulfill the more specific and extensive requirements of the Occupational Safety and Health Act of 1970 (The Act).

As you note in this report, while Congress required OSHA to approve state plans that are "at least as effective" as the federal program, the Act does not specifically define "effective." In addition, the law requires federal OSHA to conduct a "continuing evaluation of the manner in which each State ... is carrying out such plan." While we agree that outcome measures are desirable for evaluating the effectiveness of both the Federal OSHA program and the programs of the 27 States that operate their own OSHA-approved State plans, OSHA does not agree with the report's dismissal of activity or performance measures as ineffective or meaningless in determining states' effectiveness or the extent to which they are carrying out their plan.

Congress did not simply direct OSHA to achieve a particular outcome. Section 18 of the Act requires OSHA to evaluate all aspects of a State program, not only its results. There are very prescriptive requirements in the Act and OSHA's implementing regulations for the organization and operation of OSHA-approved State Plans for which Federal funding is provided. For example, Section 18(c)(2) of the Act requires federal OSHA to determine that State Plan standards and their enforcement are at least as effective as federal OSHA's and mandates certain activities that constitute a system of enforcement. Section 18(c)(3) requires states to provide for

employee and employer rights, protection for whistleblowers, the identification and citation of hazards, the proposal of first instance sanctions as a deterrent to non-compliance prior to inspection and other “activities” that are integral elements of an effective program. These statutorily mandated activities must be evaluated and Section 18(f) requires federal OSHA to ensure that State Plans do not fail “to comply substantially with any provision of the State plan.” We believe that activities measures are not only interim tools that can be used as the agency develops outcome measures, but are in themselves important indicators of program operation and effectiveness. An evaluation of outcomes will not necessarily reflect the quality or adequacy of these activities and therefore would fail as an evaluation of these activities.

OSHA is certainly aware of the importance – and the difficulty –of using outcome measures to determine the effectiveness of the federal or state programs. In fact, the Department of Labor’s FY 2011-2016 Strategic Plan commits its agencies, including OSHA, “to measuring outcomes that describe the effect of the agencies’ activities on the day-to-day lives of working families.” The Strategic Plan also recognizes, however, that “worker protection agencies face a more daunting task in determining whether the enforcement strategies undertaken in a given year are having an effect on broader outcome rates” and points to the use of “outcome data trends, analysis of annual performance, and the corresponding out-puts” to measure improved performance.

Background

In order to understand OSHA’s activities in this area, it is important to understand the recent history of State Plan oversight and the changes that OSHA is in the process of implementing. The monitoring system used in the evaluations of the State Plans immediately preceding the Nevada Special Study in 2009 and the Enhanced FAME effort in the other States was the system developed during the mid-to-late-1990’s which focused on achievement of the State’s own goals rather than extensive activities measures and on-site monitoring.

It was the more intensive review of activities measures, in addition to case file reviews and an on-site monitoring component conducted as part of the 2009 Special Study in Nevada and Enhanced FAME effort in the other States that revealed the significant operational issues. Indeed, this demonstrates the significance of activity measures and the importance of reviewing areas other than outcome data in determining the effectiveness of a State’s program.

OSHA’s FY 2009 Enhanced Federal Annual Monitoring and Evaluation (EFAME) Reports and guidance for FY 2011 monitoring are responses to problems identified with the current system that was developed and implemented in the mid-to-late-1990’s. That system, partly a response to recommendations by the Government Accountability Office and the Government Performance and Results Act (GPRA), moved OSHA’s federal oversight to a more outcome-based monitoring system, and focused on each State’s own Strategic Plan and the achievement of the State’s own goals, with minimal on-site monitoring activity. Experience under this system has demonstrated that some problems with State enforcement were not being identified, and that more Federal/State comparison measures and on-site monitoring are needed.

RESPONSE TO RECOMMENDATIONS**Recommendation 1: Define effectiveness in terms of the impact of State OSH programs on workplace safety and health.**

OSHA Response: OSHA agrees that measuring the impact of State programs on workplace safety and health would be useful in determining the effectiveness of State programs. That is why OSHA uses reductions in injury and illness rates as well as reductions in fatality rates as outcome measures to assess the success of both the State and Federal programs. OSHA and DOL are continuing to develop additional impact measures for both Federal OSHA and the States. This is a difficult task, and OSHA would welcome any suggestions for such measures or information on studies that may have produced such measures.

