

U.S. Department of Labor

Office of Inspector General—Office of Audit

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



**OSHA PROCEDURES FOR ISSUING
GUIDANCE WERE NOT ADEQUATE
AND MOSTLY NOT FOLLOWED**

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BRIEFLY...

OSHA PROCEDURES FOR ISSUING GUIDANCE WERE NOT ADEQUATE AND MOSTLY NOT FOLLOWED

MARCH 28, 2019

WHY OIG CONDUCTED THE AUDIT

OSHA issues rules, which can be standards or regulations, and guidance documents that explain the rules. Both are intended to help reduce hazards and protect 121 million workers at 9 million worksites. In 2015, three events led us to question OSHA's guidance issuance processes. First, the Government Accountability Office reported stakeholder concerns that federal agencies inappropriately used guidance in place of rules. Second, industry stakeholders challenged OSHA guidance documents, alleging OSHA created new rules without going through the rulemaking process. Third, congressional members expressed concerns over procedures OSHA used when issuing certain guidance documents.

WHAT OIG DID

Given these events, we conducted an audit to answer the following question:

Did OSHA establish adequate procedures for issuing guidance documents and, to the extent procedures were established, did OSHA follow those procedures consistently?

Between October 1, 2013, and March 18, 2016, OSHA issued 296 guidance documents on various topics, such as handling dangerous chemicals and protecting worker rights. We reviewed OSHA's internal controls and a random sample of 57 guidance documents. We also reviewed stakeholder challenges to 4 OSHA guidance documents and relevant court decisions issued through April 25, 2017.

WHAT OIG FOUND

OSHA did not establish adequate procedures for issuing guidance, and those procedures that were established were mostly not followed. While OSHA developed its procedures to provide reasonable assurance that guidance accurately reflected its rules and policies, it lacked a procedure to determine the appropriateness of issuing a document as guidance, rather than as a rule. Issuing as guidance is appropriate if the document is interpretative or a general statement of policy, and does not create, modify, or revoke a standard. OSHA also did not follow procedures for 80 percent of sampled guidance. Procedures it usually did not follow included determining if guidance was consistent with OSHA rules, considering the anticipated reception of the guidance by significant stakeholders, and obtaining official approval to issue the guidance.

As a result, OSHA risked issuing guidance that would create new rules or change existing rules in violation of laws requiring public notice and comment during agency rulemaking. OSHA could unintentionally create arbitrary and expensive employer compliance burdens, which might prompt industry stakeholders to challenge the guidance in court. Since October 2013, four OSHA guidance documents were challenged. The court ordered OSHA to rescind one document because it created a new rule. As part of negotiated settlements, OSHA rescinded one document and withdrew some changes in the other two documents.

OSHA risked issuing incomplete or inaccurate guidance that, if relied upon by its staff and stakeholders, would impact the efficiency and effectiveness of programs to protect the safety, health, and whistleblower rights of workers.

WHAT OIG RECOMMENDED

We recommend the Principal Deputy Assistant Secretary for Occupational Safety and Health improve procedures, monitor compliance with procedures, and train officials and staff as necessary. OSHA agreed that significant lapses occurred in the guidance issuance process, and it is working to rectify its existing procedures.

READ THE FULL REPORT

<http://www.oig.dol.gov/public/reports/oa/2019/02-19-001-10-105.pdf>

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INSPECTOR GENERAL'S REPORT

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The Office of Inspector General (OIG) for the U.S. Department of Labor (DOL) conducted a performance audit of the Occupational Safety and Health Administration's (OSHA) procedures for issuing guidance documents. OSHA issues rules, which can be standards or regulations, and guidance documents that explain the rules. Rules and guidance documents are intended to help reduce worksite hazards and protect 121 million American workers at 9 million worksites.

Creating rules requires extensive research, public notice, and lengthy comment resolution. By contrast, requirements for developing guidance are less extensive, but readers may find guidance easier to understand and refer to it more frequently than rules. It is essential that guidance accurately reflect the rules, and not in effect create new rules, because guidance does not require the same lengthy notice and comment process required by the rulemaking process.

According to OSHA officials, between October 1, 2013, and March 18, 2016 (the period covered by our audit), OSHA issued 296 guidance documents covering a vast range of topics, including handling dangerous chemicals, using protective equipment, and protecting the rights of workers and whistleblowers. During this period, industry stakeholders challenged four OSHA guidance documents that allegedly created new rules without having gone through notice and comment rulemaking. Further, congressional members expressed concerns over the

issuing of guidance documents, as did a Government Accountability Office (GAO) report.¹

Accordingly, we conducted an audit to answer the following question:

Did OSHA establish adequate procedures for issuing guidance documents and, to the extent procedures were established, did OSHA follow those procedures consistently?

Based on the results of our audit work, we determined OSHA did not establish adequate procedures for issuing guidance and mostly did not follow those procedures that were established. As a result, OSHA's guidance may have created or changed rules, which imposed unexpected compliance burdens on employers without the advance notice and lengthy comment process in rulemaking, leaving OSHA vulnerable to court challenges. If OSHA does not follow its own guidance, it could lead to providing incomplete or inaccurate information that, if relied upon by OSHA staff and stakeholders, would impact the efficiency and effectiveness of safety and health inspections, whistleblower complaint investigations, safety and health training, use of protective equipment, and hazard abatement.

Our audit focused on OSHA's internal controls and risk management over the issuance of guidance documents during the period October 1, 2013, through March 18, 2016. We reviewed OSHA's procedures for issuing guidance, interviewed OSHA and Solicitor of Labor (SOL) officials, and examined records for a random sample of 57 guidance documents (see Exhibit 1 for sampled guidance documents reviewed and Exhibit 2 for sampled testing results). We evaluated evidence regarding how OSHA decided to issue guidance instead of rules. Our purpose was not to determine if decisions were correct, and we make no such determinations. However, we did review relevant court documents and decisions issued through April 25, 2017, to identify the reasons stakeholders challenged four guidance documents and how OSHA's guidance was impacted (see Exhibit 3 for OSHA guidance documents subject to court challenges).

BACKGROUND ON OSHA RULES AND GUIDANCE

Under the Occupational Safety and Health Act of 1970 (OSH Act), the Secretary of Labor has the authority to make rules necessary to carry out OSHA's responsibilities. OSHA rules include: safety and health standards; requirements

¹ GAO, *Regulatory Guidance Processes: Selected Departments Could Strengthen Internal Control and Dissemination Practices*, April 16, 2015 (GAO-15-368). Excerpt of report regarding OSHA procedures is presented in Exhibit 4.

for employers seeking exemptions to standards; basic requirements for OSHA programs, such as Whistleblower Protection Programs; employer recordkeeping and reporting requirements; and state plan jurisdiction. These rules affect the regulated public by creating binding legal obligations that change employer and worker behavior.

OSHA guidance documents are the tools and materials available to OSHA staff and stakeholders to help employers and workers comply with OSH Act standards, maintain safe working conditions, and protect worker rights. Guidance includes directives, fact sheets, interpretations of standards, compliance guides, topics-of-interest web pages, and hazard alerts. Guidance is not legally binding, but guidance can have a significant effect on the public and may change public behavior. For example:

- OSHA might issue a hazard alert about a particular substance that could be unsafe under certain conditions. This would lead to changes in behavior by employers and workers, which may also have a significant economic impact on the employer, his suppliers, and customers.
- OSHA might issue an internal memorandum about how staff should inspect worksites or investigate whistleblower complaints. While the memorandum would not be available to the public, it could still have an impact on the public because the memorandum might direct staff to target certain types of worksites or hazards, or impact the results of inspections and complaints.

RESULTS

OSHA did not establish adequate procedures for issuing guidance, and mostly did not follow the procedures it did establish. All federal agencies are required to develop and maintain effective internal controls to provide reasonable assurance it will comply with federal laws and regulations, and to assess and manage risks. OSHA developed its procedures to provide reasonable assurance that guidance accurately reflected its rules and policies.

However, OSHA lacked procedures to determine if it was appropriate to issue a document as guidance, rather than a rule. Issuing as guidance is appropriate if the document is interpretative or a general statement of policy, and does not create, modify, or revoke a standard.

OSHA also did not follow procedures for 80 percent of sampled guidance. Procedures it usually did not follow included: (1) determining if guidance was consistent with OSHA rules; (2) considering the anticipated reception of the guidance by significant stakeholders; and (3) obtaining official approval to issue the guidance.

As a result, OSHA risked issuing guidance that may have: (1) created or changed existing rules in violation of the Administrative Procedures Act (APA) and OSH Act requirements for public notice and comment during agency rulemaking; or (2) contained inaccurate information that, if relied upon by OSHA staff and stakeholders, would impact the efficiency and effectiveness of programs to protect the safety, health, and whistleblower rights of American workers.

If OSHA does not issue guidance correctly, that guidance could create arbitrary and expensive compliance burdens on employers without the lengthy notice and comment portion of the rulemaking process. Such compliance burdens could prompt legal challenges by industry stakeholders.

**OSHA LACKED PROCEDURES TO
DETERMINE IF IT WAS APPROPRIATE TO
ISSUE A DOCUMENT AS GUIDANCE,
RATHER THAN A RULE**

Although OSHA had written procedures for the review and approval of guidance, it did not have procedures to help staff determine if issuing guidance or making rules was the appropriate course of action. Standards for Internal Control in the Federal Government² require OSHA to have effective internal controls to provide reasonable assurance of compliance with federal laws, such as the APA and OSH Act requirements for public notice and comment during agency rulemaking.

However, OSHA did not establish procedures requiring staff to demonstrate why it was appropriate to issue a document as guidance instead of a rule. As a result, OSHA risked issuing guidance that created new rules and imposed new requirements without following the more rigorous notice and comment provisions in APA and OSH Act rulemaking.

OSHA's written procedures were not adequate because the procedures did not require a written analysis, justification, or other record demonstrating that guidance would not establish a new policy or procedure. Regarding the risk of

² *Standards for Internal Controls in Federal Government*, GAO/AIMD-00-21.3.1, November 1999 (effective FY 2000), and GAO-14-704G, September 2014 (effective FY 2016)

non-compliance with APA and OSH Act requirements, officials stated OSHA relied on its procedures for SOL and senior OSHA management review to address any risk. However, OSHA's standard form to document the review by SOL and senior OSHA management did not specifically state whether the reviewer considered the risk of noncompliance with APA and OSH Act requirements. Moreover, we found OSHA staff did not follow OSHA's procedures and maintain appropriate records for approximately 80 percent of sampled guidance. We discuss this in the next result section of this report, *OSHA Mostly did not Follow its Established Procedures*.

