

U.S. Department of Labor

Office of Inspector General—Office of Audit

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



**COVID-19: INCREASED WORKSITE
COMPLAINTS AND REDUCED OSHA
INSPECTIONS LEAVE U.S. WORKERS'
SAFETY AT INCREASED RISK**

**DATE ISSUED: FEBRUARY 25, 2021
REPORT NUMBER: 19-21-003-10-105**



BRIEFLY...

COVID-19: INCREASED WORKSITE COMPLAINTS AND REDUCED OSHA INSPECTIONS LEAVE U.S. WORKERS' SAFETY AT INCREASED RISK

February 25, 2021

WHY OIG CONDUCTED THE AUDIT

The COVID-19 pandemic has raised specific concerns about the health and safety of workers and the measures OSHA has taken to ensure employers are mitigating employees' risk of exposure to the virus at workplaces.

Due to the pandemic, OSHA has received a surge of complaints in a matter of months, while garnering the attention of Congress, labor unions, and media with requests to act swiftly on behalf of the 130 million workers at more than 8 million worksites nationwide whom OSHA is responsible for protecting.

WHAT OIG DID

We conducted this audit to answer the following question:

What plans and guidance has OSHA developed to address challenges created by COVID-19, and to what extent have these challenges affected OSHA's ability to protect the safety of workers and its workforce?

To answer this question, we reviewed guidance, public laws, and state standards; conducted interviews; and researched complaint and enforcement data.

READ THE FULL REPORT

<http://www.oig.dol.gov/public/reports/oa/2021/19-21-003-10-105.pdf>

WHAT OIG FOUND

OSHA has taken a series of actions to address its challenges and has issued guidance in response to the pandemic. However, increased complaints, reduced inspections, and most inspections not being conducted onsite subject employees to greater safety risk.

Since the start of the pandemic, OSHA has received a sudden influx of complaints, and as a means of reducing person-to-person contact, has reduced the number of its inspections, particularly onsite inspections. Compared to a similar period in 2019, OSHA received 15 percent more complaints in 2020, but performed 50 percent fewer inspections. As a result, there is an increased risk that OSHA is not providing the level of protection that workers need at various job sites. During the pandemic, OSHA issued 295 violations for 176 COVID-19 related inspections, while 1,679 violations for 756 COVID-19 related inspections were issued under State Plans.

With most OSHA inspections done remotely during the pandemic, workplace hazards may go unidentified and unabated longer, leaving employees vulnerable. OSHA's onsite presence during inspections has historically resulted in timely mitigation efforts for at least a portion of the hazards identified. Specifically, a 2017 OIG report noted that for approximately one third of OSHA-issued citations reviewed, employers abated the hazard during the inspection or within 24 hours of OSHA identifying the hazard.

While OSHA has issued several guidance documents to enhance safety provisions during the pandemic, guidance is not enforceable like rules or standards would be, and OSHA has not issued an emergency temporary standard during the pandemic for airborne infectious diseases that may better protect employees' health and safety at worksites.

WHAT OIG RECOMMENDED

We made recommendations to OSHA regarding onsite inspection strategies, remote inspection guidance, and an emergency temporary standard for infectious diseases. OSHA agreed with all our recommendations.

TABLE OF CONTENTS

INSPECTOR GENERAL’S REPORT 1

RESULTS 2

 REDUCED INSPECTIONS DURING PANDEMIC SUBJECT
 EMPLOYEES TO GREATER SAFETY RISK..... 3

 MOST INSPECTIONS HAVE NOT BEEN CONDUCTED ONSITE
 DURING THE PANDEMIC 8

 OSHA HAS CONTINUED TO ISSUE COVID-19 RELATED
 GUIDANCE, BUT GUIDANCE IS NOT ENFORCEABLE 10

 OSHA NEEDS TO ISSUE STRONGER GUIDANCE TO ITS STAFF
 TO PRIORITIZE RESOURCES BASED ON HIGH-RISK
 EMPLOYERS 15

OIG’S RECOMMENDATIONS 16

 Summary of OSHA’s Response 16

EXHIBIT 1: COVID-19 FEDERAL AND STATE PLAN VIOLATIONS 18

EXHIBIT 2: OSHA COVID-19 EMPLOYER GUIDANCE 20

EXHIBIT 3: OSHA COVID-19 CSHO GUIDANCE 22

APPENDIX A: SCOPE, METHODOLOGY, & CRITERIA 23

APPENDIX B: AGENCY’S RESPONSE TO THE REPORT 26

APPENDIX C: ACKNOWLEDGEMENTS 28



INSPECTOR GENERAL'S REPORT

Amanda Edens
Deputy Assistant Secretary
for Occupational Safety and Health
U.S. Department of Labor
200 Constitution Ave, NW
Washington, DC 20210

This report presents the results of the Office of Inspector General's (OIG) audit of the Occupational Safety and Health Administration's (OSHA) COVID-19 response. Due to the COVID-19 pandemic, the President declared a national emergency on March 13, 2020. As of January 14, 2021, the Centers for Disease Control and Prevention (CDC) reported approximately 23 million confirmed COVID-19 cases and more than 383,000 COVID-19 related deaths in the United States.

The pandemic has raised concerns regarding the safety and health of the workforce, especially as OSHA has received a significant upswing in complaints. OSHA has been facing considerable pressure from Congress, labor unions, and the media to do more to protect workers from exposure to COVID-19.

The Occupational Safety and Health Act of 1970 (OSH Act) was enacted to assure safe and healthful working conditions for all working people by: authorizing enforcement of the standards developed under the OSH Act; assisting and encouraging states in their efforts to assure safe and healthful working conditions; and providing research, information, education, and training in the field of occupational safety and health. OSHA is responsible for the safety and health of 130 million workers employed at more than 8 million worksites nationwide.

We conducted this audit to answer the following question:

What plans and guidance has OSHA developed to address challenges created by COVID-19, and to what extent have these challenges affected OSHA's ability to protect the safety of workers and its workforce?

To answer this question, we interviewed OSHA national and area office officials, and reviewed OSHA guidance, public laws, and states' standards related to COVID-19. We also researched OSHA's COVID-19 complaint and enforcement data.

We found OSHA has taken a series of actions to address its challenges and has issued guidance in response to the pandemic. However, increased complaints and reduced and remote inspections leave U.S. workers' safety at increased risk.

