



United States
General Accounting Office
Washington, D.C. 20548

Health, Education and Human Services Division



157939

B-275637

December 30, 1996

The Honorable Robert B. Reich
The Secretary of Labor

Dear Mr. Secretary:

Among the Occupational Safety and Health Administration's (OSHA) duties are the development and enforcement of workplace safety and health standards. These enforcement duties include assessing penalties against employers for violations of these standards. OSHA's jurisdiction covers the workplaces of most private sector employers, including many federal contractors. In carrying out its mission, OSHA maintains the Integrated Management Information Systems (IMIS) database, which houses publicly accessible data on penalties, violations, and other information on inspections conducted under its authority. The IMIS data were also one source of information discussed in our August 23, 1996, report, Occupational Safety and Health: Violations of Safety and Health Regulations by Federal Contractors (GAO/HEHS-96-157). In that report, we identified 261 federal contractors from IMIS who were the corporate parent companies with worksites that OSHA cited for violating OSHA's safety and health standards. These companies received \$38 billion in federal contracts during fiscal year 1994. We also made recommendations to you to begin sharing this OSHA inspection information from IMIS with federal agency awarding and debarring officials to increase the likelihood that a company's safety and health record would be considered in decisions to award a contract or to debar or suspend an existing federal contractor.

A few federal contractors identified as OSHA violators have expressed concerns about information we obtained from IMIS. More specifically, OSHA recorded as multiple penalties in IMIS what was actually a single \$3 million payment under a supplemental settlement agreement with one company by allocating the payment among the many OSHA area offices that conducted compliance inspections of worksites owned by this company. As a result, IMIS shows this company having more significant-penalty inspections (proposed penalty \$15,000 or more) closed in fiscal year 1994 than any other federal contractor. In an inspection of a worksite of another company, no change was made in IMIS regarding fatality and injury information for two workers who allegedly were exposed to sulfuric acid in a confined space even though a settlement agreement found that the violations were

GAO/HEHS-97-43R OSHA's Inspection Database

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not a contributing factor to the accident. Although OSHA officials told us it is not agency practice to change fatality and injury information in the IMIS database after the initial citation, not doing so can easily lead to misinterpretation of an inspection record. Finally, violation information in IMIS for an inspection at a worksite of another company was not changed to reflect a settlement agreement in which willful violations were changed to unclassified violations. Even though the settlement agreement was reached in 1989, this inspection was not closed until fiscal year 1994 and, as a result, fell within the scope of our study, which was all inspections with a proposed penalty of \$15,000 or more closed in fiscal year 1994.

After discussing the contractors' concerns with OSHA officials, we believe that they warrant your immediate attention. Our follow-up shows that OSHA does not always appropriately characterize or fully capture information on corporatewide or individual facility settlement agreements, nor does OSHA always change inspection data in a timely manner to reflect the terms of a settlement agreement. As a result, information regarding the number or type of violations and penalty amounts associated with a particular inspection can be distorted or inaccurate and the depiction within IMIS of the relationship of a fatality or injury to the violations detected can be misleading.

Effective management within both the private sector and a reinvented, revitalized public sector is predicated on the maintenance of reliable data. This is especially true for the Department of Labor and an agency such as OSHA, with its crucial mission of protecting the lives of millions of America's working men and women. Further, unlike some other government-maintained databases, OSHA's IMIS database is publicly accessible. For example, academia relies on its accuracy in conducting policy research,¹ while some private sector employers use its data in their commercial activities.²

¹Academic papers have been published that examine trends in OSHA inspection data, the relationship between OSHA inspections and workplace safety and health conditions, and the impact of unions and other factors on OSHA enforcement practices, among other topics. IMIS inspection data were used in the analyses appearing in these academic papers.

²For example, a database information service company based in Maplewood, New Jersey, offers standard reports and customized searches of IMIS data to assist both public and private sector organizations with screening companies before contracting with them for products or services.

CONCLUSIONS AND RECOMMENDATIONS

Given recent concerns about how certain IMIS data are characterized, we believe that additional departmental action is necessary to restore confidence in OSHA's IMIS. Thus, we recommend that you direct the Assistant Secretary for Occupational Safety and Health to immediately assess the quality of IMIS data as they relate to settlement agreements and the procedures by which data are entered and maintained and to develop an action plan to immediately correct any detected weaknesses. Actions to improve the quality of IMIS data are particularly important given recommendations we made in our earlier report. We recommended that OSHA, in consultation with the General Services Administration and the Interagency Committee on Debarment and Suspension, develop and implement policies and procedures for the exchange of information on the safety and health records of federal contractors. This recommendation will likely result in greater dissemination of IMIS information to other agencies, which underscores the importance that these data be accurate.