APA AND OSH ACT PROTECTIONS

APA and OSH Act were both enacted after considerable debate over how to protect the rights of individuals and businesses without unduly interfering with agency operations and missions. Prior to these laws, federal laws conferred rulemaking authority to agencies, but did not generally define how agencies should go about making rules. Some agencies' guidance was clearly distinguishable from rules, while other agencies' guidance could not be differentiated from rules.

APA was enacted to provide uniformity, impartiality, and fairness in the procedures used by federal agencies. APA governs aspects, such as investigations, adjudications, rulemaking, licensing, open meeting, and disclosure requirements of federal agencies. Enactment of the OSH Act was preceded by vigorous debate over the extent to which federal authority would set and enforce workplace safety and health standards. Both the APA and OSH Act guarantee the right of judicial review to any person suffering legal wrong because of any agency action.

OSHA'S PROCEDURES DID NOT PROVIDE REASONABLE ASSUANCE OF COMPLIANCE WITH APA AND OSH ACT REQUIREMENTS

OSHA established written procedures for the review and approval of guidance prior to issuance. These procedures assigned responsibilities to specific OSHA officials for managing the guidance issuance process, including mandatory review and clearance of draft guidance. The procedures also specified criteria for issuance, such as considering if the guidance was consistent with other OSHA guidance and rules.

OSHA's written procedures were not adequate to address the risk of noncompliance with APA and OSH Act requirements when issuing guidance.

OSHA did not have procedures requiring a written analysis, justification, or other record demonstrating that guidance would not establish a new policy or procedure. Regarding the risk of non-compliance with APA and OSH Act requirements, officials stated OSHA relied on its procedures for SOL and senior OSHA management review to address any risk. However, OSHA's standard form to document the review by SOL and senior OSHA management did not specifically state whether the reviewer considered the risk of noncompliance with APA and OSH Act requirements.³

According to Standards for Internal Control in the Federal Government, OSHA is required to have effective controls to provide reasonable assurance of compliance with federal laws. OSHA procedures did not require staff to determine whether issuing guidance complied with applicable APA and OSH Act requirements. If OSHA does not issue guidance correctly, it runs the unnecessary risk of creating arbitrary and expensive compliance burdens on employers and encouraging industry stakeholders to challenge guidance because it appears to change rules or impose new requirements without notice and comment.

OSHA did not determine whether its guidance: (1) would be interpretative or general statement of policy as allowed by APA; or (2) would create, modify, or revoke a standard, which was not allowed by the OSH Act. Issuing a document as guidance is appropriate if the guidance falls under the types listed in APA exceptions to rulemaking. One such exception is contained in APA section 553, which states:

Except when notice or hearing is required by statute, this subsection does not apply— (A) to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.

If an exception does not apply, APA requires notice and comment rulemaking. For example, the OSH Act specifically requires the notice and comment rulemaking process to promulgate, modify, or revoke any occupational safety or health standard.

³ OSHA Policy Issuance Clearance (Form 201) states, "The signature of the clearance official (see block 3.) certifies that the proposed policy issuance (and any associated critical policy issues identified by subordinate staff) has been carefully considered with respect to technical matters, potential impact upon the programs and policies for which the official is responsible, and implications for Agency-wide policy and operations, and that any issues identified are communicated herewith to the originator."

*THE DIFFERENCES BETWEEN ISSUING RULES
AND GUIDANCE MAKES THE INITIAL DECISION TO
ISSUE GUIDANCE IMPORTANT*

OSHA's decision to issue a document as guidance or rule is made when it starts drafting the document, and then it follows one of two different paths before issuing the final document. If OSHA were to change the initial decision, it may not have any setbacks when changing from rulemaking to guidance. However, changing from guidance to rulemaking would require OSHA to start back at the beginning of the rulemaking process with advanced notice and comment.

For both rules and guidance, OSHA first identifies a subject or topic, drafts the rule or guidance, distributes it for comment (externally for rules and internally for guidance), and prepares and publishes the final rule or guidance document. One major difference between rules and guidance is that rules require significant preliminary research and outreach, which must be documented. While OSHA might conduct research prior to issuing guidance, it is not required to do so, and not required to document its research when it does conduct it. Another difference between rules and guidance is that comments on draft rules must be obtained from the general public, but comments on draft guidance must be obtained from only OSHA and DOL officials.

OSHA is required to justify whether rules are necessary and appropriate. It does this by gathering information on the problem and proposed solutions, and by trying to answer questions, such as:

- How does the problem affect worker safety and health?
- What are the risks under different conditions?
- What are the technical options for fixing the problem?
- How much will it cost employers to fix the problem?

OSHA publishes the information it collects for public review and comment. Commenters may offer information or solutions on the problem. OSHA must consider the comments when it prepares a final rule for issuance.

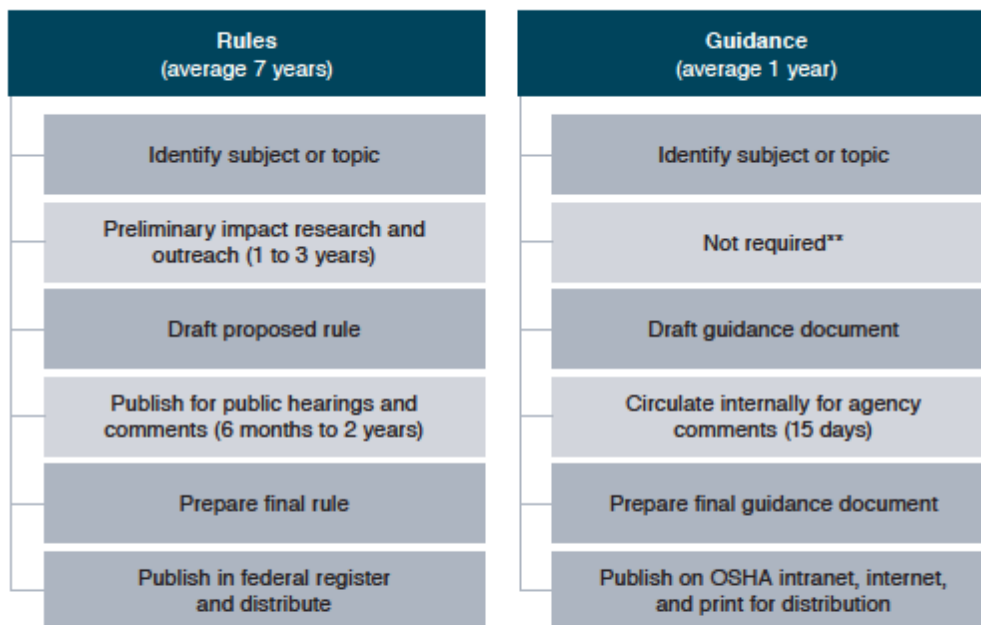
By contrast, preliminary research and outreach do not need to be conducted when issuing guidance, so OSHA can usually issue guidance within 1 year.⁴ On average, OSHA takes 7 years⁵ to issue rules.

⁴ OIG estimated the length of time (1-year) by using dated materials available for a few sampled guidance documents.

⁵ Government Accountability Office, *Workplace Safety and Health: Multiple Challenges Lengthen OSHA's Standard Setting*, April 2, 2012 (GAO-12-330)

The figure below presents a side-by-side comparison of the major requirements for rules and guidance. The major differences, rulemaking includes 1-3 years for preliminary research and 6 months to 2 years for obtaining public comments. Issuing guidance does not include preliminary research and allows 15 days for obtaining comments from officials in OSHA and other DOL agencies.

FIGURE 1: RULES AND GUIDANCE: SIDE-BY-SIDE COMPARISON OF MAJOR REQUIREMENTS



** To develop guidance, OSHA does not have to duplicate the work done for the rule, but may need research or outreach to update its information on the problem and proposed solutions.

Source: Compiled from OSHA publications – The OSHA Rulemaking Process (flowchart), OSHA Policy Issuances (directive) and Non-Policy Issuances (directive). The average time for issuing guidance was determined from sampled guidance documents.

INDUSTRY STAKEHOLDERS ARE LIKELY TO CHALLENGE GUIDANCE IF IT APPEARS TO CHANGE RULES WITHOUT NOTICE AND COMMENT

Between October 2013 and April 2017, stakeholders challenged four OSHA guidance documents that they alleged created new rules. According to stakeholders, the “new rules” either infringed on employer rights or contained new and expensive compliance requirements. As result of the challenges, the court ordered OSHA to rescind one document because it created a new rule. As part of negotiated settlements, OSHA rescinded one document and withdrew some changes in the other two documents. See Exhibit 3 for OSHA guidance

documents subject to court challenges, the reasons stakeholders challenged them, the court decisions, if any, and the current status of the guidance.

Courts review OSHA guidance when stakeholders allege OSHA did something improper when issuing guidance. In those cases, stakeholders argue the guidance documents actually created or changed occupational safety and health standards under the OSH Act, or other types of regulations under APA.

According to an SOL official, five such cases were decided by the courts prior to October 2013. The courts ruled against the Secretary of Labor twice, in 1980 and 1999,⁶ and in favor of the Secretary of Labor three times, between 2005 and 2011.⁷

OSHA MOSTLY DID NOT FOLLOW ITS ESTABLISHED PROCEDURES

OSHA established written procedures that included criteria for issuance to ensure the reliability of guidance documents provided to its staff and the general public. For 46 of 57, or 80 percent of sampled guidance documents, OSHA did not follow written procedures and maintain records demonstrating the guidance met OSHA's criteria for issuance. This occurred because OSHA did not maintain effective internal controls, such as regularly monitoring control activities and holding employees accountable for following procedures. As a result, OSHA did not have reasonable assurance of the reliability for most sampled guidance documents. See Exhibit 2 for sampled guidance testing results, and Exhibit 5 for sampled guidance that demonstrated compliance with criteria for issuance.

Standards for Internal Control in the Federal Government require agencies to establish effective systems of internal controls, regularly monitor internal control activities, identify ineffective controls, and take corrective action. The purpose of controls is to address the risks related to achieving an objective. In the case of guidance, OSHA establishes internal controls through its written procedures, which it stated were intended to ensure the reliability of issued guidance. Furthermore, according to the Federal Records Act, OSHA must create and maintain records to support its decisions and actions. OSHA is required to create and maintain records to provide for adequate documentation of agency business.