RESULTS

Between February 1, 2020, and October 26, 2020, OSHA received 15 percent more complaints and performed 50 percent fewer inspections than during a similar period in 2019. Due to the increase in complaints, reduction in inspections, and most inspections not being conducted onsite, there is an increased risk that OSHA has not been providing the level of protection that workers need at various job sites. Moreover, OSHA issued 295 violations for 176 COVID-19 related inspections, while 1,679 violations for 756 COVID-19 related inspections were issued under State Plans.¹

We are concerned that since most OSHA inspections were done remotely during the pandemic, hazards may go unidentified and unabated longer, with employees being more vulnerable to hazardous risk exposure while working.

¹ State Plans are OSHA-approved workplace safety and health programs operated by individual states or U.S. territories. There are currently 22 State Plans covering both private sector and state and local government workers, and there are six State Plans covering only state and local government workers. Monitored by OSHA, State Plans must be at least as effective as OSHA in protecting workers and in preventing work-related injuries, illnesses, and deaths.

² A complaint is a notice of an alleged safety or health hazard made by a current employee or a representative of employees. A referral is an allegation of a workplace hazard or violation received from an OSHA Compliance Safety and Health Officer, safety and health agency (such as the National Institute for Occupational Safety and Health), discrimination or whistleblower complaint, other government agency, media report or employee/employer representative report of accidents other than fatalities and catastrophes.

Furthermore, while OSHA continues to issue guidance, guidance does not create legal obligations for employers. OSHA has not issued an emergency temporary standard (ETS), but needs to take more action to determine if one is necessary.

REDUCED INSPECTIONS DURING PANDEMIC
SUBJECT EMPLOYEES TO GREATER
SAFETY RISK

OSHA's ability to respond to complaints has been limited due to restrictions of onsite inspections and business travel adopted as a means of reducing person-to-person contact. Since February 1, 2020, OSHA has received 11,041 COVID-19 complaints or referrals² and performed 1,133 COVID-19 related inspections. According to data provided by OSHA, total 2020 complaints (COVID-19 and non-COVID-19) increased by 15 percent,³ while total 2020 inspections (COVID-19 and non-COVID-19) decreased by 50 percent compared to 2019.⁴ OSHA issued 295 violations for 176 COVID-19 related inspections, while 1,679 violations for 756 COVID-19 related inspections were issued under State Plans.

Given the increase in complaints, OSHA's reduction in total inspections, and its significant reduction in onsite inspections, there is an increased risk that OSHA has not been providing the level of protection that workers need at various job sites. Even though the Wisconsin Paper Council, which represents the papermaking industry, commended OSHA for its efforts to issue guidance to keep workers safe, labor organizations representing higher risk industries, such as healthcare, meat processing, transportation, and other essential industries, have been concerned that OSHA has not been providing the level of protection workers need. While remote inspections might help mitigate potential transmission of COVID-19, a reduction in onsite inspections could result in more worksite accidents, injuries, deaths, or employee illnesses.

² A complaint is a notice of an alleged safety or health hazard made by a current employee or a representative of employees. A referral is an allegation of a workplace hazard or violation received from an OSHA Compliance Safety and Health Officer, safety and health agency (such as the National Institute for Occupational Safety and Health), discrimination or whistleblower complaint, other government agency, media report or employee/employer representative report of accidents other than fatalities and catastrophes.

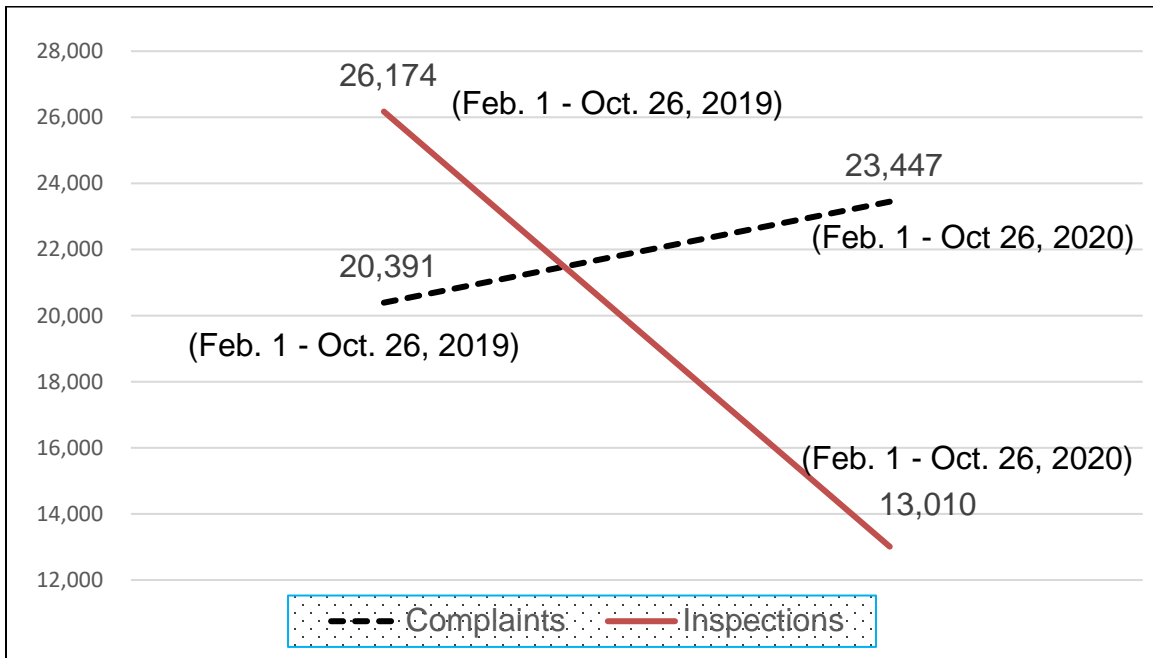
³ From February 1, 2020, through October 26, 2020, OSHA received 23,447 complaints, which was 3,056 more than during the same period in 2019, and a 15 percent increase.

⁴ From February 1, 2020, through October 26, 2020, OSHA performed 13,010 inspections, which was 13,164 less than during the same period in 2019, and a 50 percent decrease.

INCREASE IN COVID-19 COMPLAINTS/REFERRALS AND REDUCTION IN INSPECTIONS

In 2020, OSHA received 15 percent more complaints than during a similar period in 2019, but performed 50 percent fewer inspections, as shown in Figure 1.

