

# U.S. Department of Labor

Office of Inspector General—Office of Audit

REPORT TO THE  
OCCUPATIONAL SAFETY AND  
HEALTH ADMINISTRATION



## OSHA COULD DO MORE TO ENSURE EMPLOYERS CORRECT HAZARDS IDENTIFIED DURING INSPECTIONS

Date Issued:  
Report Number:

March 31, 2017  
02-17-201-10-105

## **BRIEFLY...**

### **OSHA COULD DO MORE TO ENSURE EMPLOYERS CORRECT HAZARDS IDENTIFIED DURING INSPECTIONS**

#### **WHY OIG CONDUCTED THE AUDIT**

OSHA is responsible for the safety and health of 130 million workers employed at more than 8 million worksites nationwide. For calendar year (CY) 2015, the Bureau of Labor Statistics (BLS) reported 4,836 workers were killed on the job in the United States. Furthermore, OSHA estimates an additional 50,000 workers die each year from illnesses they contract as a result of workplace-related chemical exposures.

For fiscal year (FY) 2015, the Occupational Safety and Health Administration (OSHA) issued 80,825 citations for violations of safety and health standards that impacted approximately 950,000 workers. It is critical that OSHA ensures employers take action promptly to address the dangers it identifies.

#### **WHAT OIG DID**

We conducted a performance audit to answer the following question:

Did OSHA ensure employers took adequate and timely abatement actions in response to safety or health violations it cited during inspections?

#### **READ THE FULL REPORT**

To view the report, including the scope, methodology, and full agency response, go to: <https://www.oig.dol.gov/public/reports/oa/2017/02-17-201-10-105.pdf>.

#### **WHAT OIG FOUND**

OSHA did not ensure employers took adequate and timely abatement actions for an estimated 12,808, or 16 percent, of safety or health violations the agency had cited in FY 2015.

For approximately one-third of all abated citations OSHA issued during FY 2015, employers abated the hazard during the inspection or within 24 hours of OSHA identifying the hazard. However, for hazards that were not abated immediately, OSHA took an average of 81 days from the inspection date to issue a citation, and it took even longer to issue repeat and willful citations. This is primarily because the OSH Act allows up to six months for OSHA to issue a citation for any type of hazard. Employers are not required to abate a hazard until they receive a citation. As a result, hazards were not abated for an average of 86 days after the inspection date.

In addition, abatement of hazards identified at construction sites remained a challenge for OSHA. OSHA closed 16 percent of sampled construction site citations, not because the employers had corrected the hazards, but because the construction projects had ended. As a result, OSHA had no assurance the cited construction companies had corrected the identified hazards on subsequent construction sites.

Finally, we found one-third of 200 sampled citations lacked evidence that OSHA had conducted history searches to identify past violations. Compliance Safety and Health Officers (CSHOs) should conduct a search of past violations as part of their determination on whether to issue a citation for a repeat or willful violation. These more serious types of violations require the employer to provide additional documentation of abatement, such as photographs or receipts for equipment repairs.

#### **WHAT OIG RECOMMENDED**

To better ensure workplace hazards are corrected, we recommended the Deputy Assistant Secretary for Occupational Safety and Health adjust or better enforce its policies on abatement documentation, timeframes for issuing citations, abatement verification at smaller construction sites, and documentation of employer history searches. OSHA's comments on a number of the findings and recommendations did not change our report.

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**U.S. Department of Labor**

Office of Inspector General  
Washington, D.C. 20210



March 31, 2017

## **INSPECTOR GENERAL'S REPORT**

Dorothy Dougherty  
Deputy Assistant Secretary  
for Occupational Safety and Health  
200 Constitution Avenue, NW  
Washington, DC 20210

OSHA is responsible for the safety and health of 130 million workers employed at more than 8 million worksites nationwide. For calendar year (CY) 2015, the Bureau of Labor Statistics (BLS) reported 4,836 workers were killed on the job in the United States. Furthermore, OSHA estimates an additional 50,000 workers die each year from illnesses they contract as a result of workplace-related chemical exposures.

OSHA's enforcement plays an important part in its efforts to reduce workplace injuries, illnesses, and fatalities. OSHA's Compliance Safety and Health Officers (CSHO) conduct onsite visits to worksites, inspecting for hazards that could lead to worker injury or illness. When an inspector finds violations of OSHA standards or serious hazards, OSHA may issue citations and fines. A citation includes methods an employer may use to fix a problem and the date by which the corrective actions must be completed.

In fiscal year (FY) 2015, the Occupational Safety and Health Administration (OSHA) issued 80,825 citations for violations of the Occupational Safety and Health Act of 1970 (OSH Act). These citations impacted approximately 950,000 workers. It is critical that OSHA ensure employers take action promptly to address the dangers it identifies.

Our audit objective reviewed a random sample from the 80,825 citations OSHA issued in FY 2015 to determine the following:

Did OSHA ensure employers took adequate and timely abatement actions in response to safety or health violations it cited during inspections?

## RESULTS IN BRIEF

OSHA did not ensure employers took adequate and timely abatement actions for an estimated 12,808, or 16 percent, of safety or health violations that the agency had cited in FY 2015. We found problems related to the timeliness of abatement actions, abatement of citations in the construction industry, and OSHA's issuance of citations for repeat or willful violations.

