

GAO

Report to the Chairman, Subcommittee
on Workforce Protections, Committee on
Education and the Workforce, House of
Representatives

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OCCUPATIONAL SAFETY AND HEALTH

Efforts to Obtain Establishment-Specific Data on Injuries and Illnesses





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

**Health, Education, and
Human Services Division**

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The Honorable Cass Ballenger
Chairman, Subcommittee on Workforce Protections
Committee on Education and the Workforce
House of Representatives

Dear Mr. Chairman:

The mission of the Occupational Safety and Health Administration (OSHA) is to save lives, prevent injuries, and protect the health of America's workers. OSHA, an agency in the Department of Labor, administers the Occupational Safety and Health Act of 1970. OSHA's responsibilities include establishing mandatory safety and health standards, rules, and regulations; enforcing employers' compliance with the act and its standards, rules, and regulations; and reaching out to employers and employees through technical assistance and consultation programs.

A major part of OSHA's enforcement program is conducting on-site inspections of employers' facilities. OSHA targets establishments for inspection using a priority system. First priority is given to unprogrammed, or unscheduled, inspections initiated because of (1) imminent danger situations, (2) fatalities or catastrophes, (3) formal complaints, and (4) referrals. Second priority is given to programmed, or scheduled, inspections of establishments OSHA considers more likely than others to be hazardous.

To schedule inspections of establishments considered more likely to be hazardous, as well as target other intervention activities, OSHA relies on industrywide occupational injury and illness data from the Bureau of Labor Statistics (BLS) rather than specific data for individual establishments, for which no nationwide data are available. BLS, another Labor Department agency, is the federal government's principal agency in the field of labor economics and statistics. It collects, processes, and analyzes statistical data and publishes reports that are used by other federal agencies, the Congress, state and local governments, businesses, unions, and the public.

BLS conducts an annual survey of occupational injuries and illnesses. For this survey, each year BLS selects a scientific probability sample of all U.S.

establishments, regardless of size, in all private industries.¹ Employers selected to participate in the survey are required to report to BLS, among other information, data on occupational injuries and illnesses that occurred at the selected establishments in the previous year and information on the average number of employees and the average number of hours worked during the year at the establishment. On the basis of the survey, BLS tabulates and publishes aggregate statistical data at the national and state levels on occupational injuries and illnesses for all U.S. industries and for each industry sector under the standard industrial classification (SIC) of industries.²

To ensure full participation in its survey, BLS pledges confidentiality of the information provided by respondents. Because of this pledge, BLS provides neither to OSHA nor to any other user the injury and illness and employment data (or any other data) it collects from specific establishments.

The primary data used by OSHA for targeting establishments for inspection are industrywide injury and illness incidence rates and lost workday injury and illness (LWDII) rates provided by BLS.³ For its programmed inspections, OSHA uses the LWDII and incidence rates to identify industries with the highest rates. OSHA cannot distinguish, however, between those establishments with injury and illness rates above the industry average and those with rates below the average because an industry's rates reflect the industrywide average rates of all establishments in the industry. As a result, OSHA schedules inspections of establishments with more than 10 employees randomly selected from among the top 200 industries

¹BLS excludes farms with 10 or fewer employees and self-employed individuals. In addition, BLS reports but does not collect data for employers in railroad transportation and for certain mining operations; these data are provided to BLS by other federal agencies. Until 1995, BLS surveyed about 4 percent of all employers—about 280,000 employers—each year. In 1996, BLS surveyed about 180,000 employers.

²The SIC system classifies private-sector establishments by type of primary economic activity. It classifies private industries into nine divisions, for example, construction, manufacturing, and services. Within the divisions are 74 major groups such as the health services group in the services division. Within the major groups, industry groups are classified broadly by type of business such as nursing and personal care facilities in the major health services group. Within the industry groups, industries are classified by specific type of business such as skilled nursing care facilities in the nursing and personal care facilities industry group. In this structure, major groups are designated by a two-digit numerical code, industry groups are designated by a three-digit code, and particular industries are designated by a four-digit code. For example, within the services division, 80 denotes the major health services group, 805 denotes the nursing and personal care facilities industry group, and 8051 denotes the skilled nursing care facilities industry. BLS compiles injury and illness data at the four-digit level for manufacturing industries and at the three-digit level for nonmanufacturing industries.