Figure 1: Comparison of Complaints and Inspections Between 2019 and 2020



Source: OSHA Complaint Inspection Data (unaudited) provided by OSHA

From February 1, 2020, to October 26, 2020, OSHA received 9,741 COVID-19 complaints and 1,300 referrals.⁵ Thirty-five percent, or 3,460 complaints, were received from 2 industry sectors: healthcare (2,363) and retail trade (1,097). The healthcare industry alone, comprised of ambulatory services, hospitals, nursing homes, and residential care facilities, accounted for 24 percent of all COVID-19 related complaints. For details, see Table 1 below.

⁵ OSHA’s webpage did not provide number of referrals by selected essential industry.

Table 1: Industries with Highest COVID-19 Complaints

Industry	Number of Complaints	Percentage of Complaints
Healthcare	2,363	24%
Retail Trade	1,097	11%
Restaurants and Other Eating Places	571	6%
Construction	297	3%
General Warehousing and Storage	186	2%
Automotive Repair	73	1%
Other	5,154	53%
	9,741	100%

Source: Data reported in OSHA's COVID-19 Response Summary webpage (unaudited)

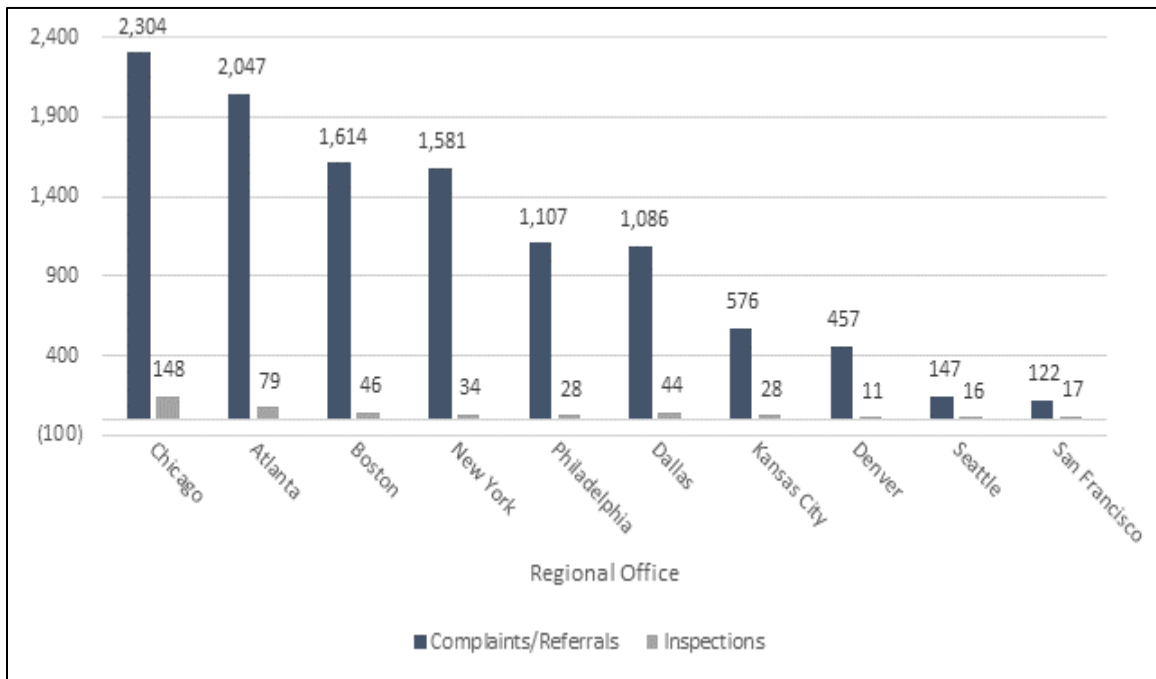
At the same time, COVID-19 has resulted in a significant reduction in inspections and an increase in non-formal complaint investigations. An investigation of a non-formal complaint occurs when a complaint does not meet certain criteria warranting an onsite inspection. In this situation, OSHA calls the employer, describes the alleged hazard(s), and then follows up with a fax, email, or letter to address the relevant hazard(s).

According to OSHA officials, to prevent the spread of COVID-19 and to ensure continued, effective use of resources during the pandemic, most onsite programmed inspections⁶ were suspended, and Compliance Safety and Health Officers (CSHO) switched from onsite inspections to mostly remote inspections via telephone, video conference, or email. However, in its data system, OSHA did not track if inspections were performed onsite or remotely. It is important to track remote inspections to determine their frequency and timeliness for identifying and ensuring abatement of worksite hazards. As a result of our audit, OSHA started coding remote COVID-19 inspections retroactive to February 1, 2020.

⁶ Programmed inspections focus OSHA's enforcement resources towards the industries and operations where known hazards exist (e.g., combustible dusts, chemical processing, ship-breaking, falls in construction).

As of October 26, 2020, OSHA had performed a total of 1,133 COVID-19 related inspections, 682 for fatality and 451 for COVID-19 complaints and referrals. Inspections initiated from COVID-19 complaints and referrals accounted for 4 percent of the 11,041 total COVID-19 complaints and referrals. For each region, the percentage of inspections resulting from complaints or referrals ranged from a low of 2 percent for New York to a high of 14 percent for San Francisco.⁷ Sixty-one percent of the COVID-19 related inspections resulting from complaints and referrals occurred in 3 regions: Chicago (148), Atlanta (79), and Boston (46). For details, see Figure 2.

Figure 2: Complaints/Referrals and Inspections by OSHA Regional Offices (February 1, 2020 – October 26, 2020)



Source: Data reported in OSHA’s COVID-19 Response Summary webpage (unaudited)

⁷ The San Francisco Region covers the following states and territories: Arizona, California, Hawaii, Nevada, American Samoa, Guam, and Northern Mariana Islands. However, Arizona, California, Hawaii, and Nevada are state plans.

COVID-19 VIOLATIONS

COVID-19 violations were issued by OSHA and states or territories operating 21 OSHA-approved State Plans. There are currently 22 State Plans⁸ covering both private sector and state and local government workers, and an additional 6 State Plans cover only state and local government workers. Under these State Plans, states or territories have issued 1,679 violations for 756 COVID-19 related inspections, equating to 85 percent of total COVID-19 violations issued, while OSHA has issued 295 violations for 176 inspections, or 15 percent of the total, from February 1, 2020, to October 26, 2020 (see Exhibit 1 for details by state).

