



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>