⁶ Cases decided against the Secretary: Chamber of Commerce v. Department of Labor, 174 F.3d 206 (D.C. Cir. 1999); and Chamber of Commerce v. Department of Labor, 636 F.2d 464 (D.C. Cir. 1980)

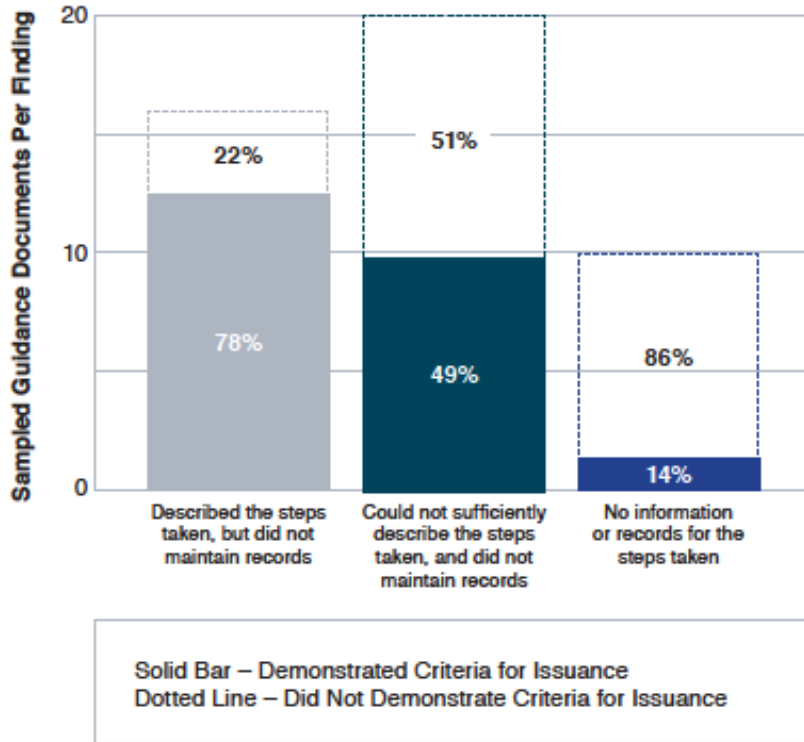
⁷ Cases decided in favor of the Secretary: Steel Erectors Ass'n of Am. v. OSHA, 636 F.3d 107 (4th Cir. 2011); National Roofing Contractors Ass'n v. Department of Labor, 639 F.3d 339 (7th Cir. 2011); Edison Elec. Inst. v. OSHA, 411 F.3d 272 (D.C. Cir. 2005)

OSHA DID NOT FOLLOW PROCEDURES FOR 80 PERCENT OF SAMPLED GUIDANCE

OSHA did not have reasonable assurance of reliability for 46 of 57, or 80 percent of sampled guidance documents because staff did not follow procedures as written nor maintain records to demonstrate compliance with the criteria for issuance. Specifically, as illustrated by Figure 2 below, we found the following:

- For 16 sampled guidance documents, staff did not maintain records to document the steps taken and OSHA was only able to demonstrate 78 percent of the applicable criteria for issuance.
- For 20 sampled guidance documents, staff did not sufficiently describe the steps they had taken to issue the guidance and OSHA was only able to demonstrate 49 percent of the applicable criteria for issuance.
- For 10 sampled guidance documents, there was no information on the steps used to issue the guidance, and staff did not maintain sufficient records. For 7 of these, officials stated the staff used unwritten, "commonly understood" procedures. For the other 3, officials stated the written procedures were not applicable. For the 10 documents, OSHA was able to demonstrate only 14 percent of the applicable criteria for issuance.

FIGURE 2: PERCENT OF APPLICABLE CRITERIA FOR ISSUANCE OSHA DID AND DID NOT DEMONSTRATE, BY SPECIFIC FINDINGS



OSHA COULD NOT DEMONSTRATE COMPLIANCE WITH CRITERIA FOR ISSUANCE

The primary purpose of OSHA’s procedures is to ensure guidance is reliable and accurately reflects OSHA’s position. The procedures also specify criteria for issuance, such as considering if the guidance was consistent with other OSHA guidance and rules. Because OSHA did not require staff to follow procedures and maintain records, OSHA did not have reasonable assurance of the reliability of issued guidance. Table 1 below summarizes OSHA’s noncompliance with its criteria for issuance:

TABLE 1: OSHA'S CRITERIA FOR ISSUANCE AND RATE OF NONCOMPLIANCE WITH THE CRITERIA

OSHA's Criteria for Issuance	Non-compliance Rate
1. Consistency: The guidance provides information consistent with all current OSHA issuances.	65%
2. References: All related OSHA issuances were explicitly referenced.	12%
3. Views/Reception: The views of subordinate staff and the anticipated reception by significant stakeholders were considered in developing the preclearance draft.	65%
4. Review/Clearance: All mandatory and other appropriate clearance/ review offices or individuals internal and external were identified, provided with all relevant background materials (including program-related and policy implications of the guidance), and provided reasonable time for a thorough review. The concerns of reviewers were discussed and resolved.	40%
5. Disclaimer: An appropriate disclaimer statement was added to the guidance document.	26%
6. Approval: An authorized issuing official approved the guidance for release.	53%

Source: Appendix B and Appendix C of Non-Policy Issuances (directive), OSHA Policy Issuances (directive), and records for sampled OSHA guidance documents

In the first result of this report, *OSHA Lacked Procedures to Determine if it was Appropriate to Issue a Document as Guidance, Rather than a Rule*, we concluded OSHA risked issuing guidance that created arbitrary and expensive compliance burdens on employers, which in turn may prompt legal challenges by industry stakeholders. OSHA may have mitigated some of this risk if it had followed its own written procedures and maintained appropriate records that it complied with criteria for issuance. However, based on testing results, OSHA did not mitigate risks for 65 percent⁸ of sampled guidance for the following criteria for issuance.

- **Consistency:** OSHA did not demonstrate that 65 percent of sampled guidance was consistent with other OSHA issuances. While OSHA generally (88 percent) referenced the guidance documents to other issuances such as standards, regulations or manuals, OSHA did not demonstrate whether the information in the sampled guidance document was consistent or different from other issuances. As a result, OSHA may

⁸ Results were 65 percent each for consistency and views/reception, but there were slight differences between the groups with exceptions. Results were 49 percent of sampled guidance documents where OSHA could demonstrate neither consistency nor views/reception.

have created or changed requirements through the issuance of the sampled guidance document.

- Views/Reception: OSHA did not demonstrate that it considered the comments of staff and views of stakeholders when developing 65 percent of sampled guidance. As a result, OSHA may not have anticipated that the reception of stakeholders would lead to legal challenges of the guidance document.
- Approval: OSHA did not demonstrate official approval when issuing 53 percent of sampled guidance.

Although OSHA established procedures, OSHA did not monitor the guidance issuance process to ensure the reliability of guidance and effectiveness of its internal controls. As a result, OSHA risked issuing guidance to staff and stakeholders that was not reliable. Therefore, employers and workers may not have been provided the best information on safe and healthy worksites. In addition, OSHA staff likely did not have accurate information on how to do their jobs efficiently and effectively, impairing their ability to do things like inspect employer worksites or investigate whistleblower complaints.

WHEN OSHA DOES NOT FOLLOW ITS PROCEDURES, GUIDANCE IS LESS LIKELY TO BE ACCURATE AND RELIABLE

Our sample results showed when staff followed OSHA's written procedures, they were frequently able to demonstrate the guidance met most criteria for issuance. Standards for Internal Control in the Federal Government require OSHA to establish expectations for competence. Competence requires relevant knowledge, skills, and abilities, and is demonstrated as individuals carry out their internal control responsibilities. This linkage between relevant knowledge and carrying out internal control responsibilities is evident in the sampled guidance. Per Figure 3 below, staff who did not follow written procedures were less likely to demonstrate compliance with OSHA's criteria for issuance than staff who followed written procedures, as follows:

- For 30 of 57 guidance documents (53 percent), staff did not follow written procedures and could not describe the steps taken when issuing the guidance. For these 30 guidance documents, OSHA could demonstrate compliance with 39 percent of OSHA's criteria for issuance.

- For 27 of 57 guidance documents (47 percent), staff followed written procedures and either maintained records (11 guidance documents) or could describe in detail the steps taken when issuing the guidance (16 guidance documents). For these 27 guidance documents, OSHA could demonstrate compliance with 87 percent of OSHA’s criteria for issuance.