On July 13, 2020, OSHA issued its first 3 COVID-19 violations for 3 inspections from the same nursing home employer in Ohio for allegedly violating respiratory protection standards after the company reported the hospitalization of 7 employees. OSHA found this company had not fully implemented an appropriate respiratory protection program to protect its employees from COVID-19, and failed to provide medical evaluations to determine employees' ability to use a respirator in the workplace.

On August 20, 2020, OSHA issued 7 violations (2 COVID-19 and 5 non COVID-19) classified as serious⁹ to a dental establishment in Massachusetts. OSHA cited the dental practice for violations such as: 1) failing to provide medical evaluations and fit testing for employees required to wear N-95 respirator masks as protection against coronavirus, and 2) a lack of written programs related to respiratory protection, bloodborne pathogen exposure control, and chemical hazard communication.

Subsequently, between August 21, 2020, and October 26, 2020, OSHA issued 285 violations for 172 inspections in various industries, including:

- Nursing Care Facilities (67)
- General Medical and Surgical Hospitals (37)
- Specialty Hospitals, except Psychiatric and Substance Abuse (6)
- Residential Intellectual and Developmental Disability Facilities (6)
- Offices of Physicians, except Mental Health Specialists (7)
- Others (49)

⁸ Maine's State Plan program did not issue any COVID-19 violations.

⁹ Section 17(k) of the OSH Act states, "a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation."

The violations were for non-compliance with standards, including:

- OSHA’s Bloodborne Pathogens standard (29 CFR §1910.1030)
- Respiratory Protection standard (29 CFR §1910.134)
- General Requirements - Personal Protective Equipment (29 CFR §1910.132)
- Hazard Communication (29 CFR §1910.1200)
- Hazardous Waste Operations and Emergency Response (29 CFR §1910.120)

MOST INSPECTIONS HAVE NOT BEEN
CONDUCTED ONSITE DURING THE
PANDEMIC

As noted, most OSHA onsite inspections have been suspended during the pandemic. The OIG is concerned that without onsite observations, hazards or unsafe practices may not be identified or mitigated for longer periods, placing employees’ safety at greater risk.

According to the CDC, the use of Personal Protective Equipment (PPE) and social distancing are critical to combatting COVID-19. The CDC notes that how closely a person interacts with others in the workplace and how long that interaction is sustained are the main factors that increase the risk of COVID-19 spreading. The lack of onsite inspections may impact OSHA’s ability to observe employer practices, quickly mitigate any potential hazards, and issue violations sooner to control the spread of the disease to other employees.

In a prior 2017 OIG report,¹⁰ we found that for approximately one-third of the citations issued, employers abated the hazard during the inspection or within 24 hours of OSHA identifying the hazard. The 2017 report also determined that the remaining citations took an average of 3 months to issue, with hazards being abated an average of 86 days after the OSHA inspection. This was primarily because the OSH Act allowed up to 6 months for OSHA to issue a citation for any type of hazard. While some citations are less complex than others and require less time to complete, all proposed citations are subject to a review process to ensure that OSHA issues accurate citations that can be legally supported. Employers are not required to abate a cited hazard until the

¹⁰ DOL OIG “OSHA Could Do More to Ensure Employers Correct Hazards Identified During Inspections,” (March 31, 2017, Report No. 02-17-201-10-105)

Occupational Safety and Health Review Commission issues a final order or the citation becomes final by operation of law.¹¹

OSHA has revised its enforcement policies and procedures during the COVID-19 pandemic as the agency understands that employers may face difficulties complying with some OSHA standards, such as providing annual training and annual certifications. OSHA area offices will assess an employer's efforts to comply with standards that require annual or recurring audits, reviews, training, or assessments. Where an employer has demonstrated efforts to comply in good faith, area offices shall consider such efforts in determining whether to cite a violation. In geographic areas experiencing either sustained elevated community transmission or a resurgence in community transmission of COVID-19, OSHA area offices will exercise their discretion, including consideration of available resources, to continue prioritizing COVID-19 fatalities and imminent danger exposures for inspections.

An OSHA official stated while the option to defer abatement was made available to the field, it was implemented in only 3 situations. In lieu of citations, OSHA issued hazard alert letters to the employers about the dangers of specific industry hazards and provided information on how to protect workers exposed to those safety and health hazards.

To ensure corrective actions have been taken once normal activities resume, OSHA plans to develop a program to conduct monitoring inspections from a randomized sampling of cases where violations were noted, but not cited, and the same for fatality or imminent danger cases where inspections were not conducted due to resource limitations. However, without information on when normal activities might resume, and with the continued rise of COVID-19 cases in the United States, we are concerned that employees may not be receiving adequate information or training from their employers on how to reduce exposure to COVID-19. Moreover, with the widespread impact of COVID-19, a randomized sampling may not prioritize those businesses that are at highest risk of exposing employees to COVID-19 at their worksites and OSHA must take additional steps to control the spread of this infectious disease.

¹¹ A citation can become a final order by operation of law when an employer does not contest the citation, or pursuant to court decision or settlement. Repeated violations can bring a civil penalty.

OSHA HAS CONTINUED TO ISSUE COVID-19
RELATED GUIDANCE, BUT GUIDANCE IS
NOT ENFORCEABLE

OSHA issued guidance based on CDC, Food and Drug Administration, and Environmental Protection Agency guidelines to help protect American employers and workers, as well as to protect CSHOs and enforce COVID-19 violations. As of October 26, 2020, OSHA had issued numerous pieces of guidance for various employers and CSHOs (see Exhibits 2 and 3 for listings of the guidance issued).

According to OSHA, guidance is not a standard or regulation, and it creates no legal obligations. It contains recommendations, as well as descriptions of mandatory safety and health standards. The recommendations are advisory in nature, informational in content, and are intended to assist employers in providing a safe and healthful workplace. As such, guidance is not enforceable and employers cannot be required to comply.

Guidance in and of itself cannot operate in lieu of an ETS as an enforcement tool. However, an OSHA official stated guidance could be used to support violations of the OSH Act's General Duty Clause, 29 U.S.C. 654(a)(1). Specifically, guidance is one form of evidence that can be used to show: (1) that the hazard was recognized; and (2) that there was a feasible and useful method to correct the hazard.