³The LWDII rate is the number of injury and illness cases that were serious enough for workers to lose work time or to be put on restricted work activities per 100 full-time workers per year. The injury and illness incidence rate is the number of injury and illness cases per 100 full-time workers per year.

regardless of the establishment's record of injuries and illnesses or any previous safety and health violations. In this way, OSHA treats all establishments in a targeted industry alike. Thus, OSHA cannot target for inspection specific establishments most likely to be hazardous; it may target others—less likely to be hazardous—instead.

We and others have said that OSHA's enforcement and outreach activities, using industrywide data rather than establishment-specific data, are ineffective in targeting the most hazardous establishments for inspection and result in an inefficient use of OSHA's resources. Others have recommended, as we did in 1994,⁴ that OSHA develop procedures to obtain establishment-specific injury and illness data from employers to better target its programmed inspections and education and training efforts and to use limited resources more efficiently.

Since 1996, OSHA has been collecting establishment-specific data so that it could identify establishments with the highest injury and illness rates and better target its inspections and other interventions to these establishments. Some employers and business associations, however, have concerns about how OSHA planned and implemented its data collection initiative. Because of these concerns, you asked us to answer the following questions:

1. What industries and establishments did OSHA include in its 1996, 1997, and 1998 data collection efforts and how did it select them? What changes, if any, does OSHA plan to make for subsequent data collection efforts?
2. What data did OSHA collect from establishments in the selected industries?
3. How did OSHA intend to use the data it collected, and how has it actually used the data?
4. What specific assurance, if any, did OSHA give about confidentiality and privacy rights associated with the data collected? What is OSHA's current policy on access to the data it collected from these establishments?

To do our work, we reviewed provisions of the Occupational Safety and Health Act of 1970 and documents on OSHA's data collection initiative. We conducted interviews with OSHA, BLS, and other Labor officials and

⁴Occupational Safety and Health: Changes Needed in the Combined Federal-State Approach (GAO/HEHS-94-10, Feb. 28, 1994).

business and worker representatives about this initiative. We determined whether OSHA pledged confidentiality of the employer occupational injury and illness data that it collected. In addition, we reviewed the Freedom of Information Act (FOIA) and discussed with Labor Department officials how Labor, including OSHA, responds to FOIA requests for these data. We conducted our study from September 1997 to April 1998 in accordance with generally accepted government auditing standards.

Results in Brief

With about \$2.6 million available annually in 1996, 1997, and 1998 for its data collection surveys, OSHA determined it could survey about 80,000 establishments each year. Within that constraint, OSHA used mainly BLS data to select industries with high rates of injuries and illnesses. Then it used size of establishment as a determining factor for the number of establishments to survey. For its 1996 and 1997 surveys, OSHA included all manufacturing industries and 14 selected industry groups and specific industries in nonmanufacturing SIC codes. The nonmanufacturing industries were among those with the highest LWDII and injury and illness incidence rates, according to data reported by BLS on occupational injuries and illnesses for calendar year 1993. In addition, OSHA knew some of the industries had high numbers of work-related fatalities. OSHA surveyed all establishments in these industries with 60 or more employees in both years. About 88 percent of the 80,000 establishments surveyed responded in both years.

For its 1998 survey, OSHA again included all manufacturing industries and, using calendar year 1995 data reported by BLS, chose the same 14 nonmanufacturing industry groups and specific industries included in the two previous surveys. In addition, OSHA replaced four specific industries included in 1996 and 1997 with the three larger industry groups of which they are a part and added three new industry groups. OSHA sent all establishments in the newly selected industries with 50 or more employees survey forms in March 1998 and sent forms to some of the establishments that it surveyed in 1997.

Employers surveyed were not required to develop new sets of injury and illness data to respond to the OSHA surveys. Instead, these employers were already required by OSHA to keep at their establishments records of specific information on work-related injuries and illnesses. For its surveys, OSHA instructed participants to copy these data from their records onto the survey forms. OSHA also required surveyed establishments to provide information on employees' total hours worked and on the average number

of employees who worked during the year. The data that OSHA collects in its survey are a part of the data that BLS collects in its annual occupational injury and illness surveys.

OSHA planned to use the data collected to better identify establishments with the highest injury and illness rates so that it could more accurately target on-site compliance inspections to establishments with safety and health problems. In addition, OSHA planned to use the data to better target its technical assistance and consultation efforts and to measure its performance under the Government Performance and Results Act of 1993 (GPRA) in meeting its goals of reducing establishment injuries and illnesses.