AGENCY COMMENTS

In commenting on this correspondence, the Assistant Secretary for Occupational Safety and Health summarized the methodology used in our report³ to identify those federal contractors assessed penalties by OSHA for violating health and safety standards and discussed the circumstances concerning three contractors who had communicated to us concerns about information we obtained from the IMIS database. Although he does not think that the three cases indicate that there are systemic inaccuracies in the IMIS system, he acknowledged that they illustrate a limitation on the value of IMIS data for users outside the agency. He described the IMIS system as a management tool to help the agency direct its resources, not a database that was intended to be an accounting system or to capture every transaction that occurs during the course of an OSHA inspection. He expressed a willingness to consider whether certain improvements to the system would be feasible and efficacious and whether OSHA should advise users outside the agency that the database should not be used without verifying the data by reference to the case file and individuals at the appropriate OSHA office. Nevertheless, he expressed his belief that IMIS is well suited to agency needs and that he is not convinced it would be feasible or in the public interest to make changes for the sake of nonagency users. (See the enclosure for the full text of the agency comments.)

³Occupational Safety and Health: Violations of Safety and Health Regulations by Federal Contractors (GAO/HEHS-96-157, Aug. 23, 1996).

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We are pleased that OSHA is willing to consider making changes in IMIS to distinguish between assessed penalties and settlement payments, enter settlement agreement information, and supplement the accident report to reflect subsequent developments. We believe that, upon careful consideration, OSHA will conclude that it is feasible to improve the database in this way and that such changes will make IMIS more useful to OSHA management as well as to nonagency users.

Regarding use of IMIS by nonagency users, we continue to believe that OSHA has a responsibility to ensure that the IMIS data, which are available to the public, appropriately characterize the information gained in the inspection and the subsequent actions of OSHA and the company inspected. We do not believe that OSHA has sufficiently met its responsibility if it simply informs nonagency users that they must verify each element in the database by reference to a case file and interviews with OSHA officials. It is not feasible to expect each user to have the resources and expertise to engage in such verification or for OSHA officials to be able to respond to such requests for verification.

The three cases discussed in the OSHA response illustrate the difficulty of clarifying the IMIS data. Even though we did not audit the database, we conducted a number of procedures to determine its overall reliability. These included discussing the database with knowledgeable OSHA individuals, conducting verification of some IMIS data where inconsistencies were apparent, and disclosing our draft report for review to OSHA. But these procedures did not initially disclose the problems with the database. For example, we described certain amounts as penalties assessed at certain worksites because OSHA had entered those amounts into an IMIS inspection data field labelled "penalty," and there was no indication in the database or in our discussions with knowledgeable OSHA officials that the characterization was inappropriate.

We continue to believe that OSHA should assess the quality of the data now in IMIS regarding inspections associated with settlement agreements and if that assessment shows that the concerns highlighted by these three cases do reflect systemic problems, OSHA should take prompt action to revise its IMIS procedures.

As the head of a federal agency, you are required by 31 U.S.C. 720 to submit a written statement on actions taken on our recommendations to the Senate Committee on Governmental Affairs and to the House Committee on Government Reform and Oversight not later than 60 days after the date of this letter and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of this letter.

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We are sending copies of this correspondence to Senators Paul Simon and Edward M. Kennedy, the requesters of our report. Copies of this letter are also being sent to appropriate congressional committees and interested parties. We also will make copies available to others on request. If you have any questions or would like to discuss this matter further, please contact me at (202) 512-7014. Contributors to this correspondence include Charles A. Jeszeck, Assistant Director, and Jackie Baker Werth, Senior Evaluator.

Sincerely yours,

A handwritten signature in cursive script that reads "Carlotta Joyner". The signature is written in black ink and is positioned above the typed name and title.

Carlotta C. Joyner
Director, Education and
Employment Issues

Enclosure

ENCLOSURE

ENCLOSURE

COMMENTS FROM THE DEPARTMENT OF LABOR

U.S. Department of Labor

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



DEC 17 1996

Carlotta C. Joyner
Director, Education
and Employment Issues
U.S. General Accounting Office
Washington, D.C. 20548

Dear Ms. Joyner:

Enclosed please find the comments of the Occupational Safety and Health Administration (OSHA) in response to the General Accounting Office's draft report to the Secretary of Labor regarding how information is characterized in the OSHA's (OSHA) Integrated Management Information Systems (IMIS) database.