Since the start of the pandemic, OSHA has received requests from Congress and stakeholders representing the healthcare and other industries, such as labor unions, to issue an infectious disease ETS that protects workers from exposure to COVID-19. An ETS creates a legal obligation that the agency and employers are required to fulfill or uphold. Pursuant to OSH Act Section 5(a)(2), employers must comply with safety and health standards and regulations issued and enforced by OSHA or by an OSHA-approved State Plan.

According to the OSH Act Section 6(c)(1), the Secretary of Labor shall provide for an ETS to take immediate effect upon publication in the Federal Register if they determine:

- (A) employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards, and
- (B) such an emergency standard is necessary to protect employees from such danger.

In addition, Section 6(c)(3) states:

- (3) Upon publication of such [an ETS] in the Federal Register, the Secretary shall commence a [rulemaking] proceeding in accordance with section 6(b) of [the OSH Act], and the [ETS] standard as published shall also serve as a proposed rule for the proceeding. The Secretary shall promulgate a standard under this paragraph no later than six months after publication of the [ETS].

While OSHA has issued guidance for employers and for its own staff to control the spread of COVID-19, it has not issued an ETS. In fact, OSHA has not used its authority to issue an ETS since 1983.

OSHA decided not to issue an ETS in response to the pandemic for various reasons. On March 18, 2020, former Principal Deputy Assistant Secretary Lauren Sweatt, in response to a request from the House Committee on Education and Labor, stated:

We believe that working on a formal rulemaking at the same time that the healthcare industry is responding to the COVID-19 public health emergency is counterproductive to both the public health response and robust stakeholder engagement. For example, the efforts employers would take to document compliance with such a standard would distract them from other vital response activities. OSHA can best meet the needs of America's workers by being able to rapidly respond in a flexible environment.

Additionally, according to OSHA, and as explained in former Principal Deputy Assistant Secretary Sweatt's March 18, 2020, letter to the U.S. House of Representatives, Committee on Education and Labor, OSHA already has a number of existing standards that impose enforceable obligations on employers to protect workers from COVID-19.

For example, when necessary to protect workers, OSHA's PPE standards, including those in 29 CFR §1910 Subpart I, require the use of gloves, eye and face protection, and respiratory protection. Furthermore, OSHA's Bloodborne Pathogens standard (29 CFR §1910.1030) applies to occupational exposure to human blood and other potentially infectious materials, and the provisions of the standard offer a framework that may help control some sources of the virus that causes COVID-19. In addition, the General Duty Clause (Section 5(a)(1) of the OSH Act) authorizes enforcement action in cases involving "recognized hazards that are causing or are likely to cause death or serious physical harm," which could include exposure to COVID-19.

In OSHA's May 29, 2020, letter denying the American Federation of Labor and Congress of Industrial Organizations' (AFL-CIO) petition to promulgate an ETS, to protect working people from occupational exposure to infectious diseases broadly, including COVID-19 OSHA also mentioned that its sanitation standard provides hygiene requirements that, directly and indirectly, address the potential for infectious disease agents to spread at the workplace. Finally, OSHA determined it lacks sufficient evidence to find that infectious diseases generally pose a "grave danger" to workers safety, though it made no finding as to whether COVID-19 specifically poses a "grave danger." Based on these reasons, OSHA declined to issue an ETS under the current circumstances related to COVID-19.

Having an ETS could be of importance during the pandemic as enforceable criteria because under the OSH Act's General Duty Clause,¹² violations are rarely issued. In FY 2019, OSHA cited the General Duty Clause 829 times and cited all other standards 62,229 times. In FY 2018, OSHA cited the General Duty Clause 883 times and all other standards 62,037 times. From Feb 1, 2020, to October 26, 2020, OSHA has issued 295 violations for 176 COVID-19 related inspections and only 3 General Duty Clause violations to 3 establishments.

According to OIG interviews, officials in area offices mostly agreed that having a standard, such as an ETS, would be useful during an inspection. An area office official also acknowledged that the General Duty Clause is harder to cite and believes a standard would make enforcement easier for issuing citations. Another area office official was not aware of an ETS ever being used, but stated that COVID-19 complaint citations may be difficult because inspectors must be able to prove that contracting COVID-19 was work-related.

Furthermore, some State Plan programs indicated the importance of having specific standards to protect workers from exposure to airborne infectious diseases. Specifically, the states of Virginia, Michigan, Oregon, and California have developed an ETS to address COVID-19. On July 15, 2020, Virginia was the first state to adopt a specific standard intended to protect workers and to control, prevent, and mitigate the spread of COVID-19 in the workplace. For Virginia, the new rules require companies to notify workers of possible exposure to infected co-workers within 24 hours, while also mandating physical distancing, as well as sanitation, disinfection, and handwashing procedures.

¹² Section 5(a)(1) of the OSH Act (aka General Duty Clause) requires each employer "furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees."

On October 14, 2020, Michigan issued an ETS to clarify requirements for employers to control, prevent, and mitigate the spread of infection. Michigan's governor stated:

While most Michigan job providers are doing their part to slow the spread of COVID-19, these rules provide them with clarity regarding the necessary requirements to keep their workplaces safe and their employees healthy.

Under the ETS, businesses that resume in-person work must, among other things, have a written COVID-19 preparedness and response plan and provide thorough training to their employees that covers, at a minimum, workplace infection control practices, the proper use of PPE, steps workers must take to notify the business or operation of any symptoms of COVID-19 or a suspected or confirmed diagnosis of COVID-19, and how to report unsafe working conditions.

Oregon also enacted an ETS to cover healthcare, restaurant, retail, construction, and other general industry employees. The ETS, which took effect November 16, 2020, is expected to remain in effect until May 4, 2021. Oregon continues to pursue permanent rulemaking that would provide a structure for responding to potential future disease outbreaks. The ETS is intended to further improve the current structure for reducing risks in the workplace by requiring several measures many employers have voluntarily implemented. For example, the ETS requires employers to notify employees of a workplace infection and provide training to workers on how to reduce risks. Employers must also formally assess the risk of exposure, develop infection control plans, and address indoor air quality.