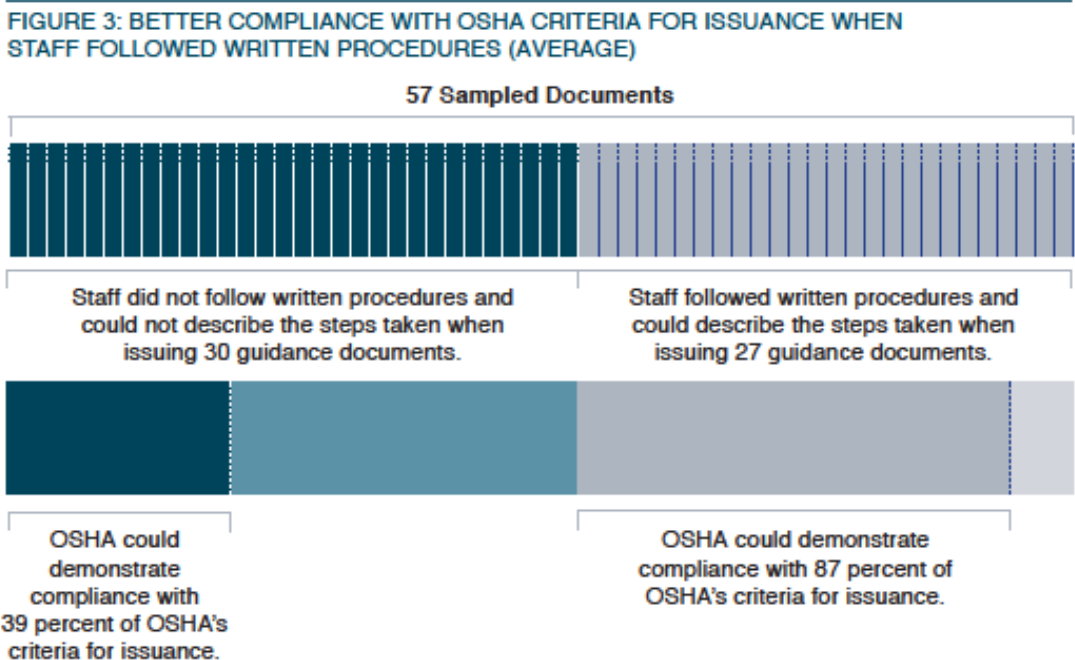
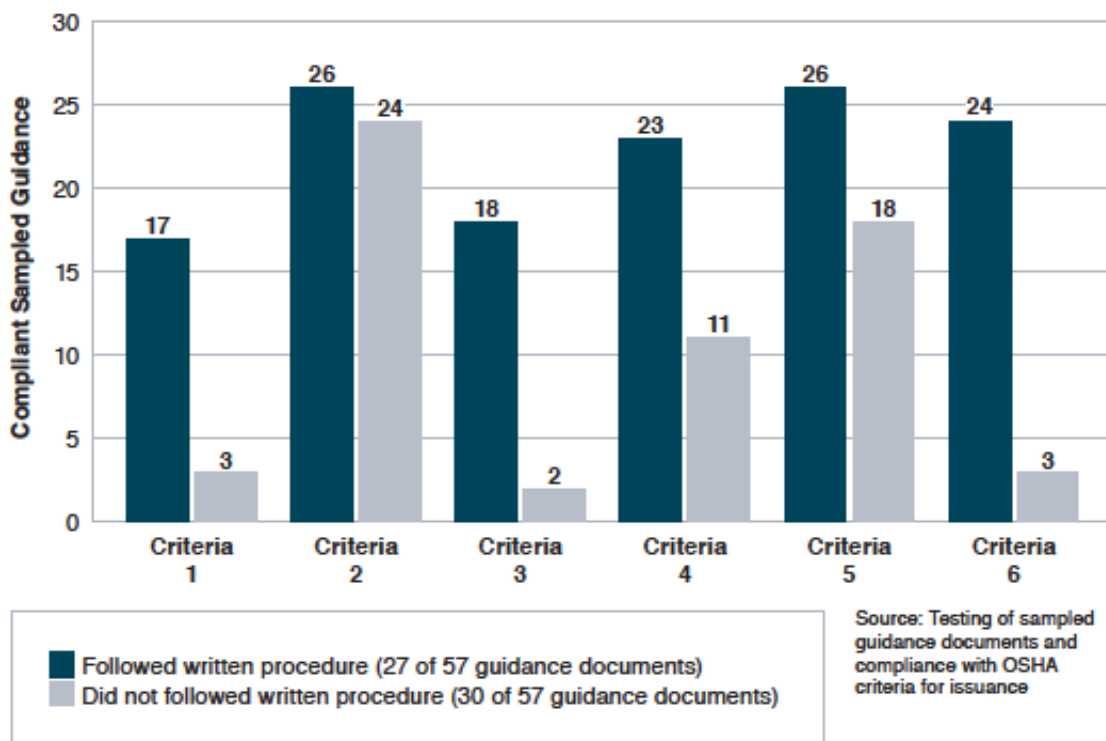


Figure 4 below provides additional information on the link between following procedures and demonstrating compliance for each of OSHA’s criteria for issuance. When staff did not follow written procedures (the grey bars), OSHA was less likely to demonstrate compliance for each of OSHA’s criteria for issuance than when staff followed written procedures (the blue bars).

For example, criteria 6 (official approval for issuance) was seldom demonstrated when staff did not follow written procedures (3 of 30 sampled guidance), but demonstrated most of the time when staff followed written procedures (24 of 27 sampled guidance).

FIGURE 4: BETTER COMPLIANCE WITH OSHA CRITERIA FOR ISSUANCE WHEN STAFF FOLLOWED WRITTEN PROCEDURES (BY CRITERIA)



As another example, review and approval by mandatory clearance officials (criteria 4) is a key internal control for ensuring both the reliability of the guidance and addressing the risk of non-compliance with APA and OSH Act requirements. Mandatory clearance officials are supposed to review proposed guidance for technical issues; potential impact on OSHA programs, policy, and operations; and the anticipated reception by stakeholders. Significant questions or concerns raised by mandatory clearance officials may lead OSHA to either refine the guidance or reconsider whether it is appropriate to issue a document as guidance.

However, for 23 of 57 sampled guidance documents, OSHA had either no records or incomplete records supporting the review and approval by mandatory clearance officials, even though its procedures specifically required staff to maintain records of approval. When staff did not follow the procedures as written, they only maintained adequate clearance records for 11 of 30 or one-third sampled guidance documents. This is represented by the red bars in Figure 4 above. Conversely, when staff followed the procedures as written, they maintained adequate clearance records for 23 of 27 sampled guidance documents. This is represented by the blue bars in Figure 4 above.

Moreover, officials stated OSHA’s guidance issuance procedures rely on SOL and senior OSHA management review to address any risk of non-compliance with APA and OSH Act requirements. However, OSHA had no records to demonstrate SOL reviewed and approved 21 sampled guidance documents. For review and approval by OSHA officials, OSHA had no records for 18 sampled guidance documents and incomplete records for 5 sampled guidance documents (see Table 2 below). Most exceptions for mandatory clearance records occurred when staff did not follow written procedures.

TABLE 2: MORE EXCEPTIONS FOR MANDATORY CLEARANCE RECORDS (SOL AND OSHA) WHEN STAFF DID NOT FOLLOW WRITTEN PROCEDURES

Whether Staff Followed Written Procedures	SOL Officials	OSHA Officials
Followed procedures	4 – No records	2 – No records 2 – Incomplete records
Did not follow procedures	17 – No records	16 – No records 3 – Incomplete records

Source: Testing of sampled guidance documents for mandatory clearance reviews by SOL and OSHA officials

Although OSHA established written procedures for issuing guidance documents, the procedures were mostly not followed. As a result, OSHA did not have reasonable assurance the issued guidance was reliable.

OIG’S RECOMMENDATIONS

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

- 1) Establish procedures to require staff to demonstrate that issuing a document as guidance is appropriate under APA and OSH Act requirements.
- 2) Maintain complete records to demonstrate compliance with OSHA criteria for issuance.
- 3) Establish and enforce a monitoring function to ensure its staff fully comply with written procedures and maintain complete records that demonstrate guidance meets criteria for issuance.

- 4) Train officials and staff as needed on their roles and responsibilities for internal controls related to the issuance of guidance and the potential risks of disregarding or circumventing controls.

SUMMARY OF OSHA'S RESPONSE

OSHA agreed that significant lapses occurred between 2013 and 2016 in the monitoring process and records management procedures to ensure timely and appropriate issuance of guidance documents. OSHA is working aggressively to rectify this through a review of existing procedures, improved accountability, and documentation. A review of its clearance processes is ongoing and the changes will be provided in the agency's corrective action plan. Going forward, OSHA said it will carefully weigh and deliberate the pros and cons of issuing guidance and ensure appropriate documentation of those decisions.

OSHA's 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.



Elliot P. Lewis
Assistant Inspector General for Audit

EXHIBIT 1: SAMPLED GUIDANCE DOCUMENTS REVIEWED

No.	Type	Guidance Document	Purpose	Page Count
1	Memo for Regional Administrators (RA)	Procedures for Local and Regional Emphasis Programs	Sets forth new requirements within OSHA's Procedures for the Approval of Local Emphasis Programs (LEP) Directive	4
2	Memo for RAs	Generation and Randomization of Inspection Targeting Lists (2014)	Provides instruction for regions on generating and randomizing inspection targeting list	2
3	Letter of Interpretation	Clarification on whether maintenance records are recognized as employee exposure records (1910.1020(c)(5))	Follow-up letter regarding on aircraft maintenance are considered exposure records under 29 CFR 19101020	2
4	Letter of Interpretation	Coke Oven Emissions - The use of exposure reducing innovative technologies to preclude compliance with the establishment of Regulated Areas. (1910.1029(d)(1))	Follow-up letter regarding OSHA's Coke Oven Emissions, 29 CFR 19101029 and permissible exposure limits	1
5	Letter of Interpretation	Servicing Requirements for Multi-piece And Single Piece Rim Wheels (1910.177)	Clarification of OSHA's standards pertaining to 29 CFR 1910177, servicing multi-piece and single piece rim-wheels	2
6	Letter of Interpretation	Temporary Labor Camps (1910.142)	Clarification of standards pertaining to 29 CFR 1910142, Temporary Labor Camps	1
7	Letter of Interpretation	Field extraction procedure for isocyanate air samples (1910.1000)	Clarification about air sampling and field extraction procedure described in (CPL 03-00-017, Isocyanates NEP)	1
8	Fact Sheet	OSHA's Proposed Crystalline Silica Rule: Construction Fact Sheet (Spanish)	Included Highlights of the proposed rule, Highlights involving the construction industry, Highlights involving general industry and maritime, Information for small businesses and Opportunities for public participation	2
9	Fact Sheet	Safe Lighting Practices in the Shipyard Industry Fact Sheet	Describes the lighting requirements that employers must follow in shipyards, as specified in 29 CFR 191582	3
10	Hazard Alert	1-Bromopropane OSHA/NIOSH Hazard Alert	It contains recommendations as well as descriptions of mandatory safety and health standards and other regulatory requirements	7
11	Quick Card	Protecting Farmworkers from Tractor and Harvester Hazards QuickCard™	Provides employers with information about Tractor Hazards and safety measures	1
12	Quick Card	Safety and Health Guide: Cold Stress	To provide guidance on Cold stress including, Common Types of Cold Stress, Risk Factors, Employer Prevention, Protecting Yourself and Others, and What to Do When a Worker Suffers from Cold Stress	2