It is my understanding that the Agency's comments will be included in full in the GAO's report to Secretary Reich. If you have any questions, please call OSHA's Directorate of Policy at 219-8055.

Sincerely,

A handwritten signature in cursive script that reads "Joseph A. Dear".

Joseph A. Dear
Assistant Secretary

cc: Charles A. Jeszeck
Jackie Baker Werth

Enclosure(s)

OSHA's Comments to GAO's Draft Report to the Secretary of Labor

In its August 23, 1996, report, *Occupational Safety and Health: Violations of Safety and Health Regulations by Federal Contractors* (GAO/HEHS-96-157), GAO identified 261 federal contractors who were the corporate parent companies with work sites that the Occupational Safety and Health Administration (OSHA) cited for violating OSHA's safety and health standards. To identify federal contractors assessed penalties for safety and health violations, GAO matched violation data from OSHA's Integrated Management Information Systems (IMIS) with a database of federal contractors maintained by the General Services Administration (GSA) (Rpt. 1). GAO restricted its analysis to cases closed in 1994, in which the penalty proposed by the compliance officer was \$15,000 or more, described by GAO as a "significant proposed penalty" (Rpt. 2). GAO verified by telephone that the company listed in the OSHA database of inspections was the same company (or owned by the same parent company) listed in the federal contractor base, but did not verify the data in either database (Rpt. 2).

Of the 261 federal contractors which GAO identified as the corporate parent companies with work sites at which OSHA assessed proposed penalties of \$15,000 or more for violations of federal safety and health regulations, three companies expressed concerns about the information GAO obtained from IMIS. On November 15, 1996, OSHA officials met with GAO to discuss the contractors' concerns. OSHA attempted to make clear to GAO that IMIS was designed as a management tool for use by OSHA to help it direct its resources. It was never intended as an accounting system or to capture every transaction that takes place during the course of an OSHA

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proceeding. OSHA personnel themselves routinely consult the case file and appropriate OSHA office in conjunction with IMIS data when dealing with specific employers or investigations (as opposed to large-group profiles or long-term trends or the like). Any time that IMIS data is put to new or different uses, the need for context research based on case files and OSHA regional or area office is doubly important.

OSHA also discussed the circumstances surrounding the three companies that wrote to GAO about its review of IMIS data. The first company to write to GAO took issue with GAO's statement, based on GAO's review of IMIS data, that 21 of 24 "significant proposed penalties" attributed to the company arose when "UPS was cited for failing to comply with a corporate wide settlement agreement to improve its emergency response to hazardous conditions created when packages are damaged while being transported" (Rpt. 26). The company noted, however, that UPS received no citations or notices of proposed penalties at any of the 21 sites in question during the effective period of the corporate wide settlement to which the Report refers. It also stated that the proposed penalty reported by GAO was, in fact, a "settlement payment" rather than a "penalty."

Some background information is necessary to understand the reason OSHA recorded as multiple penalties in IMIS the single \$3 million settlement payment. On February 27, 1992, as a result of eleven enforcement actions brought by the Secretary concerning hazardous materials at UPS, OSHA and UPS entered into a corporate-wide settlement agreement (CSA) defining UPS's responsibilities in dealing with emergency response to damaged packages that might present hazardous conditions to employees. That settlement was incorporated in an order of the U.S.

Court of Appeals for the Eleventh Circuit. As a result of monitoring inspections thereafter, OSHA concluded that UPS was substantially out of compliance with the agreement and court order at 21 separate sites. Instead of issuing more citations, OSHA prepared a petition for contempt of the Eleventh Circuit's order. Before the contempt petition was filed, UPS and OSHA entered into a Supplemental Settlement Agreement (SSA) in which UPS agreed to implement significant additional measures to ensure corporate-wide compliance and to pay \$3 million in "settlement of any claim by the Secretary related to the CSA from its effective date until the date of signing this agreement."