Oregon's ETS requires more measures for exceptionally high-risk jobs, such as direct patient care or decontamination work, aerosol-generating or postmortem procedures, and first-responder activities. The additional measures include:

- Detailed infection control training and planning
- Sanitation procedures for routine cleaning and disinfection
- Robust use of PPE
- Operation of existing ventilation systems according to standards
- Use of barriers, partitions, and airborne infection isolation rooms
- Screening and triaging for symptoms of COVID-19

Since 2009, California has had two standards for aerosol transmittable diseases – one that protects employees in health care and other higher risk environments, and another that protects employees from diseases contracted from animals. On November 30, 2020, California approved an ETS on COVID-19 infection prevention. The ETS applies to most workers in California not covered by the

aerosol transmissible diseases standard and requires employers to: 1) establish, implement, and maintain an effective written COVID-19 prevention program; and 2) provide effective training and instruction to employees on how COVID-19 is spread, infection prevention techniques, and information regarding COVID-19 related benefits.

When there are multiple COVID-19 infections and COVID-19 outbreaks in California, employers must follow the requirements for testing and notifying public health departments of workplace outbreaks. The requirements include: 1) free COVID-19 testing for employees who might have been exposed; 2) contacting the local health department immediately, but no longer than 48 hours after learning of 3 or more COVID-19 cases, to obtain guidance on preventing the further spread of COVID-19 within their workplace; and 3) recording and tracking all COVID-19 cases, while ensuring medical information remains confidential.

If OSHA issued an airborne infectious disease ETS designed to address COVID-19, employers would be legally obligated to comply with it. In addition, CSHOs would not need to rely solely on the OSH Act's General Duty Clause and may not be hampered by a lengthy process of gathering evidence to establish that employers did not protect workers from COVID-19. In addition, an ETS would impose more specific obligations that would give CSHOs more clarity on the evidence they needed to gather to support violations.

Over the course of almost 9 months since the pandemic began to emerge as a nationwide health threat, OSHA only issued 295 violations for 176 COVID-19 related inspections. Most of the violations were for violating particular standards for respiratory protection, recordkeeping, and PPE. However, according to OSHA, only 3 COVID-19 General Duty Clause violations were issued as of October 26, 2020, to 3 meatpacking establishments for failing to provide a workplace free from recognized hazards that cause death or serious harm.

Since the former Principal Deputy Assistant Secretary for Occupational Safety and Health's March 18, 2020, response to the House Committee on Education and Labor that an ETS was not necessary, there has been a growing number of COVID-19 cases in the U.S. As of January 14, 2021, the CDC reported approximately 23 million confirmed COVID-19 cases and more than 383,000 COVID-19 related deaths in the United States. Furthermore, as of October 26, 2020, OSHA had received 11,041 COVID-19 complaints or referrals. To help control the spread of COVID-19, OSHA should consider whether COVID-19 should be classified as a "grave danger" and reconsider whether an ETS would be necessary to protect employees from such danger.

OSHA NEEDS TO ISSUE STRONGER
GUIDANCE TO ITS STAFF TO PRIORITIZE
RESOURCES BASED ON HIGH-RISK
EMPLOYERS

As of October 26, 2020, OSHA had issued 33 key guidance documents for employers (see Exhibit 2) and 11 key COVID-19 related internal guidance documents to enhance safety provisions during the pandemic for its regional offices, state plan designees, and CSHOs (see Exhibit 3). However, while OSHA's mission is to ensure the health and safety of more than 130 million workers, the internal guidance used to assist with enforcement activities issued during the preliminary months of the pandemic did not emphasize the need to increase COVID-19 inspections for very high or high-risk healthcare workers, or employees in other industries who were dying or falling ill. The largest nurses' union, National Nurses United, reported that as of September 16, 2020, more than 1,700 healthcare workers had died due to COVID-19, yet as of October 26, 2020, OSHA's 497 COVID-19 fatality inspections at healthcare establishments had resulted in 198 COVID-19 violations issued to 124 healthcare establishments. According to an OSHA official, 64 percent of healthcare fatality inspections remained open and could have violations issued later.

OSHA's enforcement guidance does not emphasize the need to increase COVID-19 inspections for very high or high-risk healthcare or other employers to help protect employees against exposure to COVID-19. On May 19, 2020, OSHA issued the Updated Interim Enforcement Response Plan for COVID-19, which required area directors to exercise their discretion, including consideration of available resources, to continue prioritizing COVID-19 fatalities and imminent danger exposures for inspection. As of October 26, 2020, or approximately 9 months into the pandemic, OSHA had performed a total of 1,133 COVID-19 related inspections, 682 for fatality and 451 for COVID-19 complaints and referrals. OSHA had reported 295 violations for 176 COVID-19 related inspections. According to an OSHA official, 65 percent of these inspections remained open and could have violations issued later.

OIG'S RECOMMENDATIONS

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

- 1) Improve OSHA's inspection strategy by prioritizing very high and high-risk employers for COVID-19 related onsite inspections, particularly as businesses reopen and increase operations in various localities across the United States.
- 2) Ensure remote inspections are tracked retroactive to February 1, 2020, and going forward.
- 3) Compare remote inspections to onsite inspections and document analysis of the frequency and timeliness of inspectors in identifying and ensuring abatement of worksite hazards.
- 4) Analyze and determine whether establishing an infectious disease-specific ETS is necessary to help control the spread of COVID-19 as employees return to worksites.

SUMMARY OF OSHA'S RESPONSE

OSHA concurred with each of the report's 4 recommendations. According to OSHA's response, pursuant to President Biden's January 21, 2021, Executive Order on Protecting Worker Health and Safety, the agency is already working to launch a national program to focus OSHA enforcement efforts related to COVID-19 on violations that put the largest number of workers at serious risk.

OSHA's written response to our draft report is included in its entirety in Appendix B.

We appreciate the cooperation and courtesies OSHA extended us during this audit. OIG personnel who made major contributions to this report are listed in Appendix C.