For approximately one-third of all abated citations OSHA issued during FY 2015, employers abated the hazard during the inspection or within 24 hours of OSHA identifying the hazard. However, for the remaining 43,162 hazards that employers did not abate immediately, OSHA took an average of 81 days from the inspection date to issue a citation, and it took even longer to issue repeat and willful citations. This is primarily because the OSH Act allows up to six months for OSHA to issue a citation for any type of hazard. To protect their workers, employers can correct hazards identified by OSHA inspectors at any time, but they are not required to take action until they receive a citation. As a result, hazards were not abated for an average of 86 days after the inspection date; therefore, workers may have continued to be exposed to hazards or unhealthful conditions.

In addition, abatement of hazards identified at construction sites remained a challenge for OSHA. OSHA closed 16 percent of sampled construction site citations, not because employers had corrected the hazards, but because the construction project had ended. As a result, OSHA had no assurance the cited construction companies had corrected the identified hazards on subsequent construction sites.

Finally, we found one-third of 200 sampled citations lacked evidence that OSHA had conducted history searches to identify past violations. CSHOs should conduct a search of past violations as part of their determination on whether to issue a citation for a repeat<sup>1</sup> or willful<sup>2</sup> violation. Repeat and willful violations require the employer to provide additional documentation of abatement, such as photographs or other proof equipment has been repaired. Fifteen percent of the citations that lacked a history search were associated with employers who had prior violations, but to whom OSHA did not issue repeat or willful citations.

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<sup>1</sup> A repeat violation occurs if an employer has been cited previously for the same or substantially similar condition or hazard.

<sup>2</sup> A willful violation exists where an employer has demonstrated either an intentional disregard for the requirements of the OSH Act or a plain indifference to employee safety and health.

## BACKGROUND

OSHA sets and enforces safety and health standards; provides training, outreach, and education; and encourages continual improvement in workplace safety and health. The agency's enforcement programs include verification of the adequacy and timeliness of hazard abatement.

OSHA's inspections are intended to result in the abatement of violations of the OSH Act. OSHA issues citations that include a brief description of the violation, hazards that need correction, an abatement due date for correcting the hazards, and any additional documentation required. Employers are required to verify in writing that they have abated cited conditions. Abatement verification includes abatement certificates, abatement documents, abatement plans, and progress reports. Abatement documentation is the employer's physical proof of abatement and is required for each repeat, willful, and designated serious violation. Documentation may include receipts for the purchase or repair of equipment, photographic or video evidence, or other written records.

OSHA has delegated authority for overseeing its enforcement and program activities to 10 regional offices. These regional offices oversee operations of 90 area offices. Area Office Directors are responsible for determining if an employer has accomplished abatement.

## RESULTS

OSHA did not ensure employers took adequate and timely abatement action. We found:

1. For an estimated 12,808, or 16 percent, of cited safety or health violations, OSHA did not ensure employers took adequate and timely abatement actions.
2. For cited violations that were not abated immediately, OSHA took an average of 81 days from the inspection date to issue a citation, and it took even longer to issue repeat and willful citations. During this time, workers may have continued to be exposed to hazards or unhealthful conditions.
3. OSHA closed 16 percent of sampled citations (12 out of 76) related to safety issues at construction sites, not because the hazards had been corrected, but because the construction project had ended. As a result, OSHA had no assurance the cited construction companies had corrected the identified hazards on subsequent construction sites.

4. For one-third of 200 sampled citations, OSHA did not have evidence that it adequately considered whether a violation was repeat or willful. OSHA requires CSHOs to conduct a history search on employers as part of every inspection to determine if a citation should be repeat or willful. Repeat or willful violations require additional documentation for abatement.

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**OSHA DID NOT ENSURE EMPLOYERS TOOK  
ADEQUATE AND TIMELY ABATEMENT ACTIONS  
FOR AN ESTIMATED 16 PERCENT OF VIOLATIONS**

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Based on our review of a random sample of safety and health violations identified by OSHA in FY 2015, we estimate OSHA did not ensure employers took adequate and timely abatement actions for 12,808 violations.<sup>3</sup> While OSHA verified the abatement of an estimated 84 percent of safety or health violations it had cited, for 28 of 200 sampled violations, OSHA did not ensure employers took adequate and timely abatement actions. Five of the 28 citations were high-gravity serious violations. OSHA issues citations for high-gravity serious violations when there is a high likelihood of death from injury or illness; injury involving permanent disability; or chronic, irreversible illnesses. Of these 28 citations, abatement was either not completed (7 violations), had insufficient evidence of abatement (12 violations), or was completed after the due date (9 violations). When abatement is not completed or is not accomplished in a timely way, workers continue to be exposed unnecessarily to hazards or unhealthful conditions.

The lack of adequate abatement of violations occurred because OSHA did not: (1) obtain properly completed abatement certification forms; (2) follow its protocol for missing abatement certifications; or (3) obtain acceptable abatement documentation. OSHA Regional Administrators agreed with our assessment, but could not explain why this occurred. Moreover, OSHA did not establish goals for the two performance measures related to abatement of hazards in its FY 2016 Operating Plan. The goals related to abatement were associated only with falls — number of hazards abated associated with falls in construction, and number of hazards abated associated with falls in general industry.

Abatement documentation is the employer's physical proof of abatement completion, and includes the employer's self-certification. OSHA requires employers to submit more extensive documentation of abatement for all repeat, willful, and designated serious violations. Examples include photographs, videos, receipts for purchases of new equipment, bills for repair services, reports or evaluations by safety and health professionals, reports of analytical testing, and records of employees' completed training.

