



MAY 3 1 2011

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

FROM:   
DAVID MICHAELS, PhD, MPH

SUBJECT: Response to OIG's Final Audit Report  
Number: 02-11-201-10-105  
"OSHA Had Not Determined if State OSH Programs Were at  
Least as Effective in Improving Workplace Safety and Health As  
Federal OSHA's Programs."

This memorandum is in response to your March 31, 2011, transmittal of the Office of Inspector General (OIG) Audit Report Number: 02-11-201-10-105, "OSHA Had Not Determined if State OSH Programs Were at Least as Effective in Improving Workplace Safety and Health As Federal OSHA's Programs." We appreciate the OIG's responsiveness to many of OSHA's concerns. As we noted in response to the draft report, while we agree with the intent of the recommendations, OSHA is also concerned that attempting to define the effectiveness of State plans by relying exclusively on a system of impact or outcome measures is not only extremely problematic, but would not fulfill the more specific and extensive requirements of the Occupational Safety and Health Act of 1970 (the Act). We strongly believe that OSHA must review activities as well as outcomes to ensure that OSHA-approved State plans are operating effectively and fulfilling Federal grant requirements.

## RESPONSE TO RECOMMENDATIONS

**Recommendation 1: Define effectiveness in terms of the impact of State OSH programs on workplace safety and health.**

**OSHA Response:** OSHA agrees in part. As noted in our response to the draft report, OSHA agrees that measuring the impact of State programs on workplace safety and health would be useful in determining the effectiveness of State programs. Determining appropriate measures to determine the program's effect on workplace safety and health is, however, extremely problematic, and even if it is possible to develop accurate impact measures, we do not believe that impact measures are sufficient to evaluate the effectiveness of State programs. OSHA has a responsibility to evaluate the complete State program, and we intend to continue to use appropriate activity measures to evaluate the effectiveness of State programs and ensure that they are meeting the requirements for State plan approval and funding. We appreciate that the audit report noted the OIG's agreement that impact measures should be used in conjunction with

activity-based measures to ensure compliance with the Act's requirements, although the audit recommendations were not modified to reflect this agreement.

OSHA does recognize the need to provide more precise parameters to define State plan effectiveness, and we have been working with our State plan partners to define effectiveness and develop appropriate measures. We have convened a Federal/State Task Group that was initially tasked with defining the parameters for an "at least as effective" State plan penalty policy, but has expanded its scope to look at all aspects of equivalent effectiveness. The Task Group, composed of the Board of Directors of the Occupational Safety and Health State plan Association (OSHSPA), the organization of States with OSHA-approved plans, and a group of senior OSHA officials, met in April 2011 to discuss the definition of effectiveness and how it should be measured. These meetings will continue, and the group's conclusions will provide input to a comprehensive revision of OSHA's State plan monitoring procedures. We anticipate one of the results of these discussions would be a new set of statistical activity measures, as well as outcome measures, to the extent they are available, to be used in evaluating State plan performance.

**Recommendation 2: Design measures to quantify the impact of State OSH on workplace safety and health.**

**OSHA Response:** OSHA agrees in part. OSHA and DOL are continuing to develop additional impact measures for both Federal OSHA and the States. The Department is engaged in studies on the effect of penalty size, warning letters and compliance assistance. This is a difficult and lengthy task, and OSHA would welcome OIG specific suggestions for such measures or information on studies that may have produced such measures.

As discussed above, OSHA is working to develop new measures, including impact measures, for defining and evaluating State plan effectiveness. Any measures developed will be incorporated into revised monitoring procedures that will be issued through a change to the State Plan Policies and Procedures Manual, as discussed in the response to Recommendation 4, below.

**Recommendation 3: Measure Federal OSH program to establish a baseline to evaluate State OSH effectiveness.**

**OSHA Response:** OSHA agrees in part. On the Federal level, the Department of Labor FY 2011-2016 Strategic Plan envisions a review of trends in compliance, violation, or discrimination rates as measures of impact.<sup>1</sup> OSHA looks at injury, illness, and fatality rates in select industry sectors as one indicator of OSHA's impact, while acknowledging there are inherent problems with these data. Among them are the reliance on employer self-reporting for injury and illness data, the data's heavy dependence on the level of economic activity and the changing composition of the economy. In some State plan States, the Bureau of Labor Statistics has noted that the sample size is not large enough to present a complete picture of injuries and illnesses. Nevertheless, OSHA will continue to seek methods of addressing this issue and include State plans in the process as appropriate.

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<sup>1</sup> Trends, p. 16, Department of Labor FY 2011-2016 Strategic Plan

The DOL strategic planning process emphasizes the development of outcome measures and the need to link them to impact. DOL is working with its enforcement agencies in the development of these measures, in addition to the continued development of appropriate activity measures, particularly for the worker protection agencies. There are several ongoing DOL studies to this end. In addition, as mentioned above, the Department of Labor is engaged in studies on the effect of penalty size, warning letters and compliance assistance.

**Recommendation 4: Assure effectiveness by revising the monitoring processes to include comparison of the impact of State OSH and Federal OSHA.**

**OSHA Response:** OSHA agrees in part. As noted above, we will continue to use activity measures as well as all available impact measures to assess State plan performance. Any useful impact measures developed by OSHA or the Department to assess the effectiveness of the workforce protection agencies will be incorporated into a new OSHA State plan monitoring system which Federal OSHA is currently developing in consultation with the States. As noted above, discussions with State plan representatives on defining effectiveness have already begun. As finalizing and developing the data output reports for this system will take some time, we plan in the interim to continue the expanded monitoring efforts begun with the FY 2009 Enhanced Federal Annual Monitoring and Evaluation reports. Annual monitoring guidance will continue to require the analysis of available statistical measures that directly compare State to Federal performance in addition to the current activity measures, and to mandate on-site monitoring activities including review of State enforcement case files. Guidance for preparation of the FY 2011 State plan evaluation reports will be issued before the end of the fiscal year. Formal issuance of revised monitoring procedures as part of the State Plan Policies and Procedures Manual will be dependent on the progress of the on-going discussions and the availability of resources.

We have already implemented a system to give the State plans an expanded opportunity, beyond discussions at regular OSHSPA meetings, to provide input into the development of OSHA policy. Directives and other policy documents that constitute changes to the Federal program which will impact State programs, including National Emphasis Programs and other enforcement policies, are being shared in draft on a limited access website for State review and comment. Conference calls between the States and the OSHA staff involved in developing the policies are then conducted, as appropriate, to discuss the policy. We believe that this mechanism will provide more explanation and justification to the States on the rationale for changing policies and programs that affect them. We will try to include more background information on the reasoning behind new policies and procedures in future directives.