

APPENDIX B: AGENCY'S RESPONSE TO THE REPORT


U.S. Department of Labor

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



March 29, 2022

MEMORANDUM FOR: CAROLYN R. HANTZ
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FROM: DOUGLAS L. PARKER 

SUBJECT: Response to the Office of the Inspector General's Draft Report,
COVID-19: To Protect Mission Critical Workers, OSHA Could
Leverage Inspection Collaboration Opportunities with External
Federal Agencies

This memorandum is in response to your March 10, 2022, transmittal, Office of Inspector General's (OIG) Draft Report *COVID-19: To Protect Mission Critical Workers, OSHA Could Leverage Inspection Collaboration Opportunities with External Federal Agencies*. OSHA appreciates the opportunity to provide a response to the draft report.

The discussion below addresses OIG's characterization of OSHA's inspection efforts and OSHA's collaboration efforts with federal agencies and their occupational safety and health responsibilities.

Characterizing OSHA's Inspection Efforts

Although on-site inspections decreased during the pandemic, OSHA worked to ensure that every valid complaint and referral received attention in accordance with the Field Operations Manual. For each valid complaint or referral, if OSHA did not inspect, the agency engaged with the employer to ensure that COVID-related hazards were addressed and abated. OIG failed to credit OSHA's engagement with employers in ensuring worker health and safety during this dynamic crisis.

Characterizing OSHA's Collaboration Efforts

OIG asserts that:

"OSHA had not collaborated with external federal agencies' enforcement or oversight personnel to help safeguard mission critical U.S. workers during the pandemic."

OSHA disagrees with OIG's assessment. As detailed in OSHA's earlier comments on and proposed edits to OIG's draft report, the agency collaborated with external agencies in numerous ways as part of the Administration's overall effort to control and respond to the pandemic. OSHA's collaborations included, but were not limited to, its participation in the Federal Emergency Management Agency's National Response Framework (<https://www.fema.gov/emergency-managers/national-preparedness/frameworks/response#esf>) and the following workgroups and meetings:

- The White House National Security Council Executive Office of the President (WH NCS/EOP) Domestic Preparedness/Response Working Group on COVID-19,
- The White House NSC Medical and PPE Supply Chain Task Force,
- The Department of Health and Human Services (HHS) Disaster Leadership Group (DLG),
- The HHS Office of the Assistant Secretary for Preparedness and Response (ASPR) Interagency Workgroup,
- The HHS/Department of Homeland Security, Federal Emergency Management Agency (FEMA) Supply Chain Task Force,
- HHS Secretary Operations Center (SOC) Task Force Coordination Group,
- OPM Human Resource Guidance for Federal Agency Workgroup,
- HHS, National Institute of Environmental Health Sciences (NIEHS) Worker Safety and Health Support Training Annex Workgroup,
- OSHA received Mission Assignments (MAs) from FEMA to provide virtual Worker Safety and Health Technical Assistance and Support in Region 1, 2, 3, and National Office,
- DHS FEMA Food Supply Chain Task Force Workgroup (via the National Response Coordination Center), and
- DHS/FEMA Emergency Support Function Leadership Group.

These collaboration efforts included dozens of permanent federal, and sometimes state, members. Membership included all the departments and agencies OIG identifies as potential partners with which OSHA should have collaborated. OIG did not evaluate the work of the workgroups and other collaborative efforts listed above and how they acted to mitigate pandemic effects in the essential industries that are the focus of this audit. Consequently, OIG's audit did not capture the effectiveness of OSHA's collaboration with these groups to reduce the spread of COVID-19 to workers throughout the U.S., including working together on issues related to personal protective equipment and COVID-19 control measures, especially in workplaces where workers were performing essential services.

In addition, early in 2020, OSHA, independent of the efforts listed above, began holding weekly conference calls with the Department of Agriculture's Food Safety Inspection Service, along with HHS's Centers for Disease Control, and the Food and Drug Administration, to discuss COVID-19 issues at meatpacking establishments.¹ This collaborative effort primarily involved OSHA and CDC providing technical information and updates to FDA and USDA regarding products under development and the group often discussed safety and health issues concerning

¹OSHA and FSIS switched to monthly calls in November 2021.

meatpacking and other food processing facilities to ensure the health of meat and food workers and the federal inspectors nested at those facilities. OSHA enforcement staff, as well as other technical experts, attended the meetings to ensure that accurate information was shared. OSHA judged this effort to be far more fruitful than attempting to reach individual FSIS inspectors. OIG did not evaluate the efficacy of this effort and instead focused solely on OSHA's alleged lack of direct interaction with individual FSIS inspectors.

In addition to the collaboration between OSHA, CDC, FDA and USDA, OSHA conducted 383 inspections in meatpacking establishments between March 1, 2020 and March 15, 2022—157 of which were COVID-19-related. In nearly all cases, OSHA interviewed FSIS inspectors regarding COVID-19-related hazards and exposure or other workplace hazards. Nearly all inspections in meatpacking establishments were initiated due to worker complaints, fatalities, employer-reported referrals, and referrals. Although FSIS inspectors were not the sources of the complaints or referrals, OSHA interviewed them as part of the inspection when appropriate. OIG did not show how referrals or complaints from individual FSIS inspectors would have improved this process.

Moreover, in addition to overlooking OSHA's many collaborative efforts or showing how alternative methods of collaboration would have improved OSHA's COVID-19-related enforcement work, OIG's statement that OSHA "could have created MOUs with federal agencies that oversee high-risk industries; and updated its existing MOUs with external agencies to ensure they are current and include accountability characteristics" fails to acknowledge the labor and time resources necessary to create and update such MOUs. (Report p. 3). Although OSHA agrees that MOUs can be valuable tools, developing or revising MOUs during the pandemic would have required the reallocation of resources from OSHA's other activities in developing employer guidance, enforcement policy, and management, at a time when those other activities were crucial in protecting workers from the hazards posed by COVID-19. The agency did not have any resources to spare.

Characterizing Other Agencies' Occupational Safety and Health Responsibilities

As stated in the report, "OSHA's mission and work is not within" the scope of other federal agencies and these agencies "do not want to increase their staff's workload or overstep their authority." (Report p. 6). Yet federal agencies have significant occupational safety and health responsibilities and authority for their own employees under 29 U.S.C. 668, 29 CFR 1960, and EO 12196. Under 29 CFR 1960.26 federal agencies must conduct inspections of the worksites where their employees are located, identify the hazards they find, and post Notices of Unsafe or Unhealthful Working Conditions, referencing the standard or other requirement and including the time for the hazard to be abated.

The OIG reports that federal agencies "emphasized they do not have authority to enforce OSHA standards." (Report, p. 6.) However, when federal agencies' employees face the same hazards as other workers or people in a shared space, as is the case with COVID-19, these agencies are responsible for taking appropriate action and have the authority to take that action. Specifically, under 29 CFR 1960 subpart H, agencies have the responsibility to train all their employees on occupational safety and health, including training employees to conduct inspections and refer

hazards to the appropriate contacts within their agencies. Further, under 29 CFR 1960.60, agencies can request assistance from OSHA when needed.

To the extent OIG's findings indicate that other federal agencies have failed to carry out these responsibilities, OSHA recommends that the OIG modify its second recommendation to focus on actions OSHA can undertake to ensure federal agencies understand their responsibilities under 29 CFR 1960.