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<sup>3</sup> We are 95 percent confident OSHA did not ensure employers took adequate and timely abatement actions for 10,507 to 15,110 citations.

OSHA guidance does not specify criteria for CSHOs to follow to determine abatement due dates. Our interviews with CSHOs indicated they used their professional judgment and worked with employers to set the abatement due date, contingent upon the Area Director's approval.

According to OSHA guidance, if abatement is past due, OSHA reminds the employer by telephone, issues a follow-up letter, and if the documentation is not received within seven days, issues another citation.

Of the seven sampled violations for which employers did not complete abatement, five were serious, one was a repeat, and one was other-than-serious. A serious violation is issued when there is a substantial probability that death or serious physical harm could result. For example, an employee at a copper company had his middle and index finger tips amputated when he reached into a double draw cutting shear. The employer was aware of the amputation hazards, but chose to ignore them. Rather than fixing the cutting shear, employees were trained to work with the exposed amputation hazard. OSHA issues a citation for a repeat violation when, upon re-inspection, it finds a substantially similar violation to one it had previously cited. For example, OSHA cited an employer for not posting information regarding its safety and health program, a violation for which the employer had been cited two years earlier.

For the 12 sampled citations in which the employers had provided insufficient evidence of abatement, we found the following documentation was missing: 1) self-certified abatement certificates; 2) required additional documentation, such as abatement photos, equipment receipts, and training certificates; and 3) other evidence to substantiate that employers had corrected the hazards. Abatement documentation must be accurate and describe the abated condition adequately. For example, in one case, an employer was cited with a serious violation for exposing employees to impermissible levels of lead. The CSHO requested documentation to verify the hazard was abated; however, the employer failed to provide any proof. Nevertheless, OSHA classified the citation as "Abatement Complete." In a second example, a storage company was cited for not training employees on the proper use of special precautionary techniques and tools. After OSHA issued the citation, the employer provided — and OSHA accepted — an abatement certificate that stated the employer had purchased and put to use electrical hazard rated personal protective equipment. However, the equipment purchase did not fully address the citation, which was primarily related to a lack of training, not an equipment issue.

For the nine sampled citations that were abated after their due date, eight were serious and one was other-than-serious. Employers abated the violations an average of 53 days past their due dates, ranging from 14 days to 119 days. For one of the serious violations at a construction company, workers were exposed for approximately three months to the risk of being struck by cement, brick, and tools located 10 feet above the edge of the excavation site.

OSHA Area Directors indicated they monitored overdue abatement by reviewing weekly open inspection reports that regional officials stated they obtained from OSHA's management information system. These reports, which showed the number of violations cited with abatement overdue more than 60 days, were discussed with area offices during weekly regional teleconferences.

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**FOR HAZARDS NOT ABATED IMMEDIATELY, OSHA TOOK AN AVERAGE OF 81 DAYS FROM THE INSPECTION DATE TO ISSUE A CITATION**

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Of the 62,773 abated violations,<sup>4</sup> employers corrected 19,611 hazards, or 31 percent, immediately during the inspection or within 24 hours of OSHA uncovering the hazard. However, for the remaining 43,162 hazards that employers did not abate immediately, OSHA took an average of 81 days<sup>5</sup> from the inspection date to issue a citation, and it took even longer to issue repeat and willful citations. While an OSHA inspector typically informs the employer of hazards at the time of the inspection, a citation is not issued until it has been reviewed and approved by a supervisor. The OSH Act allows up to six months for OSHA to issue a citation for any type of hazard. Employers are not required to take action to abate the hazard until they receive a citation, although some employers chose to abate the hazard before OSHA issued the citation. As a result, hazards were not abated for an average of 86 days after the inspection date, during which time workers may have faced continued exposure to hazards or unhealthful conditions.

After OSHA issues a citation, employers are afforded their due process and allowed the right to contest. Employers are not mandated to initiate abatement until they have received the citations, and OSHA does not allow CSHOs to issue citations during inspections. While some citations may take longer to issue than others, such as those requiring laboratory results, OSHA guidance does not differentiate between the types of hazards being cited in establishing timeframes to issue citations.