As with all "penalties" or "payments," UPS's three million dollar payment was entered into IMIS against inspections to account properly for all incoming funds the Agency receives. In the past, when OSHA has received a settlement payment for corporate program deficiencies, it has usually recorded the payment against a single OSHA Area Office. The UPS agreement, however, represented a unique situation because of the number of OSHA Area Offices involved and the time each spent at UPS facilities to verify program compliance. As a result, solely for OSHA bookkeeping purposes, the \$3 million payment was entered into IMIS and "credited" to the Area Offices involved in proportion to compliance officer hours devoted to each inspection. GAO interpreted the data as showing that the company had more significant-penalty inspections closed in fiscal year 1994 than any other federal contractor.

The second letter to GAO claims that GAO erred when it reported, based on its review of data from the IMIS, that a worker was killed or hospitalized due to overexposure to sulfuric acid in a

confined space. In that case, company workers alleged in part that employees were being exposed to hazardous concentrations of sulfuric acid when replacing sump pumps on plating trucks. During the course of OSHA's investigation, one of the maintenance workers that had worked on the sump pump was hospitalized and later died. OSHA's complaint investigation was then expanded into a fatality inspection. The purpose of a fatality inspection is to determine whether violations of OSHA safety and health standards occurred which may have contributed to an employee's death. OSHA's initial accident report, entered on IMIS, stated in part that one employee "entered the hospital on 12/18/91 with chemical pneumonia. He died on 1/21/93." It also stated that another employee "was also hospitalized for two weeks for acid fume inhalation."

As a result of the fatality investigation, OSHA issued a citation to Bell, citing among other things, violations of OSHA's confined space and training standards. Later, the parties entered into a settlement agreement in which Bell agreed to train the workers and apply the OSHA confined space standard to its sump area. In return, OSHA agreed to drop several charges. OSHA then revised the information on IMIS to show which items had been dropped. Apparently, reviewing only the original accident report quoted above, GAO concluded that one worker was hospitalized and one was killed due to over exposure to sulfuric acid in a confined space (Rpt. 60). OSHA accident reports, however, are reports of information available to the compliance officer at the time the report is prepared. It is not intended to serve as a report of information acquired later in the course of the investigation and is therefore not revised based on later-acquired data.

In the third letter, the company pointed out that one of the two proposed penalties that GAO included in the 1994 closed case group related to a matter closed five years earlier (in 1989). The company also noted that the GAO report referred to an Administrative Law Judge (ALJ) decision not reflected in IMIS data in which the citation was changed to unclassified (Rpt. 54, fn. 63). The company asserted that in fact the inspection of its facility described in the GAO report occurred on September 29, 1988, citations were issued on March 24, 1989, the parties settled the case on June 30, 1989, and the settlement agreement provided that all citations be reduced to unclassified.

The IMIS closing date is an administrative closing date which indicates when all internal activities are completed, such as abatements and payments. It does not relate to the date that a settlement agreement is signed. The IMIS closing date may be later than the date of settlement because of a lag in time between the settlement and receipt by the OSHA Regional Office of notification of the settlement. The delay in this particular case was aggravated by the fact that during this period California's Governor defunded the Cal-OSHA program, and federal OSHA built up a federal enforcement organization in California with seven Area Offices. When the California electorate voted to return the program to California in 1988, the federal OSHA structure in California was dismantled and several Area Offices were closed. Thousands of files were sent to the remaining federal Area Office in San Diego which had reduced clerical staff for handling case files. In addition, at the time settlement was reached in this case, settlement agreements were routinely submitted to an Administrative Law Judge (ALJ) for entry of a final Commission order and to clarify that the citations as amended by the agreement are legally enforceable under the Act rather than as a contract. GAO's notation in its report that the violations were changed to unclassified by an ALJ's decision was attributable to lack of knowledge about the context of the IMIS entries (Rpt. 73).

We do not think that these cases indicate that there are systematic inaccuracies in the IMIS system. The most that can be said is that the data on IMIS has limitations for users other than the Agency, something OSHA has never denied. However, OSHA is always willing to consider ways to improve the system, including whether the use of a mechanism to distinguish between assessed penalties and settlement payments, changes to the process for entering settlement agreement information, and supplementing the accident report to reflect subsequent developments, would be feasible and efficacious. OSHA will also consider adding a notation to the IMIS advising academics and outside users of its limitations and that the data should be verified by reference to the case file and confirmed by the appropriate OSHA office. Any actions that OSHA decides to implement will be embodied in a written action plan and made available to GAO upon request. It is important however, to keep in mind that OSHA has found the IMIS system as it currently exists well suited to the agency's needs and there is no empirical basis for a conclusion that changing the system for the sake of non-agency users is feasible or in the public interest.

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