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

Carolyn R. Hantz
Assistant Inspector General for Audit

EXHIBIT 1: COVID-19 FEDERAL AND STATE PLAN VIOLATIONS

	Number of Violations	Percentage of Violations	Number of Inspections	Percentage of Inspections
Federal				
ALABAMA	3		2	
ARIZONA	1		1	
CALIFORNIA	1		1	
COLORADO	2		1	
CONNECTICUT	20		10	
FLORIDA	7		5	
GEORGIA	7		4	
ILLINOIS	17		8	
INDIANA	6		3	
LOUISIANA	1		1	
MASSACHUSETTS	25		10	
MISSOURI	4		4	
MONTANA	1		1	
NEW JERSEY	113		68	
NEW YORK	56		38	
OHIO	10		7	
PENNSYLVANIA	2		1	
RHODE ISLAND	2		1	
SOUTH DAKOTA	1		1	
TEXAS	9		6	
WEST VIRGINIA	5		1	
WISCONSIN	2		2	
Total	295	15%	176	19%

State Plan States				
ALASKA	4		1	
ARIZONA	10		5	
CALIFORNIA	407		147	
CONNECTICUT	8		2	
INDIANA	6		4	
IOWA	5		3	
KENTUCKY	8		5	
MARYLAND	22		6	
MICHIGAN	463		132	
MINNESOTA	110		41	
NEVADA	147		166	
NEW JERSEY	2		2	
NEW MEXICO	2		2	
NORTH CAROLINA	2		1	
OREGON	110		67	
PUERTO RICO	3		3	
SOUTH CAROLINA	5		3	
TENNESSEE	9		6	
VERMONT	6		3	
VIRGINIA	22		13	
WASHINGTON	328		144	
Total	1,679	85%	756	81%
Grand Total	1,974	100%	932	100%

Source: Data reported in OSHA's COVID-19 Response Summary webpage (unaudited)

EXHIBIT 2: OSHA COVID-19 EMPLOYER GUIDANCE

ITEM #	DATE	SUBJECT
1	March 9, 2020	Preparing Workplaces
2	March 2020	Prevent Worker Exposure to Coronavirus
3	March 24, 2020	Worker Exposure Risk (Risk Pyramid)
4	Unknown	Fact sheet on Healthcare Workplaces Classified as Very High or High Exposure Risk
5	Unknown	Additional Guidance for Healthcare Workers and Employers
6	April 6, 2020	Ten Steps All Workplaces Can Take to Reduce Risk of Exposure to Coronavirus
7	April 8, 2020	Guidance for Retail Workers
8	April 13, 2020	Guidance for the Package Delivery Workforce
9	April 16, 2020	Guidance for Manufacturing Industry Workforce
10	April 21, 2020	U.S. Dept. of Labor Issues Alert to Help Keep Construction Workers Safe During the Coronavirus Pandemic
11	April 26, 2020	Guidance for Meat and Poultry Processing Workers: Interim Guidance from the CDC and the OSHA
12	May 1, 2020	Restaurants and Beverage Vendors
13	May 11, 2020	Dental Practitioners
14	May 14, 2020	Nursing Home and Long-Term Care Facility Workers
15	May 14, 2020	Retail Pharmacies
16	May 14, 2020	Rideshare, Taxi, and Car Service Workers
17	Unknown	Retail Workers and Employers in Critical and High Customer-Volume Environments
18	May 28, 2020	Social Distancing
19	June 2, 2020	Agriculture Workers and Employers Interim Guidance from CDC and the U.S. Department of Labor
20	June 2, 2020	Stockroom and Loading Dock Workers
21	June 10, 2020	Frequently Asked Questions: Cloth Face Coverings
22	June 17, 2020	Returning to Work

ITEM #	DATE	SUBJECT
23	July 7, 2020	Employers to Help Protect Oil and Gas Workers During the Coronavirus Pandemic
24	July 8, 2020	Meat and Poultry Processing Workers and Employers Updated Guidance
25	August 6, 2020	Steps to Protect Automotive Service Workers from Exposure to Coronavirus
26	August 18, 2020	Food Truck Workers
27	August 18, 2020	Hair and Nail Salon Workers
28	August 28, 2020	Steps to Reducing Worker Exposure n Fish and Seafood Processing and Packaging Facilities
29	August 28, 2020	Understanding Compliance with OSHA's Respiratory Protection Standard
30	September 1, 2020	Use of Cloth Face Coverings while Working Indoors in Hot and Humid Conditions.
31	September 1, 2020	Use of Cloth Face Coverings while Working Outdoors in Hot and Humid Conditions.
32	October 7, 2020	In-Home Repair Services
33	October 7, 2020	Restaurants Resuming Dine-In Service

EXHIBIT 3: OSHA COVID-19 CSHO GUIDANCE

ITEM #	DATE	SUBJECT
1	March 14, 2020	Temporary Enforcement Guidance - Healthcare Respiratory Protection Annual Fit - Testing for N95 Filtering Facepieces
2	April 3, 2020	Enforcement Guidance for Respiratory Protection and the N95 Shortage
3	April 3, 2020	Enforcement Guidance for Use of Respiratory Equipment Certified Under Standards of Other Countries of Jurisdictions
4	April 8, 2020	Expanded Temporary Guidance on Respiratory Protection Fit-Testing for N95 Filtering Facepieces in all Industries During the Coronavirus
5	April 10, 2020	Enforcement Guidance for Recording Cases of Coronavirus Disease 2019
6	April 13, 2020	Interim Enforcement Response Plan for Coronavirus Disease 2019
7	April 16, 2020	Discretion in Enforcement When Considering an Employer's Good Faith Efforts
8	April 24, 2020	Enforcement Guidance on Decontamination of Filtering Facepiece Respirators in Healthcare
9	May 19, 2020	Revised Enforcement Guidance for Recording Cases of Coronavirus Disease 2019
10	May 19, 2020	Updated Interim Enforcement Response Plan for Coronavirus Disease 2019
11	October 2, 2020	Temporary Enforcement Guidance – Tight-Fitting Powered Air Purifying Respirators

APPENDIX A: SCOPE, METHODOLOGY, & CRITERIA

SCOPE

Our audit covered OSHA’s interim guidance for preventing exposure to COVID-19 as of October 26, 2020. In addition, our audit covered COVID-19 complaint and inspection data from February 1, 2020, to October 26, 2020.

METHODOLOGY

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

We confirmed our understanding of OSHA’s guidance issuance processes through interviews and document reviews. We reviewed laws, policies, procedures, documents, audit reports, and congressional hearings. We compared OSHA’s procedures with other federal requirements, including the OSH Act. We interviewed 2 OSHA directorates: 1) Enforcement Programs; and 2) Construction. We also interviewed 3 CSHOs and 1 CSHO supervisor within the 3 regions with the highest number of COVID-19 complaints at the time of the selection (New York, Boston, and Chicago).