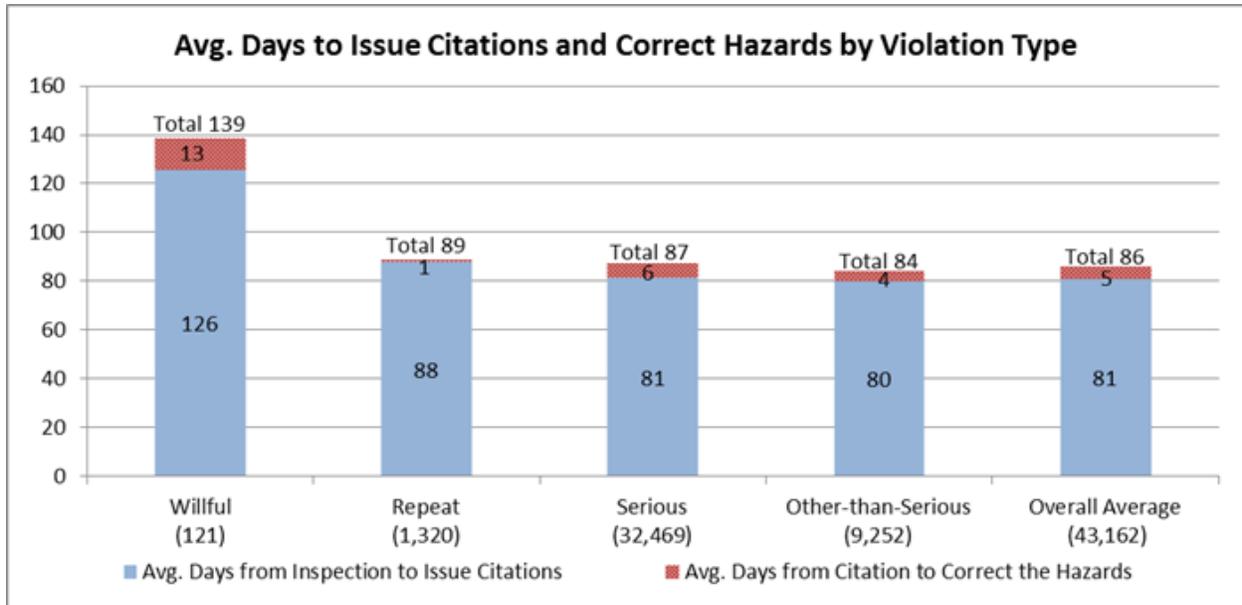
Of the violations that employers had abated, 32,469, or 75.2 percent, were serious; 9,252, or 21.4 percent, were other-than-serious; and the remaining 1,441, or 3.3 percent, were either repeat or willful. OSHA took an average of 81 days from the inspection date to issue a citation, with 40 percent taking more than three months. According to OSHA officials, they expect repeat and willful citations to take more time to issue, as more stringent evidentiary requirements are required for that type of citation classification. On average, employers took 86 days from the date the inspection started to complete abatement. Chart 1 shows the average number of elapsed days to issue and to correct hazards by violation type.

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<sup>4</sup> To calculate the abated violations, we excluded citations that were not yet due, Hazard Alert Letters used to warn employers about the dangers of specific industry hazards, and where employers failed to abate. From the 80,825 citations for violations OSHA issued in FY 2015, employers abated 62,773 hazards.

<sup>5</sup> OSHA officials disagreed with OIG's statement that it took the Agency 81 days to issue citations. They stated it took an average of 48 working days to issue citations following the opening of an inspection, but did not provide support for this number.

**Chart 1: Average Number of Days to Issue and Correct Hazards by Violation Type**



**ABATEMENT OF HAZARDS IN THE CONSTRUCTION INDUSTRY CONTINUED TO BE A CHALLENGE**

According to OSHA, in CY 2015, 937 of 4,379 (21 percent) worker fatalities in private industry occurred in the construction industry. BLS indicated these 937 fatal work injuries represented the highest total since 975 such fatalities occurred in 2008. The leading cause of worker deaths at construction sites was falls, which accounted for 39 percent of fatalities. Furthermore, fall protection was listed as the most frequently cited violation for FYs 2015 and 2016; and fall protection was also the most cited standard for willful and serious violations during this same period.

In 1991, GAO issued a report<sup>6</sup> that found OSHA “inadequately addressed confirmation of abatement of hazards found at construction worksites.” The report indicated OSHA treated construction inspections like non-construction inspections, and required employers to correct the problem. Once the construction site was no longer in operation, OSHA considered the hazard abated and required no further abatement effort by the employer even if the cause of the problem was untrained personnel, defective equipment, or inadequate procedures for performing work safely. As a result, the same hazards could continue at another worksite if the same personnel, equipment, and procedures were used again.

<sup>6</sup> GAO report dated May 1991, *OSHA Policy Changes Needed to Confirm That Employers Abate Serious Hazards*

Our audit identified problems similar to those GAO reported regarding hazards found at construction sites. Since some construction activities are of short duration, work at a location where a hazardous condition was cited may have been completed before OSHA had an opportunity to confirm the employer abated the hazard. While OSHA's guidance requires employers to certify abatement for violations related to items such as equipment, training, hazard communication, and respirator regardless of construction site closure, OSHA acknowledged it could not always verify abatement of construction hazards. OSHA officials stated the small and transient construction employers often change their name, dissolve the company, or just disappear. Commercial construction may be active long enough for OSHA to verify the abatement; however, typically on residential construction, the small contractors are inactive within a day or two after receiving the citation and OSHA does not have the opportunity to verify abatement.

In our sample, 76 of 200, or 38 percent, of OSHA's citations were for construction sites. For 27 of the construction site citations, employers did not wait to receive a citation from OSHA, but went ahead and corrected the deficiency within 24 hours of the inspection. Of the remaining 49 citations, OSHA closed 12 because construction activity had ended. Due to a lack of clear guidance,<sup>7</sup> some area offices closed the citations and listed the abatement status as "abatement completed," while other offices listed the abatement status as "not completed – worksite changed." Regardless of the closure code offices used, the employer had not completed abatement and the same hazards could exist at the employer's subsequent construction sites.

Regional officials indicated they were not aware of any specific guidance on how to categorize abatement status in OSHA's Integrated Management Information System when a construction project had ended. A regional official also indicated area offices were not aware of any monitoring efforts to track these employers from one construction site to the next. Another regional official stated OSHA has to ensure it schedules inspections based on neutral and objective criteria, and scheduling inspections based on prior abatement actions would not meet the criterion of neutrality.

Regarding citations issued solely for fall protections, OSHA took less time to issue citations, as did employers to complete abatement. On average, OSHA took 50 days from the date of inspection to issue the citations, and likewise, employers took the same number of days from the inspection date to abate the hazards. Nonetheless, had OSHA issued citations sooner employers could have potentially corrected the hazards sooner as well, thereby protecting employees. In addition, such expeditious action would have reduced the chance of the construction/project ending before OSHA officials could verify abatement.