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No.	Type	Guidance Document	Purpose	Page Count
13	Web Page	Emergency Response and Preparation web page: Winter Weather	To help businesses and their workers prepare for winter weather, and to provide information about hazards that workers may face during and after winter storms (i.e., slips and falls on ice)	18
14	Hazard Bulletin	Preventing Worker Fatigue Among Ebola Healthcare Workers and Responders	Guidelines on preventing healthcare workers and responders involved with Ebola related cases avoid fatigue on the job, including the effects	4
15	Fact Sheet	Fall From a Telecommunications Tower: Fatal Facts	To prevent falls from telecommunication towers pertaining to 29 CFR 19261053(a)(22)(iii), ladder safety device or system	2
16	Booklet	Training Guide - A Lesson Plan for Employers	To help plan how to prevent injuries and fatalities from falls among your crew, and provide training to your workers	24
17	Fact Sheet	Material Hoist Collapse: Fatal Facts	To prevent fatalities and injuries pertaining to material hoist collapse	2
18	Fact Sheet	Protecting Workers during a Pandemic Fact Sheet	How to protect workers during a pandemic	3
19	Fact Sheet	Highlights of OSHA's Reporting and Recordkeeping Rule Fact Sheet	To highlight provisions of OSHA's revised reporting rules pertaining to recording and reporting of occupational injuries and illnesses	2
20	Manual	Servicing Multi-Piece and Single-Piece Rim Wheels 29 CFR 1910.177 Manual - Tire Chart	To provide new updated tire charts for OSHA's 1910177 standard (Servicing multi-piece and single piece rim wheels)	1
21	Hazard Bulletin	Tree Care Work Hazards - Hazard Bulletin	To protect worker in the tree care industry from serious injuries or death from falls and falling objects	4
22	Pamphlet	Tree Care Work: Know the Hazards Pamphlet	Provides information on workplace hazards pertaining to tree care work, which includes employers and workers responsibilities	1
23	Manual	Ethanol Processing OTM Chapter	To update OSHA Technical Manual, Section IV, Chapter 5	87
24	Safety and Health Information Bulletin	SHIB: Carbon Monoxide Explosion Hazards in Electric Arc Furnace Steelmaking Operations	How to Protect Workers from Carbon Monoxide Explosion Hazards in Electric Arc Furnace Steelmaking Operations	4
25	Poster	Job Safety and Health -- It's The Law Poster	An update to include the new reporting obligations for employers, who must now report every fatality and every hospitalization, amputation and loss of an eye The poster informs workers of their rights, and employers of their responsibilities	1

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No.	Type	Guidance Document	Purpose	Page Count
26	Poster	Workers' Rights Poster – OSHA/USDA	To encourage reporting of work-related injuries and illnesses, to make clear worker rights and employer responsibilities, and information about filing a whistleblower complaint It also includes the new reporting obligations for employers, who must now report every fatality and also every hospitalization, amputation and loss of an eye	1
27	Guide	Restroom Access for Transgender Workers, Best Practices	To provide best practices in restroom access for transgender workers to prevent potentially serious physical injury or illness	4
28	Hazard Bulletin	OSHA/NIOSH Exposure to Silica during Countertop Manufacturing, Finishing and Installation Hazard Alert	How to protect workers involved in manufacturing, finishing and installing natural and manufactured stone countertop products from exposure to crystalline silica	8
29	Booklet	Training Requirements in OSHA Standards	To assist employers, safety and health professionals, training directors and others with a need to know, OSHA's training-related requirements have been excerpted and collected in this updated booklet	270
30	Hazard Bulletin	Indoor Environmental Pollutants: Lead: Worker and Employer Guide to Hazards and Recommended Controls	To provide guidance on lead hazards and recommended controls	4
31	Flyer	Nail Salon Workers' Rights Flyer	To educate nail salon workers about their rights to a safe workplace and fair pay	2
32	Safety and Health Information Bulletin	Hazards when Purging Hydrogen Gas-Cooled Electric Generators	To prevent worker injuries or fatalities pertaining to Purging Hydrogen Gas-Cooled Electric Generators	5
33	Fact Sheet	Asphyxiation in Sewer Line Manhole (PDF*). OSHA Fatal Facts No. 12-2015	To prevent asphyxiation as it pertains to OSHA's Confined Spaces in Construction, 29 CFR 1926 Subpart AA	2
34	Letter of Interpretation	Process Safety Management (PSM) Retail Exemption Interim Enforcement Policy	Revised interpretation on PSM retail exemption pertaining to 29 CFR 1910119(a)(2)(i)	2
35	Letter of Interpretation	Temporary Enforcement Policy-Proximity Alarms and Insulating Links	Clarification of standards pertaining to Cranes and Derricks in Construction standard, 29 CFR 1926 Subpart CC, Section 19261401	1
36	Letter of Interpretation	Assembly, disassembly, and set-up of cranes	Clarification of standards pertaining to Cranes and Derricks in Construction standards 9261402, 9261403 - 19261406	2
37	Letter of Interpretation	Responsibility for laundering FR clothing	Clarification of standards pertaining to 29 CFR 192695(a), Personal Protective Equipment	2
38	Letter of Interpretation	Information exchange requirements for ground conditions underneath railroad cranes	Interpretation of OSHA's standard, Crane and Derricks in Construction Standard (29 CFR 1402(c)(2))	4
39	Letter of Interpretation	Requirements for ladders used for roof access	Clarification of standards pertaining to 29 CFR 19261053(a)(I7), Ladders	2

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No.	Type	Guidance Document	Purpose	Page Count
40	Letter of Interpretation	Protecting painters from electrical hazards	Clarification of standards pertaining to electrical standard, 29 CFR 1926405(i)(l)(i)	2
41	Letter of Interpretation	Applicable OSHA electrical standards	To provide information on OSHA's Electrical Construction Standards, and any other resources that could assist in career development and small business assistance	2
42	Directive	On-site Consultation Cooperative Agreement Application Instructions	Provides instructions and forms that are necessary for preparing the FY 2014 On-site Consultation Cooperative Agreement Application	30
43	Directive	Instructions for 23(g) State Plan Grants Directive	Provides instructions and forms necessary for the preparation and submittal of the FY 2015 applications for 23(g) State Plan Grants	41
44	Directive	OSHA Strategic Partnership Program Directive (November 2013)	Describes and implements revisions to the OSHA Strategic Partnership Program for Worker Safety and Health (OSPP) and describes Agency procedures for implementing this program	52
45	Guide	Guidelines for Products Developed by OSHA's Alliance Program Participants (September 2014)	These guidelines define the expectations and requirements that apply to such products, including their goals, the processes for their development, review, update or withdrawal, and other requirements	8
46	Guide	National Construction Safety and Health Achievement Recognition Program (SHARP) National Construction Pilot Program Guidelines (January 2015)	To provide uniform procedures for on-site consultation projects that would like to implement a construction SHARP pilot in their state	11
47	Directive	Consultation Policies and Procedures Manual (November 2015)	This instruction outlines the policy framework for administering the OSHA Consultation Program and revises and clarifies processes and procedures for administering and monitoring Consultation Projects	116
48	Letter of Interpretation	Whistleblower Complainants and Safety and Health Referrals [PDF*] – issued and effective June 27, 2014	The purpose of this memorandum is to reiterate OSHA's long-standing policy of ensuring that safety and health hazards identified during the whistleblower complaint intake and screening process are referred to OSHA enforcement or the appropriate agency	1

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No.	Type	Guidance Document	Purpose	Page Count
49	Guidance Email	PATH v. ARB: FRSA (c)(2) Office Duty Injuries [PDF*] – issued and effective February 19, 2015	Advising staff that OSHA, based on the recent decision in PATH v USDOL, is taking a new position regarding the application of whistleblower protection provisions under (c)(2) and (b)(1)(A) its policy will be to dismiss – for lack of protected activity – complaints in which an employee alleges that he or she was retaliated against for following the orders or treatment plan of a treating physician for a non-work-related injury or illness It is important to keep in mind that some cases may involve a factual dispute concerning whether an employee's injury is work-related	2
50	Memo for RAs	Clarification of the Investigative Standard for OSHA Whistleblower Investigations – issued and effective April 20, 2015	Clarifying the investigative standards for OSHA's whistleblower investigations (whether OSHA has reasonable cause to believe a violation occurred)	4
51	Report	Alternative Dispute Resolution (ADR) Processes for Whistleblower Protection Program, issued and effective Aug. 18, 2015	Outcome Report to discuss the implementation and outcome of OSHA's ADR Pilot Program (ADRPP)	16
52	Manual	Whistleblower Investigations Manual, CPL 02-03-007 – issued and effective January 28, 2016	This manual outlines procedures, and other information relative to the handling of retaliation complaints under the various whistleblower statutes delegated to OSHA	290
53	Letter of Interpretation	Clarification of the Work Refusal Standard under 29 CFR 1977.12(b)(2) – issued and effective Jan. 11, 2016	This document serves to clarify the proper application of the Section 11(c) work refusal interpretive regulation, 29 CFR 197712(b)(2)	8
54	Fact Sheet	Health Effects of Exposure to Beryllium Fact Sheet	Provides information on the primary health effects associated with exposure to beryllium and emphasizes using medical screening to identify beryllium disease in workers	2
55	Hazard Bulletin	Small Entity Compliance Guide for Employers That Use Hazardous Chemicals	This guide is intended to help small employers comply with the Occupational Safety and Health Administration's (OSHA) Hazard Communication Standard (HCS)	48
56	Hazard Bulletin	Hazard Classification Guidance for Manufacturers, Importers, and Employers	This document is designed to help manufacturers and importers of chemicals identify chemical hazards, classify hazards so that workers and downstream users can be informed about and better understand hazards	432
57	Safety Alert	Chemical Safety Alert: Safer Technology and Alternatives (Jointly issued by EPA, OSHA, and ATF)	This Alert explains the concepts and principles of integration of safer technologies into facility risk management activities	7

EXHIBIT 2: SAMPLED GUIDANCE TESTING RESULTS

No.	Guidance Document	Followed Written Procedure	Demonstrated Compliance with OSHA's Criteria for Issuance					
			1	2	3	4	5	6
1	Procedures for Local and Regional Emphasis Programs	Yes	Yes	Yes	Yes	Yes	N/A ⁹	Yes
2	Generation and Randomization of Inspection Targeting Lists (2014)	UNK ¹⁰	Yes	Yes	Yes	Yes	N/A	Yes
3	Clarification on whether maintenance records are recognized as employee exposure records (1910.1020(c)(5))	Yes	Yes	Yes	Yes	Yes	Yes	Yes
4	Coke Oven Emissions - The use of exposure reducing innovative technologies to preclude compliance with the establishment of Regulated Areas. (1910.1029(d)(1))	Yes	Yes	Yes	Yes	Yes	Yes	Yes
5	Servicing Requirements for Multi-piece And Single Piece Rim Wheels (1910.177)	Yes	Yes	Yes	Yes	Yes	Yes	Yes
6	Temporary Labor Camps (1910.142)	Yes	Yes	Yes	Yes	Yes	Yes	Yes
7	Field extraction procedure for isocyanate air samples (1910.1000)	Yes	Yes	Yes	Yes	Yes	Yes	Yes
8	OSHA's Proposed Crystalline Silica Rule: Construction Fact Sheet (Spanish)	UNK	No	Yes	No	No	Yes	No
9	Safe Lighting Practices in the Shipyard Industry Fact Sheet	UNK	No	Yes	No	Yes	Yes	No
10	1-Bromopropane OSHA/NIOSH Hazard Alert	UNK	No	Yes	No	Yes	Yes	No
11	Protecting Farmworkers from Tractor and Harvester Hazards QuickCard™	UNK	No	No	No	Yes	No	No
12	Safety and Health Guide: Cold Stress	UNK	No	No	No	No	No	No
13	Emergency Response and Preparation web page: Winter Weather	UNK	No	Yes	No	No	No	Yes
14	Preventing Worker Fatigue Among Ebola Healthcare Workers and Responders	UNK	Yes	Yes	No	No	No	No
15	Fall From a Telecommunications Tower: Fatal Facts	UNK	No	Yes	No	Yes	Yes	No
16	Training Guide - A Lesson Plan for Employers	No	No	Yes	No	No	No	No
17	Material Hoist Collapse: Fatal Facts	UNK	No	Yes	No	No	Yes	No
18	Protecting Workers during a Pandemic Fact Sheet	Yes	No	Yes	No	No	Yes	No

⁹ "N/A" indicates a disclaimer (Criteria 5) was not required because the guidance document was an OSHA directives and internal policy statement.