We reviewed guidance issuance records to test if OSHA issued employer and enforcement guidance consistent with regulations and the OSH Act. From OSHA’s COVID-19 Response Summary webpage, we obtained the total number of complaints/referrals and inspections by region and industry from February 1, 2020, through October 26, 2020, and analyzed this data.

RELIABILITY ASSESSMENT

We did not perform a data reliability assessment. Our audit was limited to a review of the guidance OSHA developed to address challenges created by COVID-19 and to what extent those challenges affected OSHA’s ability to protect the workforce. Any data related to inspections, complaints/referrals, or violations was reported by OSHA and is considered unaudited.

INTERNAL CONTROLS AND RISK ASSESSMENT

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

CRITERIA

1. Coronavirus Aid, Relief, and Economic Security Act, March 27, 2020
2. Occupational Safety and Health Act of 1970
 - Section 5(a)(1) - General Duty Clause of the OSH Act
3. OSHA Guidance for Workplaces, as of March 9, 2020
 - Preparing Workplaces for COVID-19
 - Manufacturing Industry Workforce
 - Retail Workers
 - Package Delivery Workforce
 - Respiratory Protection Fit-Testing for N-95 Filters in All Industries
4. OSHA Guidance for Enforcement, as of March 14, 2020
 - Temporary Enforcement - Healthcare Respiratory Protection Annual Fit - Testing for N-95 Filtering
 - Enforcement Considering Employer's Good Faith Efforts
 - Recording Cases
 - Respiratory Protection
 - Use of Respiratory Equipment Certified under Standards of Other Countries

5. Existing Applicable Standards

- 29 CFR §1904 – Recording and Reporting Occupational Injuries and Illness
- 29 CFR §1910.1030 – Bloodborne Pathogens
- 29 CFR §1910.132 – Personal Protective Equipment (General Requirements)
- 29 CFR §1910.133 – Eye and Face Protection
- 29 CFR §1910.134 – Respiratory Protection
- 29 CFR §1910.141 – Sanitation
- 29 CFR §1910.145 – Specifications for Accident Prevention Signs and Tags
- 29 CFR §1910.1020 – Access to Employee Exposure and Medical Records

6. Updated Interim Enforcement Response Plan for COVID-19, May 19, 2020

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

- Chapter 3, Inspection Procedures
- Chapter 9, Complaint and Referral Processing


APPENDIX B: AGENCY'S RESPONSE TO THE REPORT

U.S. Department of Labor

Occupational Safety and Health Administration
Washington, D.C. 20210



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

FROM: AMANDA L. EDENS 
Deputy Assistant Secretary

SUBJECT: Response to the Office of the Inspector General's
Recommendations in Audit Report, *COVID-19: Increased
Worksite Complaints and Reduced OSHA Inspections Leave
U.S. Workers' Health at Increased Risk*

This memorandum is in response to your January 25, 2021 memorandum, Office of the Inspector General's (OIG) Draft Report: *COVID-19: Increased Worksite Complaints and Reduced OSHA Inspections Leave U.S. Workers' Health at Increased Risk*. OSHA appreciates this opportunity to review the draft report and takes seriously the input and recommendations found in the report. OSHA accepts all four OIG recommendations.

OIG Recommendation 1: Improve OSHA's inspection strategy by prioritizing very high and high-risk employers for COVID-19 related onsite inspections, particularly as businesses reopen and increase operations in various localities across the United States.

Responsible Party: OSHA's Directorate of Enforcement Programs (DEP) will take responsibility for implementing this recommendation.

OSHA Response: OSHA accepts the recommendation. Pursuant to President Biden's January 21, 2021, Executive Order on Protecting Worker Health and Safety, the agency is already working to launch a national program to focus OSHA enforcement efforts related to COVID-19 on violations that put the largest number of workers at serious risk or are contrary to anti-retaliation principles.

OIG Recommendation 2: Ensure remote inspections are tracked retroactive to February 1, 2020, and going forward.

Responsible Party: DEP will take responsibility for implementing this recommendation.

OSHA Response: OSHA accepts the recommendation. The agency has already begun taking steps to address this recommendation. On November 4, 2020, OSHA issued an internal memo directing field offices to enter a code (N-10-COVID-19 REMOTE) in the OSHA Information System (OIS) for all COVID-19-related inspections that are conducted completely offsite. OSHA is in the process of ensuring completion of the coding retroactive to February 1, 2020.

OIG Recommendation 3: Compare remote inspections to onsite inspections and document analysis of the frequency and timeliness of inspectors in identifying and ensuring abatement of worksite hazards.

Responsible Party: DEP and the Directorate of Technical Support and Emergency Management (DTSEM) will take responsibility for implementing this recommendation.

OSHA Response: OSHA accepts the recommendation. Using data from OIS, the agency will compare COVID-19-related inspections conducted on-site with those conducted remotely. Specifically, OSHA will compare number of violations, number of serious violations, number of employees covered by the inspection, and, for COVID-19-related inspections initiated through complaint or referral, average number of days to initiate an inspection. For inspections resulting in violations, OSHA will compare on-site and remote inspections and evaluate whether or not documentation was received to demonstrate abatement and abatement status.

OIG Recommendation 4: Analyze and determine whether establishing an infectious disease-specific Emergency Temporary Standard (ETS) is necessary to help control the spread of COVID-19 as employees return to worksites.

Responsible Party: OSHA’s Directorate of Standards and Guidance (DSG) will take responsibility for implementing this recommendation.

OSHA Response: OSHA accepts the recommendation. Pursuant to President Biden’s January 21, 2021, Executive Order on Protecting Worker Health and Safety, the agency is already considering whether any emergency temporary standards on COVID-19, including with respect to masks in the workplace, are necessary.

APPENDIX C: ACKNOWLEDGEMENTS

Key contributors to this report were:

Labony Chakraborty, Writer Editor
Richard Donna, Expert Auditor
Miguel Hughes, Expert Auditor
Steven Johnson, Expert Auditor
Mark Schwartz, Audit Director
Barry Weiss, Expert Auditor
Steve Witherspoon, Program Analyst
Cardelia Yan, Audit Manager

**REPORT FRAUD, WASTE, OR ABUSE
TO THE DEPARTMENT OF LABOR**

Online

<http://www.oig.dol.gov/hotline.htm>

Telephone

(800) 347-3756 or (202) 693-6999

Fax

(202) 693-7020

Address

Office of Inspector General
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210