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<sup>7</sup> OSHA's Field Operations Manual (FOM), Chapter 7 XI.A.1.a, states, "Construction site closure or hazard removal due to completing of the structure or project will only be accepted as abatement without certification where the area office CSHO verifies the site closure/completion and where closure/completion effectively abates the condition cited." This lacks clarity because FOM, Chapter 7 XI.A.2, states, "Equipment-related and all program-related (e.g., crane inspection, hazard communication, respirator, training, competent person, qualified persons, etc.) violations will always require employer certification of abatement regardless of construction site closure."

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**LIMITED EVIDENCE OF HISTORY SEARCH TO DETERMINE IF A CITATION SHOULD BE REPEAT OR WILLFUL**

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For 66 of 200, or one-third of our sampled citations, OSHA did not have evidence that it conducted a required history search to consider whether a violation was repeat or willful. Our history search revealed that for 10 of these citations the employers had a history of prior violations and, therefore, could potentially have been repeat or willful violations. OSHA did not issue repeat or willful violations for any of these 10, and it could not demonstrate whether it had considered doing so. OSHA guidance does not require documentation of a history search unless it is a repeat violation. Without evidence of a history search, OSHA cannot determine whether its CSHOs misclassified violations.

Due to the wide variety of industries and associated hazards CSHOs are likely to encounter, their pre-inspection preparation is essential in order to conduct a quality inspection. If prior inspections showed violations, CSHOs could use the inspection history to document an employer's heightened awareness of a hazard and/or standard in order to support development of a willful citation or OSHA's decision to issue a repeat citation. As part of this pre-inspection process, CSHOs are required to review data for information relevant to the establishment scheduled for inspection. This may include inspection files and source reference material relevant to the industry. CSHOs are also required to conduct an establishment search by accessing OSHA's database and using name variations and address matching in their establishment search (due to possible company name changes and status) to maximize their efforts.

**OIG RECOMMENDATIONS**

To better ensure the adequacy and timeliness of OSHA's hazard abatement verification, we recommend the Deputy Assistant Secretary for Occupational Safety and Health:

1. Reinforce OSHA's policies to its staff regarding the documentation OSHA requires employers to submit as evidence they have abated a cited hazard.
2. Reevaluate OSHA's policy on timeframes for issuing citations, and determine if there is a need to develop different timeframes for different types of citations.
3. Evaluate methods for smaller and transient construction employers to timely verify abatement when abatement cannot be obtained during the inspection.

4. Revise OSHA's policies to provide clearer guidance on how to obtain abatement verification at smaller construction sites where contractors become inactive in a very short period of time.
5. Require CSHOs to document they conducted a pre-inspection history search on employers to help determine if a repeat or willful citation should be issued.

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## **MANAGEMENT'S RESPONSE**

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OSHA disagreed with many of the report's conclusions and recommendations, and expressed concerns regarding the underlying methodology and data analysis we used. However, OSHA provided no support for its comments, and we made no changes to our report.

OSHA stated incomplete documentation is a serious concern to the agency, and agreed with recommendation 1 to reinforce its policies to staff regarding documentation required of employers.

OSHA officials disagreed with our calculation of the number of days it took the agency to issue citations, but provided no support for its calculation. To get hazards corrected faster, we continue to believe OSHA should evaluate its current policy to develop different timeframes for different types of hazards, as employers are not required to take action to abate the hazard until they receive a citation.

OSHA also disagreed with our recommendations that the agency should evaluate its policy regarding smaller and transient construction employers, stating that the report's conclusions were not based on a valid representative sample of OSHA inspections. OSHA's concerns about the sampling methodology are not valid because its methodology used the number of construction site inspections rather than the number of citations. While we agree with the numbers OSHA reported using inspections, the audit's random sample was based on OSHA's universe of citations, not inspections.

Almost 25 years ago, GAO found OSHA had inadequately addressed confirmation of abatement of hazards found at construction worksites. We are concerned a similar problem still exists, based on our finding that OSHA closed 16 percent of sampled construction site citations because the construction projects had ended.

Finally, OSHA disagreed with our recommendation that the agency require CSHOs to document they conducted a pre-inspection history search on employers. OSHA stated a history search is already a fundamental part of every OSHA inspection, and noted it cannot legally issue a citation with a repeat classification without documenting that the classification is based on a prior citation. This is true regarding citations for repeat

violations; however, as stated in the report, our concern is that OSHA lacked documentation of pre-inspection history searches when a repeat violation was not issued.

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

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



Elliot P. Lewis  
Assistant Inspector General  
for Audit

## Appendices

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**APPENDIX A**

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**OBJECTIVE, SCOPE, METHODOLOGY, AND  
CRITERIA**

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**OBJECTIVE**

Did OSHA ensure employers took adequate and timely abatement actions in response to safety or health violations it cited during inspections?

**SCOPE**

The audit covered 80,825<sup>8</sup> citations issued for violations of safety and health standards during FY 2015.

Fieldwork was performed at OSHA's National Office in Washington, DC, regional offices in Region 4 (Atlanta), Region 3 (Philadelphia), and Region 9 (San Francisco), and area offices in Atlanta West, Fort Lauderdale, Tampa, Philadelphia, Allentown, and Oakland.