¹⁰ "UNK" indicates that OSHA's use of written procedures could not be determined. Officials stated the staff used the guidance issuance procedures as augmented by other OSHA procedures. However, the staff could not sufficiently describe the steps they had taken to issue the guidance.

No.	Guidance Document	Followed Written Procedure	Demonstrated Compliance with OSHA's Criteria for Issuance					
			1	2	3	4	5	6
19	Highlights of OSHA's Reporting and Recordkeeping Rule Fact Sheet	UNK	No	Yes	No	No	Yes	No
20	Servicing Multi-Piece and Single-Piece Rim Wheels 29 CFR 1910.177 Manual - Tire Chart	Yes	No	No	No	No	No	No
21	Tree Care Work Hazards - Hazard Bulletin	Yes	No	Yes	No	Yes	Yes	No
22	Tree Care Work: Know the Hazards Pamphlet	No	No	No	No	No	No	No
23	Ethanol Processing OTM Chapter	UNK	No	Yes	No	No	Yes	No
24	SHIB: Carbon Monoxide Explosion Hazards in Electric Arc Furnace Steelmaking Operations	UNK	No	Yes	No	Yes	Yes	No
	Job Safety and Health -- It's The Law Poster	No	No	No	No	No	No	No
26	Workers' Rights Poster – OSHA/USDA	No	No	No	No	No	No	No
27	Restroom Access for Transgender Workers, Best Practices	No	No	Yes	No	No	Yes	No
28	OSHA/NIOSH Exposure to Silica during Countertop Manufacturing, Finishing and Installation Hazard Alert	UNK	No	Yes	No	Yes	Yes	No
29	Training Requirements in OSHA Standards	No	Yes	Yes	No	No	Yes	No
30	Indoor Environmental Pollutants: Lead: Worker and Employer Guide to Hazards and Recommended Controls	UNK	No	Yes	No	No	Yes	No
31	Nail Salon Workers' Rights Flyer	No	No	No	No	No	No	No
32	Hazards when Purging Hydrogen Gas-Cooled Electric Generators	UNK	No	Yes	No	Yes	Yes	No
33	Asphyxiation in Sewer Line Manhole (PDF*). OSHA Fatal Facts No. 12-2015	UNK	No	Yes	No	No	Yes	Yes
34	Process Safety Management (PSM) Retail Exemption Interim Enforcement Policy	Yes	Yes	Yes	Yes	No	Yes	Yes
	Temporary Enforcement Policy-Proximity Alarms and Insulating Links	Yes	No	Yes	Yes	Yes	N/A	Yes
36	Assembly, disassembly, and set-up of cranes	Yes	No	Yes	No	Yes	Yes	Yes
37	Responsibility for laundering FR clothing	Yes	No	Yes	Yes	Yes	Yes	Yes
38	Information exchange requirements for ground conditions underneath railroad cranes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
39	Requirements for ladders used for roof access	Yes	Yes	Yes	Yes	Yes	Yes	Yes
40	Protecting painters from electrical hazards	Yes	Yes	Yes	No	Yes	Yes	Yes
41	Applicable OSHA electrical standards	Yes	Yes	Yes	Yes	Yes	Yes	Yes
42	On-site Consultation Cooperative Agreement Application Instructions	Yes	Yes	Yes	Yes	Yes	N/A	Yes
43	Instructions for 23(g) State Plan Grants Directive	Yes	Yes	Yes	Yes	Yes	N/A	Yes

No.	Guidance Document	Followed Written Procedure	Demonstrated Compliance with OSHA's Criteria for Issuance					
			1	2	3	4	5	6
44	OSHA Strategic Partnership Program Directive (November 2013)	Yes	No	Yes	Yes	Yes	N/A	Yes
45	Guidelines for Products Developed by OSHA's Alliance Program Participants (September 2014)	No	No	Yes	Yes	No	No	No
46	National Construction Safety and Health Achievement Recognition Program (SHARP) National Construction Pilot Program Guidelines (January 2015)	No	No	Yes	No	No	No	No
47	Consultation Policies and Procedures Manual (November 2015)	Yes	No	Yes	No	Yes	N/A	Yes
48	Whistleblower Complainants and Safety and Health Referrals [PDF*] – issued and effective June 27, 2014	Yes	Yes	Yes	Yes	Yes	N/A	Yes
49	PATH v. ARB: FRSA (c)(2) Office Duty Injuries [PDF*] – issued and effective February 19, 2015	Yes	No	Yes	No	No	N/A	Yes
50	Clarification of the Investigative Standard for OSHA Whistleblower Investigations – issued and effective April 20, 2015	Yes	Yes	Yes	No	Yes	N/A	Yes
51	Alternative Dispute Resolution (ADR) Processes for Whistleblower Protection Program, issued and effective Aug. 18, 2015	Yes	No	Yes	No	Yes	N/A	Yes
52	Whistleblower Investigations Manual, CPL 02-03-007 – issued and effective January 28, 2016	Yes	Yes	Yes	Yes	Yes	Yes	Yes
53	Clarification of the Work Refusal Standard under 29 CFR 1977.12(b)(2) – issued and effective Jan. 11, 2016	Yes	Yes	Yes	Yes	Yes	N/A	Yes
54	Health Effects of Exposure to Beryllium Fact Sheet	UNK	No	Yes	No	Yes	Yes	No
55	Small Entity Compliance Guide for Employers That Use Hazardous Chemicals	UNK	No	Yes	No	Yes	Yes	No
56	Hazard Classification Guidance for Manufacturers, Importers, and Employers	UNK	No	Yes	No	Yes	Yes	No
57	Chemical Safety Alert: Safer Technology and Alternatives (Jointly issued by EPA, OSHA, and ATF)	No	No	Yes	No	No	No	No

EXHIBIT 3: OSHA GUIDANCE DOCUMENTS SUBJECT TO COURT CHALLENGES

Summary of Relevant Rules, Guidance Document, Stakeholder’s Challenge, and Status of the Challenge and Guidance	
Guidance Title	Participation by employee representative in OSHA inspection
Relevant Rule	The OSH Act authorizes an employee representative to participate in the walk around portion of an inspection. OSHA’s regulations state that an employee representative must be an employee of the company. When reasonably necessary, OSHA also allowed for third-party specialists, such as industrial hygienists and safety engineers, to accompany the compliance officer during the inspection walk through (29 C.F.R. § 1903.8).
Guidance Document	In a letter of interpretation dated February 21, 2013, OSHA stated for a non-union worksite, a person affiliated with a union or community organization can act as the employee representative if so authorized by the employees. The letter also stated that third-party specialists are considered “reasonably necessary when they will make a positive contribution to a thorough and effective inspection.
Stakeholder’s Challenge	On September 8, 2016, stakeholders challenged OSHA’s letter of interpretation, in part, because it allegedly changed regulations without APA rulemaking. The allegation was that the guidance changed two requirements that: (1) an employee representative must be an employee, and (2) a third-party specialist to the walk-around must be reasonably necessary. These changes allegedly allowed union representatives to access a non-union business and recruit its employees during the walk around portion of an inspection. (<u>National Federation of Independent Business v. OSHA</u> , N.D. TX, No. 3:126-cv-2568)
Status of the Challenge and Guidance	On April 25, 2017, OSHA rescinded the guidance and stated it was no longer necessary. OSHA stated that regulations, specifically 29 C.F.R. 1903.8(c), permit, where good cause is shown and where “reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace,” a CSHO may allow a non-employee third party to accompany the CSHO during an OSHA inspection. Two days later, the stakeholders voluntarily dismissed the court case.


Summary of Relevant Rules, Guidance Document, Stakeholder's Challenge, and Status of the Challenge and Guidance	
Guidance Title	Process Safety Management of Highly Hazardous Chemicals and Covered Concentrations of Listed Appendix A Chemicals
Relevant Rule	In 1992, OSHA issued the Process Safety Management (PSM) standard to protect the safety of those who work with or near highly hazardous chemicals. Appendix A lists 137 chemicals with threshold quantities at or above which the PSM standard is applicable. Eleven of the chemicals were also defined by minimum concentration levels for when the chemicals are present in a mixture. The other 126 chemicals are listed without reference to any concentration (29 C.F.R. § 1910.119(a)(1)(i)). Thereafter, OSHA's policy was that the chemicals listed in Appendix A without minimum concentrations were covered at "commercial grade" concentrations (maximum concentration commercially available and shipped) and higher.
Guidance Document	On June 5, 2015, OSHA issued a standard interpretation letter that adopted a one percent test to determine if the PSM standard would be applicable for the 126 chemicals on Appendix A without concentrations. In developing the test, OSHA considered similar requirements issued by the Environmental Protection Agency for its list of regulated toxic substances and threshold quantities for accidental release prevention. (https://www.osha.gov/laws-regs/standardinterpretations/2015-06-05)
Stakeholder's Challenge	On August 3, 2015, industry stakeholders challenged OSHA's guidance because they alleged OSHA made a significant change to the PSM standard by way of an interpretation memo, rather than rulemaking. The challenge also focused on the alleged arbitrary and capricious nature of OSHA's policy change – that is most chemicals in small concentrations did not present the hazard intended to be addressed by PSM. One stakeholder stated this new policy will substantially expand the universe of facilities covered by PSM without inviting public comment and conducting cost-benefit analyses through a formal rulemaking. (<u><i>American Chemistry Council v. Occupational Safety and Health Administration and Department of Labor</i></u> , (D.C. Cir., Case No. 15-1252); and <u><i>National Association of Chemical Distributors NewsBrief</i></u> , http://www.multibriefs.com/briefs/nacd/PSM090115.html , September 1, 2015)
Status of the Challenge and Guidance	As part of a negotiated settlement, OSHA rescinded the June 2015 interpretation memorandum and replaced it with a different memorandum on July 18, 2016. The new memorandum retained the one percent test for most chemicals, but excluded chemicals in aqueous solutions or mixtures, such as chemicals specifically listed as "anhydrous." OSHA also exempts from PSM coverage hydrogen chloride or hydrogen fluoride in aqueous solutions or aqueous mixtures even though those chemicals were not listed as anhydrous on Appendix A. (https://www.osha.gov/laws-regs/standardinterpretations/2016-07-21) On July 26, 2016, the court case was voluntarily dismissed.