OSHA is concerned, however, that attempting to define the effectiveness of State plans by relying exclusively on a system of impact or outcome measures is not only extremely problematic, but, as discussed above, would not fulfill the more specific and extensive requirements of the Occupational Safety and Health Act of 1970. Indeed, if outcome measures, such as injury, illness and fatality rates had been used as an exclusive measure of effectiveness, Nevada would have continued to receive an effective rating despite the serious problems that federal OSHA identified in its special study. OSHA believes that appropriate activity or performance measures can be useful in determining states' effectiveness and the extent to which they are carrying out their plan

As a Federally funded program, States must account for the performance of the funded activities as well as results. In addition, OSHA's activity measures are not solely counts of numbers of inspections or other activities; they focus on the timeliness of responses to complaints, fatalities, and other events, on the preservation of employee and employer rights, including the protection of whistleblowers, on the ability of States to target their inspections to those workplaces where hazards are likely to occur, and on the actions taken when hazards are discovered. OSHA believes that these and other factors, as set out in the Act, must also be considered in defining effectiveness. The DOL Strategic Plan notes that if agencies are doing their jobs properly, producing outputs in a sufficient quantity should produce the desired outcomes. Thus, while OSHA will continue to take action with regard to developing impact measures, we do not expect that they will be the only measurement of State program effectiveness.

Recommendation 2: Design measures to quantify the impact of State OSH on workplace safety and health.

OSHA Response: As discussed above, OSHA is working to develop impact measures for both Federal OSHA and State plans. The DOL strategic planning process emphasized the development of outcome measures and the need to link them to impact. DOL is working with its enforcement agencies in the development of these measures, in addition to the continued development of appropriate activity measures, particularly for the worker protection agencies. There are several ongoing DOL studies to this end.

Recommendation 3: Measure Federal OSH program to establish a baseline to evaluate State OSH effectiveness.

OSHA Response: On the Federal level, the Department of Labor FY 2011-2016 Strategic Plan envisions a review of trends in compliance, violation, or discrimination rates as measures of impact.¹ OSHA looks at injury, illness, and fatality rates in selected sectors as one indication of OSHA's impact, while acknowledging that there are inherent problems with these data, among them the reliance on employer self-reporting for injury and illness data, the data's heavy dependence on the level of economic activity and the changing composition of the economy from manufacturing to the service sector. In some state plan states, BLS has noted that the sample size is not large enough to present a complete picture of injuries and illnesses. Nevertheless, OSHA will continue to seek methods of addressing this issue and include State plans in the process as appropriate.

Recommendation 4: Assure effectiveness by revising the monitoring processes to include comparison of the impact of State OSH and Federal OSHA.

OSHA Response: Any useful impact measures will be incorporated into a new OSHA State plan monitoring system which Federal OSHA is currently developing in consultation with the states. As finalizing this system will take some time, we plan in the interim to revise OSHA's monitoring system by developing more meaningful activities measures that will directly compare State to Federal performance and strengthening monitoring procedures to mandate on-site monitoring activities including review of State enforcement case files. We are also implementing a system to give States more advance notice of, and input into, changes to the Federal program which will impact their programs, including National Emphasis programs and penalty policies. We also agree that we need to provide more explanation and justification to the States on why we are changing policies and programs that affect them. We will include more background information on the reasons behind new policies and procedures in future issuances.

We appreciate your review and assistance, and the cooperation of your staff, as we work toward our common goal of ensuring that State OSHA programs are at least as effective as the Federal program.

¹ Trends, p. 16, Department of Labor FY 2011-2016 Strategic Plan

Appendix E

Acknowledgements

Key contributors to this report were Mark Schwartz (Audit Director), Rebecca Bowen, Danielle Brown-Buzan, Sean Ally, Enrique Lozano, Reza Noorani and Mary Lou Casazza.

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