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 the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

**METHODOLOGY**

To achieve our objective, we collected and summarized background information on OSHA issues related to the audit objective. We examined OSHA's controls over the issuance of citations by reviewing applicable criteria, reviewed OSHA's response to our customized Internal Control Questionnaire, interviewed key OSHA officials to obtain an understanding of OSHA's process and procedures followed during verification of the adequacy and timeliness of abatement, and statically selected citations from the 10 regions to answer our audit objective and support our results and conclusions.

We assessed the reliability of data for the 80,825 citations in our audit we received from OSHA on November 4, 2015. We considered the completeness and reliability of the data received from OSHA as follows:

- 1) For the universe of citations, we performed edit/logic checks on the data to identify outliers and duplicates. We then compared the data to citations

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<sup>8</sup> This number included 627 Hazard Alert Letters for hazards that warrant some type of notification to the employer and employee representative describing the hazard and suggesting corrective action.

data reported on OSHA’s webpage. We reconciled the data and concluded it was sufficiently reliable for testing.

- 2) We considered the accuracy and reliability of the data by judgmentally selecting five citations and comparing them to website data and ensuring the citations were the same in both data sets, including all the selected fields. We concluded the data was sufficiently accurate and reliable for testing.
- 3) We tested the data for duplications and citations outside of our scope by removing any duplicates and ensuring the issuance date was within FY 2015. Based on our testing, we concluded the data to be sufficiently complete and within the scope of our audit.

We assessed the effectiveness of controls by interviewing National and regional officials; reviewing their responses to internal control questionnaires; reviewing OSHA guidance for citations and abatement, including the Field Operations Manual; and reviewing Management Accountability Program reports issued by OSHA that addressed abatement.

For sample selection, we used a stratified two-stage random sampling plan to select regions (stage 1) and citations for review (stage 2). For stage 1, we grouped regions into 3 strata (small, medium, and large) based on their number of citations and selected one region from each stratum — Regions 3, 4, and 9. For stage 2, we used a 95 percent confidence level and 10 percent margin of error to select a total of 200 citations, as follows:

Region	Number of Sampled Citations
9	28
3	64
4	108

## CRITERIA

- **OSHA’s Field Operations Manual** – This manual is used to provide OSHA offices, State Plan programs, and federal agencies with policy and procedures.
- **OSHA’s Abatement Verification Regulation, Title 29, Code of Federal Regulations, Section 1903.10** – This regulation outlines guidelines that are to be used to verify abatement.
- **OSHA Act** – This act is the primary federal law which governs occupational health and a safety in the private sector and federal government in the United States.

**MANAGEMENT RESPONSE TO DRAFT REPORT**

U.S. Department of Labor

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



MAR 22 2017

Reply to the attention of:

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

FROM:   
DOROTHY DOUGHERTY  
Deputy Assistant Secretary for OSHA

SUBJECT: Response to OIG's Draft Report No. 02-17-201-10-105, "OSHA Could Do More to Ensure Employers Correct Hazards Identified During Inspections"

Thank you for the opportunity to provide further comment on the most recent draft of the Office of Inspector General (OIG) Audit Report No. 02-17-201-10-105, "OSHA Could Do More to Ensure Employers Correct Hazards Identified During Inspections." Although OSHA appreciates the efforts OIG undertook to develop this report, the agency respectfully disagrees with many of OIG's conclusions and subsequent recommendations. OSHA is particularly concerned with the underlying methodology and data analysis OIG used to reach these conclusions.

The OIG report contends that OSHA did not ensure that employers took adequate and timely abatement action following the issuance of citations. There were three general points, in particular, that OIG emphasized:

1. For an estimated 12,808, or 16 percent of cited safety or health violations, OSHA did not ensure employers took adequate and timely abatement actions.

OIG's conclusions with respect to this issue were drawn from an analysis of 200 citations for violations of OSHA standards from three OSHA regions: III, IV, and IX. OSHA, however, believes this analysis is flawed for several reasons. First, OIG, in its report, noted only 28 instances of non-abatement out of the 200 citations. Of these 28 instances, only seven (3.5 percent) of the 200 citations had no documented abatement, and the remaining 14 had only partial or late abatement documentation. The determination that OSHA did not ensure employers took adequate and timely abatement actions is based primarily on the review of abatement documentation. Incomplete documentation is a serious concern to the agency; however, a lack of proper documentation does not necessarily indicate that the abatement did not occur.

A crucial aspect of OSHA's mission is to ensure quality and lasting abatement. OSHA recognizes that in many instances employers may need additional time to achieve lasting abatement and, when appropriate, the agency will work with employers through mechanisms such as settlement agreements to give employers the time and resources to achieve abatement of

hazards that will ultimately be the most protective for exposed employees. Limiting abatement verification analysis to the narrow data set selected by OIG without taking into account any of the additional factors noted in this reply does not provide an adequate representation of OSHA's efforts to achieve quality abatement that is most beneficial to workers.

In addition, by focusing solely on lack of abatement documentation as opposed to actual conditions at the cited worksite, OIG's analysis presumes continued exposure to hazardous conditions. However, OIG's audit process and methodology did not research the actual outcome of hazardous conditions from the selected violations. For example, in its report OIG references a case that remained open for three months involving a trenching operation. Because the case remained an open investigation during this time frame, OIG concluded that employees were continuously exposed to struck-by hazards from cement, brick, and tools. However, given the typical work operations in the construction industry, the likelihood of a trench remaining open day after day with the same hazardous conditions is extremely low, and it is more likely the cited hazardous conditions were abated well before the receipt of abatement verification. OIG's methodology did not provide evidence of when the hazardous conditions at this worksite were actually abated versus when abatement was received and accepted by the relevant OSHA Area Office. As a result, review of abatement documentation alone is not sufficient to conclusively assess if adequate and timely abatement actions were taken and the real conditions at a worksite. Indeed, in the trenching operation cited in the OIG report, OSHA confirmed with the Area Office that the hazard was actually abated prior to the receipt of abatement verification. In fact, the employer in this example was removed from the jobsite by the general contractor following the inspection.