Summary of Relevant Rules, Guidance Document, Stakeholder's Challenge, and Status of the Challenge and Guidance	
Guidance Title	Process Safety Management (PSM) Standard's Recognized and Generally Accepted Good Engineering Practices (RAGAGEP)
Relevant Rule	Under OSHA's PSM standard, employers are obligated to document that all equipment in PSM-covered processes complies with <u>Recognized and Generally Accepted Good Engineering Practices (RAGAGEP)</u> and perform mechanical integrity tests and inspections in accordance with RAGAGEP and manufacturer's recommendations. RAGAGEP are generally approved ways to perform specific engineering, inspection or mechanical integrity activities that are based on established codes, standards, published technical reports or recommended practices or similar documents. OSHA's policy was to treat these documents as compliance tools to help employers identify and deploy RAGAGEP. (29 C.F.R. § 1910.119(d)(3)(ii), (j)(4)(ii), and (j)(4)(iii))
Guidance Document	On June 5, 2015, OSHA issued a standard interpretation letter that explained how employers should interpret language in established codes, standards, published technical reports, recommended practices or similar documents. If an employer deviates from "shall" or "shall not" requirements, OSHA will presume a violation. If an employer chooses to use an alternate approach to published "should" recommendations, OSHA should evaluate whether the employer has determined and documented that the alternate approach is at least as protective, or that the published RAGAGEP is not applicable to the employer's operation. In the absence of employer documentation, the CSO should determine if the employer's approach is as protective and is a good engineering practice. "Should not" or similar language describes disfavored or less than fully protective practices, and are presumed to be violations. (https://www.osha.gov/laws-regs/standardinterpretations/2015-06-05-0)
Stakeholder's Challenge	On August 3, 2015, industry stakeholders challenged OSHA's guidance because they alleged OSHA changed regulations without entering into rulemaking (<u>American Petroleum Institutes, et al v. Department of Labor</u> , D.C. Cir., No. 15-1253). Stakeholders alleged the guidance effectively eliminated an employer's right to use internally developed alternative approaches to RAGAGEP, elevated consensus standards to the level of regulations, and required employers to update RAGAGEP to keep current with consensus standards.
Status of the Challenge and Guidance	As part of a negotiated settlement, OSHA rescinded the interpretation memorandum dated June 5, 2015, and replaced it with a new letter on May 11, 2016. In the new letter, OSHA changed how it interpreted some of the provisions and stated that an employer who deviates from "shall" or "shall not" requirements will have the opportunity to explain the rationale for the deviation and why it believes its approach reflects recognized and generally accepted good engineering practices. Further, if an employer does not follow "should" provisions or follows "should not" provisions, OSHA will not presume a violation. Instead, OSHA will evaluate if the employer's approach or equipment complies with RAGAGEP. (https://www.osha.gov/laws-regs/standardinterpretations/2016-05-11-0) On May 13, 2016, the court case was voluntarily dismissed.

Summary of Relevant Rules, Guidance Document, Stakeholder's Challenge, and Status of the Challenge and Guidance	
Guidance Title	Process Safety Management of Highly Hazardous Chemicals and Application of the Retail Exemption (29 CFR 1910.119(a)(2)(i))
Relevant Rule	In 1992, OSHA issued the PSM Standard to protect the safety of those who work with or near highly hazardous chemicals. From its inception, the standard exempted retail facilities from its requirements under the assumption that retailers dealt in small quantities, which lessens the risks of a catastrophic release of toxic chemicals. Shortly after issuing the regulation, OSHA issued a letter defining an exempt retail facility as an establishment "at which more than half of the income is obtained from direct sales to end users (the '50 percent test')."
Guidance Document	On July 22, 2015, OSHA issued a standard interpretation letter that redefined retail facilities as only "Retail Trade" sectors 44 and 45 of the North American Industry Classification System. Therefore, only facilities in those industry sectors would be eligible for the exemption.
Stakeholder's Challenge	On September 16, 2015, industry stakeholders challenged OSHA because they alleged OSHA issued a new standard within the meaning of the OSH Act when it narrowed the scope of the exemption for retail facilities. The stakeholders stated the change had an estimated cost of over \$100 million for the agricultural retail industry. (<i>Agricultural Retailers Association v. OSHA</i> , D.C. Cir., Case No. 15-1326)
Status of the Challenge and Guidance	On September 23, 2016, the Court vacated OSHA's standard interpretation for failure to abide by the OSH Act procedural requirements. In its decision, the Court rejected OSHA's argument that the memorandum did not issue or modify a standard, and that the memorandum only interpreted existing standard and therefore, was not subject to the procedural requirements in the OSH Act. Rather, the Court concluded that when OSHA narrowed the scope of the exemption for retail facilities, the agency issued a safety "standard" within the meaning of the OSH Act. The Court stated, "[t]he 'basic function' of OSHA's new definition [was] to address a 'particular significant risk,'" and therefore it constituted a new standard. Thus, OSHA was required to enter into rulemaking procedures, which includes notice-and-comment. (837 F.3d 60 (D.C. Cir. 2016))

EXHIBIT 4: GAO'S SUMMARY OF OSHA'S PROCEDURES

Excerpt from 2015 GAO Report *Regulatory Guidance Processes: Selected Departments Could Strengthen Internal Control and Dissemination Practices*



Department of
Labor

Appendix II

Occupational Safety and Health Administration (OSHA)

Overview

What OSHA Does

OSHA assures safe and healthful working conditions for men and women by promulgating protective health and safety standards; enforcing workplace safety and health rules; providing training, outreach, education, and assistance to workers and employers in their efforts to control workplace hazards; preventing work-related injuries, illnesses, and fatalities; and partnering with states that run their own OSHA-approved programs.

Target Audiences

Employers and their representatives, such as trade associations; covered workers and their representatives, such as unions, community groups and worker centers; and other safety and health professionals.

Written guidance review policy?

Yes No

Review decisions documented?

Yes No

Dissemination methods

OSHA website, hard copy delivery to area offices, mass mailings to employers, webinars, outreach in the school system, social media, newsletter (QuickTakes), and e-mail.

Used web metrics to evaluate online guidance dissemination?

Yes No

Used web metrics to change online guidance dissemination?

Yes No

Agency Use of Guidance

Policy issuances—established internal policies or policy interpretations.

OSHA officials told us policy issuance documents have been used to explain internal procedures for inspections and interpretations of regulations for specific programs. An example of a policy issuance was the inspection procedure directive, which contains procedures used to investigate and cite violations of particular OSHA regulations.

Non-policy issuances—provided information consistent with regulations.

1. **Fact sheets, information sheets, hazard alerts, and small entity compliance guidance:** Provided hazard identification and prevention information on critical safety and health hazards that often must be disseminated quickly.
2. **Booklets:** Provided information for constituents at all education levels.
3. **Fatal Facts:** Contained information about how to identify and prevent hazards that lead to fatalities at worksites. Written for employers, safety and health professionals, and workers.
4. **Quick cards:** Small laminated cards that provided safety and health information for employers, professionals, and workers with some safety and health background.
5. **Low-literacy materials:** For workers and employers with limited English proficiency and young workers.
6. **Letters of interpretation:** Clarified ambiguities in regulations.

Initiation, Development, Review, and Dissemination

Initiation: OSHA officials told us that they were often prompted to issue or revise guidance for clarification in response to feedback from regional offices and external stakeholders with questions on existing guidance.

Development and Review: Officials told us policy issuances were cleared by the Office of the Solicitor and OSHA leadership, and were sometimes sent to the Office of the Executive Secretariat for coordination of department-level review. OSHA program directors obtained input and technical and policy clearance for both policy and non-policy issuances from each of the other program directors and their directorate offices and resolved any comments. The final draft was sent to the Director of Administrative Programs for approval. The Deputy Assistant Secretary addressed unresolved disagreements concerning the substance or policy implications of proposed policy guidance. Officials told us that in some circumstances, OSHA sought expert input or input of the target audience for non-policy guidance materials to provide the most accurate and applicable information—and to make sure it is accessible—for workers and employers on a specific topic.

Dissemination: OSHA officials told us all documents were published on the OSHA website and e-mailed to stakeholders in the field. OSHA

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Department of Labor

Highlighted Practices

OSHA had separate written procedures in the form of instructions for both policy and non-policy issuances. Policy issuances are internal directives and supplementary guidance that have implications for internal statements of policy and procedure, while non-policy issuances are technical and educational guidance documents that provide information consistent with regulations and include such supplementary guidance materials as letters of interpretation and other non-policy statements issued by OSHA. These procedures outlined the roles and responsibilities for the Assistant Secretary of Labor for Occupational Safety and Health, OSHA program directors, and the Director of Administrative Programs and identified conditions under which guidance should be published.

OSHA's written procedures for non-policy issuances asked officials to answer a number of questions designed to ensure that the guidance document was in fact a non-policy issuance and thus did not require heightened scrutiny, including whether the draft issuance (1) established a new policy or procedure, (2) amended established policy, or (3) interpreted OSHA's authorizing statute. If the answer to any of these questions was yes, the drafter was directed to draft an OSHA directive or regulation.

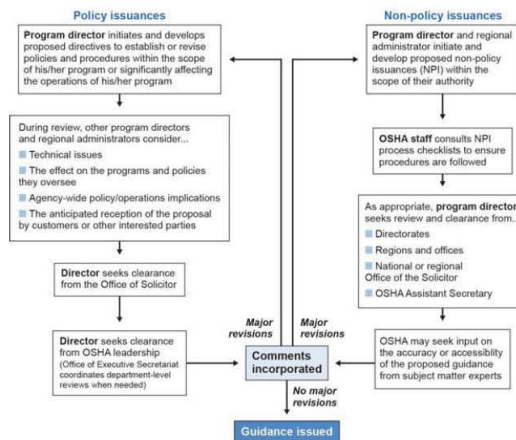
Occupational Safety and Health Administration (OSHA)

Continued

Initiation, Development, Review, and Dissemination, cont.

produces an e-mail based newsletter called QuickTakes that publicized new policy and non-policy guidance documents. Area offices distributed new educational guidance materials to the stakeholders who were difficult to contact electronically. They also conducted mass mailings and webinars, posted on social media sites, and reached out at conferences and schools. Dissemination also occurred with cooperative program participants such as Alliance and Partnership members and state partners. Participants and partners disseminate materials and guidance to members and constituencies.

