


## APPENDIX B: AGENCY'S RESPONSE TO THE REPORT

U.S. Department of Labor

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



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

FROM: DOUGLAS L. PARKER 

SUBJECT: Response to Office of the Inspector General Report  
*OSHA Needs to Better Address Complaints and Referrals for  
Increased Worker Safety No. 02-23-001-10-105*

This memorandum is in response to the Office of Inspector General's (OIG) contracted audit, conducted by the Lopez Group, to address the question: "To what extent did OSHA ensure complaints and referrals were adequately and timely addressed?" We take the OIG's findings seriously and appreciate the opportunity to address them. However, we continue to have serious concerns, many of which were brought to your attention in our response to the Lopez Group's preliminary results (See Response from August 13, 2022, to Office of Inspector General's Results on OSHA's Complaints and Referrals 109-P20-021-10-105 attached and incorporated here by reference).

The principal limitation of the audit is stated in the audit itself: "This report does not project the audit results of the sampled complaints and referrals to either the total population of unprogrammed complaint- and referral-initiated inspections or to those that did not result in an inspection" (OIG Report p. 4). The audit analyzed 100 sample case files in 3 of OSHA's 10 Regions, less than .2 percent (0.159 percent) of the 62,595 complaints and referrals OSHA received during the audit period (FY 2019-FY 2020). The OIG has declined to provide the criteria used to select the sample case files, leaving OSHA in the difficult position of being unable to do its own follow up to determine how representative the samples may be of larger issues, while having to respond to an audit report that concedes it does not provide a basis for the sweeping recommendations it contains.

Despite asserting the report does not project outcomes to the more than 62,000 files that the Lopez Group did not review, the final report Results do exactly that. We address the Results and the lack of support for these conclusions below.

**Result 1: OSHA Did Not Sufficiently Involve Complainants and/or Witnesses in the Investigation or Inspection Process.**

Throughout the audit there has been a misunderstanding regarding the role of witnesses and complainants in the OSHA process. The Lopez Group/OIG confuse the importance of good communication with complainants, which OSHA concedes it can improve, with the importance of identifying and obtaining information from witnesses that will advance the investigation, which for a variety of reasons may not include the complainant. The audit also discounts the fact that if an inspection has been initiated, the complainant has already provided significant relevant information to OSHA that has prompted and will guide the inspection.

Especially in straightforward cases, if a Compliance Safety and Health Officer (CSHO) has interviewed employees on site and has established a violation through evidence such as a physical inspection, document review, or employer admission, the CSHO may decide additional witness interviews are not necessary. Every complaint is not the same and the CSHO must have the discretion to determine what interviews are necessary. Where a case is contested, there may be additional engagement with relevant witnesses. While we are always looking for opportunities to make inspections, including employee and other witness interviews, more effective, we are concerned that rote interview requirements will not advance that cause.

OSHA is reviewing how to improve the “customer service” aspect of the inspection process to be more responsive to workers’ concerns about feeling excluded from the process so that we do not discourage worker participation in health and safety matters. However, the audit has not demonstrated a need or rationale for mandating complainant interviews in *every* complaint/referral situation. Therefore, OSHA does not agree with Recommendation 1.

The Lopez Group also concluded that “for the 70 inspection cases sampled, interviewing both complainants and witnesses may have resulted in a higher rate of citations and/or penalties” (OIG Report p. 7). As pointed out in our prior response, this analysis of the relationship between interviews and citations confuses correlation and causation. The OIG/Lopez Group did not make any inquiry to determine a causal link between lack of interviews and lack of citations. In our experience, the more reasonable explanation is that more interviews occur on inspections when violations are observed as the CSHO conducts witness interviews to gather evidence on key elements of the citation such as employer knowledge of the violation, how long the violation has existed, and how many workers have been exposed to the hazard; conversely, as a general matter, fewer interviews occur when no violation is observed simply because there is less to inquire about.

**Result 2: OSHA Did Not Provide Evidence That an Inspection was Conducted When a Complaint/Referral Met the Criteria.**

This result is based on, and limited to, 11 out of 30 sample cases that did not include documentation to support why OSHA determined an inspection was not warranted. Under the procedures in OSHA’s Field Operations Manual (FOM), if a *formal* complaint has been submitted, an inspection is normally warranted. However, ten of the eleven cases that the report points to as lacking justification for not conducting an inspection were *non-formal* complaints or referrals. In each of those ten cases, OSHA conducted an inquiry per the FOM’s procedures. The example in the report relates to a non-formal complaint in April 2020 regarding inadequate

personal protective equipment (PPE) in a retail setting. OSHA properly conducted an inquiry per Chapter 9 of the FOM and received a satisfactory response from the employer.

It is notable that while the report identified documentation issues, the audit did not reveal any evidence that a documentation issue resulted in a hazard not being addressed. However, OSHA agrees documentation is important. The agency will provide additional training to supervisors to reinforce case file documentation as required under 29 CFR 1903.14(a) and in Chapter 5 of the FOM. The report does not support a need to change or update current policy.

**Result 3: OSHA Did not Ensure Violations from Complaints and Referrals Were Corrected in a Timely Manner and Did Not Adhere to Documentation Requirements.**

OSHA interprets this result as relating to whether violations were timely abated. OSHA's abatement verification regulation, 29 CFR 1903.19, outlines detailed requirements related to abatement dates, abatement certification, abatement verification, abatement plans, and progress reports, among other requirements. OSHA's FOM contains additional guidance and procedures related to abatement.

The report states that "our review of the 70 sampled cases found 41 cases with abatement violations." However, the Lopez group included in that count cases where abatement documentation was provided, cases where abatement was observed during the inspection, and cases where no inspection took place. It also included five cases where OSHA had no authority to require employers to abate the hazards because the cases were being contested.

This result also assumes without adequate substantiation that late abatement documentation meant that employees may have been exposed to the hazard. The audit confuses the date of abatement documentation with the date abatement occurred. In the single example provided, the Lopez Group noted that the employer *had* abated the trenching violation but had simply not sent in the documentation. The report erroneously suggests that employees could have been exposed for up to 149 days – from the date of receipt of the complaint – even though the job was complete (the trench no longer existed), and no one had been exposed to the hazard.

Though OSHA raised this issue in response to the preliminary results, this Result continues to fail to recognize and consider that there are several reasons why abatement may be extended beyond the default deadline of 30 days after issuance of a citation. The audit team did not assess whether hazards were mitigated in any way, whether a work process was no longer active or whether OSHA had the authority to require abatement of a hazard at the time. The report does not support a need to create new procedures or policies, and therefore, OSHA does not agree with Recommendation 3.

OSHA appreciates the opportunity to improve the way that we carry out our programs in support of our mission. We remain open to a continued dialogue and a cooperative approach between the OIG and OSHA, and we will explore ways to improve our case file documentation to provide greater clarity on decisions made during the investigative and inspection processes.