To assess compliance beyond abatement documentation, the agency routinely conducts post-citation follow-up inspections to verify abatement of hazards. For example, in FY2015, the agency conducted 1,045 follow-up inspections. Of these follow-up inspections, OSHA issued only two failure-to-abate violations, indicating that, for the initial inspection findings, employers are almost universally abating hazards. For cited conditions that require longer periods of abatement, OSHA sometimes conducts monitoring inspections to ensure that hazards are being abated and employees protected. In FY2015, OSHA conducted 123 monitoring inspections. Of these monitoring inspections, the agency did not issue any failure-to-abate violations and only issued two repeat violations.

Moreover, the report presents FY2015 data analysis from data collected in late October 2015. An analysis of the complete set of FY2015 data several months after the completion of FY2015 demonstrates that FY2015 data collected in late October 2015 does not take into account several important factors in hazard abatement. OSHA's abatement data dramatically changes over time as cases are settled, resolved, or decided through both OSHA processes and litigation before the Occupational Safety and Health Review Commission (OSHRC). According to OSHA's analysis of over 70,000 violations from FY2015, over the course of the year following the October 2015 collection of FY2015 data, the percent of unabated hazards is under 0.5 percent. An analysis of FY2014 yielded an almost identical result. OSHA's basis for this analysis is attached to this memorandum as Appendix A.

2. For cited violations that were not abated immediately, OSHA took an average of 81 [calendar] days from the inspection date to issue a citation, with an even lengthier amount of time to issue citations with willful and repeat classifications. Workers were exposed to hazardous conditions during these interim time periods.

Under authority given to OSHA by Congress through the OSH Act, OSHA must issue a citation within six months of the occurrence of a hazard. In FY2015, OSHA took an average of only 48 working days to issue citations following the opening of an inspection—far below the audit report’s claim of 81 calendar days. For the purposes of documenting time for citation issuance, OSHA only counts working days, not calendar days to more accurately represent the actual time a case is in review prior to issuance. Pursuant to OSHA’s established procedures, each citation and supporting violation documentation is reviewed by Area Office managers and signed by the Area Director.

As noted in the report by the OIG, certain actions such as willful citations can take longer to be issued due to the complexity of the investigation. Additionally, significant resources are often necessary in more complex cases. For example, in inspections involving complex standards such as OSHA’s Process Safety Management (PSM) standard or significant events involving fatalities and catastrophes, agency Compliance Safety and Health Officers (CSHOs) must conduct extensive document review and interview witnesses, as well as perform an extensive site investigation. In those cases, the six-month statutory deadline is difficult to meet. In addition, these cases require review by the Office of the Solicitor as well as the Regional and National OSHA offices for policy, legal, and technical considerations. Such review is critical to develop legally defensible citations that, if challenged, can withstand judicial scrutiny and ultimately lead to abatement of workplace hazards.

It should be noted that even if OSHA were to issue citations at any point within the six-month statutory period, once an employer contests a violation before the OSHRC, they are not under any legal obligation to abate the hazard until the contest and any related litigation concludes with a final order from the OSHRC. OSHA does, however, actively encourage employers to correct hazards during inspections and notes that in FY2015, the year under review by the OIG, more than 50 percent of abated hazardous conditions—including 55 percent of high gravity hazardous conditions—were abated prior to citation issuance. In addition, 68 percent of the cited hazardous conditions were corrected prior to the abatement due date, excluding hazardous conditions that were corrected via Quick Fix and during inspections.

3. The OIG report states that 16 percent of the citations related to safety hazards issued at construction sites were abated due to project completion and suggest that these hazards could be transferred to other worksites.

OSHA understands OIG’s concern that in construction and other mobile work industries employers may create the same or similar hazards at different worksites. OSHA, however, respectfully disagrees with this assumption. First and foremost, OSHA is concerned that this audit finding misconstrues the legal authorities governing OSHA inspections. Under the OSH Act, OSHA can only issue citations for circumstances where a hazard to which employees are

exposed actually exists. For instance, if an OSHA CSHO documents the existence of a fall hazard at a given time and place on a jobsite, a citation may be issued for that hazard. However, once the project is completed, no fall hazards can legally exist as no employees are exposed to fall hazards at that particular jobsite.

In addition, unless OSHA has specific evidence demonstrating the potential existence of a hazard, OSHA is precluded by law from opening an inspection at another worksite solely on the basis of the issuance of a prior citation or the mere presence of a previously cited employer. Furthermore, OSHA may not open an inspection simply because of the similarity of work at a particular jobsite is the same or similar to work at another jobsite of that employer. Although OSHA has issued citations to the same employer for similar hazards at multiple worksites, such repeated non-compliance is only one basis for initiating a legally valid inspection, and contributes to agency consideration of either a repeat or willful classification of any resulting citations.