Figure 11: OSHA Written Policies Outline Guidance Review Responsibilities



Source: GAO analysis of Occupational Safety and Health Administration (OSHA) policies and procedures. | GAO-15-368

Feedback on Guidance and Dissemination

OSHA officials told us they tracked and evaluated guidance to determine whether to revise guidance. If a guidance product was written for a specific OSHA standard that had not changed, revisions were infrequent. Guidance would be updated if based on a standard that has changed or a hazard where new information was available to assure workers are protected.

Examples of Recent Guidance-Related GAO Reports

Workplace Safety and Health: OSHA Can Better Respond to State-Run Programs Facing Challenges. GAO-13-320. Washington, D.C.: April 16, 2013.

Workplace Safety and Health: Further Steps by OSHA Would Enhance Monitoring of Enforcement and Effectiveness. GAO-13-61. Washington, D.C.: January 24, 2013.

EXHIBIT 5: SAMPLED GUIDANCE THAT DEMONSTRATED COMPLIANCE WITH CRITERIA FOR ISSUANCE

For 11 of 57 sampled guidance documents, OSHA maintained sufficient records to demonstrate compliance with the criteria for issuance. The following is an example of sampled guidance where OSHA successfully demonstrated compliance with the criteria for issuance.

Example from Sampled Guidance

Clarification of the Work Refusal Standard Under 29 CFR 1977.12(b)(2)

Relevant Rule – OSHA’s Work Refusal standard protects workers from discrimination if the employee has no reasonable alternative and refuses in good faith to expose himself to the dangerous condition.

Guidance Document – The guidance contained instructions to help staff in the Directorate of Whistleblower Protection Programs to use the work refusal standard appropriately when reaching decisions on whistleblower cases.

OSHA’s Reason for Issuing Guidance – The guidance provided instructions to staff on how to appropriately use the standard.

Criteria for Issuance – OSHA demonstrated compliance. For example

- **Consistency:** The final guidance document quoted the applicable standard, regulation and whistleblower manual section without interpreting or changing the information.
- **Views/Reception:** OSHA’s retained records with emailed comments from staff and included a discussion of the impact on key stakeholders in a background section. The key stakeholder, the whistleblower complainant, was impacted when OSHA staff incorrectly used the work refusal standard to close out his complaint without investigation. The guidance explained how often the standard was used, and how often it had been misused in cases where the complainant appealed OSHA’s decision.
- **Approval:** The final guidance document was signed by the approving official.

OIG Conclusion – OSHA staff followed procedures as written and documented compliance with OSHA’s criteria for issuance.

Source: Records for sampled OSHA guidance, and interviews of staff and officials

APPENDIX A: SCOPE, METHODOLOGY, & CRITERIA

SCOPE

Our audit scope covered 296 guidance documents identified by OSHA officials as meeting the definition of guidance documents and issued by OSHA's national office between October 1, 2013, and March 18, 2016 (the period covered by our audit). Our audit scope also included stakeholder challenges to OSHA guidance through September 8, 2016, and related court decisions or settlement agreements through April 25, 2017. Fieldwork was conducted at OSHA headquarters in Washington, DC.

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 reviewed OSHA's procedures to gain an understanding of internal controls considered significant to the audit objective, and confirmed our understanding of OSHA's guidance issuance processes through interviews and document reviews. We considered the internal control elements of control environment, control activities, information and communication, and monitoring during our planning and substantive audit phases and evaluated relevant controls. We reviewed laws, policies, procedures, documents, audit reports, and congressional hearings. We compared OSHA's procedures with other federal requirements including the APA and OSH Act. We interviewed staff and officials from SOL, OSHA's Office of the Assistant Secretary, and six OSHA directorates:

- 1) Enforcement Programs,
- 2) Construction,
- 3) Cooperative and State Programs,
- 4) Whistleblower Protection Programs,
- 5) Standards and Guidance, and
- 6) Technical Support and Emergency Management.

We obtained court cases concerning guidance documents from the SOL office. The cases were over the process of the audit. However, no official listing is maintained by the SOL office to know whether or not the listing is complete. We searched the Public Access to Court Electronic Records database and the various district courts websites to identify decisions reached.

We assessed the reliability of OSHA guidance documents by performing tests for completeness, accuracy, and consistency. The lack of a complete listing of the guidance documents is a scope limitation. In context, the likelihood of the auditors arriving at an incorrect or misleading conclusion is low. The record management issue is an issue about how OSHA create and maintain records. This issue would affect any guidance document that is created.

We used a random sampling plan to select items for testing from OSHA's universe of guidance documents. We used a 90 percent confidence level and 15 percent margin of error to select a total of 57 guidance documents. We interviewed OSHA staff and reviewed guidance issuance records to test if OSHA: (1) demonstrated whether the guidance would supplement or create new standards or requirements; and (2) complied with its own procedures for issuing guidance. Sample results were not projected.

CRITERIA

- *Administrative Procedures Act, Chapter 5 Federal Records Act, Title 36, Chapter XII, Subchapter BB*
- *Occupational Safety and Health Act of 1970*
- *Standards for Internal Controls in Federal Government, GAO/AIMD-00-21.3.1, dated November 1999 (effective FY 2000) and GAO-14-704G, dated September 2014 (effective FY 2016)*
- Various OSHA directives

APPENDIX B: AGENCY'S RESPONSE TO THE REPORT

U.S. Department of Labor

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



MAR 22 2019

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

FROM: LOREN SWEATT *Loren Sweatt*
Acting Assistant Secretary

SUBJECT: Response to OIG's Draft Report No. 02-19-001-10-105, "OSHA Procedures for Issuing Guidance Were Not Adequate and Mostly Not Followed"

Thank you for the opportunity to provide comment on the draft of the Office of Inspector General (OIG) Audit Report No. 02-19-001-10-105, "OSHA Procedures for Issuing Guidance Were Not Adequate and Mostly Not Followed." OSHA appreciates the efforts OIG undertook to develop this report.

OSHA agrees significant lapses occurred between 2013-2016 in the monitoring process and records management procedures to ensure timely and appropriate issuance of guidance documents. The OIG's finding that OSHA did not follow procedures or could not document it followed procedures for 80 percent of sampled guidance is troubling. OSHA is working aggressively to rectify this through a review of existing procedures, improved accountability, and documentation.

As OSHA advised the OIG during the audit process, OSHA has existing protocols to review documents before the issuance of guidance. For example, when preparing to issue guidance, draft guidance is to be reviewed and approved at multiple levels within the agency and Department (including the Office of the Solicitor). The review and approval process includes, among other things, an examination of the draft document for consistency with OSHA policy and for compliance with Administrative Procedure Act (APA) and Occupational Safety and Health Act (OSH Act) requirements, as well as a consideration of any risks involved in the agency action. While a formal decision tree is not included in the protocol, the process itself, including the issuance of a final guidance document with Assistant Secretary approval, requires guidance to be issued in compliance with applicable law after careful review.

Based on the OIG's audit as well as in response to successful legal challenges to OSHA's guidance documents discussed in the OIG's report, OSHA has taken and is taking additional

steps to ensure guidance follows proper procedures in the future. A review and revision of the Directives on Directives, which covers both policy and non-policy guidance clearance processes (including both ADM 03-00-002 (policy) and ADM 03-00-004 (non-policy)), is ongoing and the changes will be provided in the agency's corrective action plan. In the meantime, each of the Directorates responsible for issuing guidance is ensuring their staff is following required record maintenance policies and reminding staff of correct processes for issuing guidance documents. OSHA is also considering a more formal internal system through the directive control process to ensure guidance follows required protocols through the review, clearance, and final approval processes.

OSHA has a few clarifying comments regarding the draft report:

- OIG's audit report suggests that *all* of OSHA's documents must go through the same type or level of review. OSHA notes that a different level of review and analysis is appropriate for different types of documents. An examination of the letter of interpretation process has led to the Assistant Secretary of Policy's office now reviewing OSHA's Letters of Interpretation (LOI) to ensure these letters do not create new or additional requirements.
- OSHA agrees the agency must not "unintentionally create arbitrary and expensive employer compliance burdens" when deciding whether it is appropriate to issue policy guidance versus rulemaking as noted in the Executive Summary. The agency would note the unprecedented legal challenges of all four instances cited in Exhibit 2 of the report regarding the issuance of policy guidance or interpretation of rules demonstrates the need to reevaluate the existing clearance procedures and ensure those procedures are being followed and documented appropriately. Failure to follow existing protocols and consider costs to the regulated community, as well as, legal risk may have led to the issuance of these documents that were ultimately withdrawn or amended to address stakeholder concerns related to compliance burdens.
- OSHA agrees appropriate documentation of compliance with APA and OSH Act requirements was not present in the record examined by OIG. OSHA protocols do require OSHA and the Solicitors' Office to carefully evaluate these factors. In each of the four lawsuits referenced in OIG's audit report, the agency understands OIG may not have been able to substantiate these steps due to gaps in the records management procedures.
- Based on the successful challenges to OSHA's guidance documents, OSHA leadership and staff, as well as the Solicitors' Office, are acutely aware of the potential legal risks of issuing policy guidance documents. Going forward, the agency will carefully weigh and deliberate the pros and cons of issuing guidance and ensure appropriate documentation of those decisions.
- Some of the documents referenced in the report are not guidance documents and potentially outside the scope of OIG's concerns. For example, two of the documents, the Guidelines for Products Developed by OSHA's Alliance Program Participants and the National Construction Safety and Health Achievement Recognition Program (SHARP) National Construction Pilot Program Guidelines, are related to the management of the respective programs and thus do not appear to meet the OIG's definition of guidance.

See audit report p. 3 (“OSHA guidance documents are the tools and materials available to OSHA staff and stakeholders to help employers and workers comply with OSH Act standards, maintain safe working conditions, and protect worker rights.”). These documents relate to program management rather than compliance with OSHA standards.

Thank you again for the opportunity to provide comments. The agency looks forward to receiving the final report and the opportunity to describe the corrective action plan.

APPENDIX C: ACKNOWLEDGEMENTS

Key contributors to this report were Mark Schwartz, Rebecca Bowen, Renata Hobbs, Cassie Galang, and Jennifer Roberts.

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