Finally, OIG's data does not accurately depict the level of construction inspection activity by the agency. Of the 200 citations analyzed by OIG, only 76 were from construction worksites. OSHA, however, conducts approximately 50 percent of its inspections at construction worksites. As a result, OSHA believes that this audit report finding is misleading because it is not based on a valid representative sample of OSHA inspections.

## RECOMMENDATIONS

### **Recommendation 1: Reinforce OSHA's policies to its staff regarding the documentation OSHA requires employers to submit as evidence they have abated a cited hazard.**

**OSHA's Response:** Chapter 7 of the OSHA Field Operations Manual already provides clear guidance on the types of documentation required and that guidance is delivered in OSHA Compliance Safety and Health Officer (CSHO) training courses. As noted above, OSHA does not believe documentation is the only indicator of abatement, and, as a result, OSHA does not believe that the manner in which the data presented by OIG demonstrates any deficiencies in OSHA's current processes. OSHA accepts the recommendation and will further emphasize this requirement in future CSHO and management training.

### **Recommendation 2: Reevaluate OSHA's policy on timeframes for issuing citations, and determine if there is a need to develop different timeframes for different types of citations.**

**OSHA's Response:** OSHA respectfully disagrees with this recommendation. As noted above, the OSH Act grants OSHA six months to conduct an inspection and issue a citation. 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, which in the end, will lead to more robust and comprehensive abatement.

**Recommendation 3: Evaluate methods for smaller and transient construction employers to timely verify abatement when abatement cannot be obtained during the inspection.**

**OSHA's Response:** OSHA respectfully disagrees with this recommendation. Pursuant to well established law, OSHA is generally prohibited from opening inspections at a worksite based solely on a cited hazard from a previous worksite. Furthermore, long-standing case law recognizes closing a worksite as an acceptable form of abatement. Once the worksite is closed and no employees are working there, an employer has met its legal obligation to abate a hazard. In situations where OSHA lawfully initiates an inspection at a subsequent workplace, the agency has several options to deter continued non-compliance through the use of repeat and willful classifications, which lead to higher proposed penalties. Moreover, even in cases where employers have demonstrated indifference to their OSH Act obligations by committing willful, repeated, or failure-to-abate violations, OSHA may not initiate an inspection based solely upon previous enforcement history.

**Recommendation 4: Revise OSHA's policies to provide clearer guidance on how to obtain abatement verification at smaller construction sites where contractors become inactive in a very short period of time.**

**OSHA's Response:** OSHA respectfully disagrees with this recommendation. We believe our existing guidance is acceptable and addresses the dynamic conditions that exist on construction sites. For instance, as an incentive for construction employers to abate hazards during an inspection, OSHA offers a penalty reduction for "Quick Fix" abatement where an employer abates hazards, such as repairing a broken guardrail that creates a fall hazard, before the CSHO leaves the jobsite.

**Recommendation 5: Require CSHOs to document if they conducted a pre-inspection history search on employers to help determine if a repeat or willful citation should be issued.**

**OSHA's Response:** The audit report does not support this recommendation, as a history search is already a fundamental part of every OSHA inspection. OSHA is statutorily required to evaluate history as one of the factors in determining penalty. In fact, OSHA cannot legally issue a citation with a repeat classification without documenting that the classification is based on a citation for the same standard or a substantially similar hazard that has become a final order of the OSHRC. In addition, an employer's citation history is only one of many factors in determining whether a willful classification of a citation is valid; other factors, such as any good faith efforts to comply with the cited standard, can mitigate willful classification.

Thank you for the opportunity to comment on this report. In summary, I want to reiterate the findings of the data analysis included in Appendix A. As a basis for its recommendations, OIG analyzed a narrow set of 200 citations, from which it concluded that 16 percent of all OSHA citations were not adequately and timely abated. In addition, in FY2015, the year under review by the OIG, more than 50 percent of abated hazardous conditions were abated prior to citation issuance. This conclusion is wholly inconsistent with OSHA's analysis of over 140,000 citations over two fiscal years, which shows that less than one percent of all citations were not abated.

Appendix A

OSHA Analysis of Violation Abatement Data, by Report Run Date

Abatement Status	FY 2015 Violation Report as of October 2015 to OIG		FY 2015 Violation Report as of December 2016		FY 2014 Violation Report as of March 2017	
	% of Violations	# Violations	% of Violations	# Violations	% of Violations	# Violations
Abatement Completed	58.33%	40,836	64.62%	46,334	66.81%	50,291
Corrected During Inspection	23.44%	16,410	22.96%	16,464	21.57%	16,234
HAL, Abatement not Requested	0.01%	4	0.01%	6	0.00%	1
Closed - AD Discretion	2.55%	1,788	3.33%	2,384	2.77%	2,087
Closed - Employer Out of Business	0.38%	268	0.63%	452	0.56%	424
Closed - Solicitor Advised	0.01%	7	0.03%	23	0.06%	42
Closed - Worksite Changed	4.54%	3,177	5.53%	3,964	5.48%	4,122
Quick Fix	2.49%	1,744	2.44%	1,751	2.64%	1,986
Pending abatement	8.24%	5,769	0.45%	321	0.12%	91
<b>Total<sup>1</sup></b>	<b>100%</b>	<b>70,003</b>	<b>100%</b>	<b>71,699</b>	<b>100%</b>	<b>75,278</b>

<sup>1</sup> Total excludes Hazard Alert Letters, violations that had been deleted or were contested, violations with a Petition to Modify Abatement, and violations where the abatement due date had not yet passed as of the date that the report was run.

**APPENDIX C**

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**ACKNOWLEDGEMENTS**

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