As of April 1998, however, OSHA had made only limited use of the data it collected in its 1996 and 1997 surveys mainly because of two lawsuits. To settle one lawsuit, in February 1997, OSHA agreed not to use the data from the 1996 survey for enforcement activities. In another lawsuit, in February 1998, a federal court ordered OSHA to halt implementation of a new program that, using the 1997 survey data, identified specific establishments with the highest LWDII rates. At that time, OSHA had already scheduled for inspection 500 establishments that reported the highest LWDII rates for inspection and had completed 89 inspections. OSHA had also already invited about 12,000 employers who reported LWDII rates of at least 7.0—almost double the national average—to participate in this new program, which would involve working cooperatively with the agency to eliminate hazardous conditions in return for a reduced probability of being inspected. Employers who declined to participate in this new program would remain on OSHA's list of employers most likely to be inspected. The program has been suspended until the court issues a decision. An oral argument is scheduled for December 1998. In April 1998, OSHA began an interim inspection plan using OSHA survey data to select establishments with high LWDII rates for inspection.

As part of its data collection effort, OSHA gave no assurances about privacy or confidentiality when it requested establishment information from employers. OSHA did not compromise the privacy rights of individual employees because it collected only summary information on injuries and illnesses; the data do not identify individual workers. OSHA said it took steps to protect employers' privacy rights and to maintain confidentiality of the information. The agency did not pledge confidentiality, however, because the data collected could be subject to disclosure under FOIA.

OSHA has received many FOIA requests for the names and addresses of the 12,000 establishments with high injury and illness rates that it invited to participate in the new program. OSHA has provided this information to the requesters. OSHA is permitted under FOIA to withhold from disclosure information that might reveal its inspection scheduling criteria. It does not disclose such information while it is being used for inspection purposes, but the information may be subject to disclosure after OSHA completes its enforcement activities.

Background

The Occupational Safety and Health Act of 1970 covers more than 100 million working men and women and about 6.5 million employers.⁵ Excluded from coverage are the self-employed; state and local government employees in some states; and some transportation workers, miners, and others covered by other federal laws.⁶

OSHA regulations require most employers covered by the act to keep records at each establishment, including a log and summary of occupational injuries and illnesses (OSHA form 200 or an equivalent form) and a supplementary record of occupational injuries and illnesses (OSHA form 101 or an equivalent form).⁷ On the log, employers must briefly describe all occupational injuries and illnesses that occur at the establishment and summarize that information yearly. Employers must make the log accessible to authorized federal and state officials and to employees upon request and post an annual summary of occupational injuries and illnesses for the previous calendar year at each establishment. The supplementary record is to provide information about each injury and illness on the log, such as the affected employee's name and the circumstances of the injury or illness. Authorized government officials must have access to these records also.

The records employers must keep provide useful information for (1) employers and employees, raising their awareness of injuries and illnesses and helping them in their efforts to address establishment hazards; (2) OSHA staff for carrying out enforcement and outreach

⁵A state may develop and operate its own safety and health program in place of the federal program if OSHA has approved a state plan and confirmed through monitoring state performance that the program remains "at least as effective as" OSHA. Twenty-three states and two territories operate such programs; two of these states cover the public sector only.

⁶Since 1976, an appropriations rider has exempted certain small farms with 10 or fewer workers.

⁷Employers exempt from keeping these records include employers with 10 or fewer employees and employers who conduct business in specific SIC codes, including some retail trade businesses; service businesses; and finance, insurance, and real estate businesses.

programs; and (3) statistical purposes, by measuring the magnitude of injury and illness problems nationwide. The information also helps OSHA develop safety and health standards and conduct research on the causes and prevention of such injuries and illnesses. In addition, BLS collects injury and illness data from employers for its annual survey of occupational injuries and illnesses. OSHA's compliance officers review and collect data from the records during on-site inspections.

In February 1996, as part of its initiative to enhance safety, reduce paperwork, and reinvent the agency, OSHA proposed comprehensively revising the current rule for record-keeping requirements. The overall rule addressed certifying the records' accuracy and completeness, requiring employers to provide increased access to the records, defining key terms, and updating records to reflect changes in previously recorded data.

The proposed rule would also create a system for OSHA to collect injury and illness data at the establishment level. Under the proposed data collection system, OSHA would (1) identify industries among the most hazardous based on their injury and illness rates as reported by the BLS annual survey of occupational injuries and illnesses and (2) survey establishments in these industries to collect establishment-specific injury and illness data. Establishment-specific data would help identify individual establishments with high rates of occupational injuries and illnesses.

OSHA said it would focus its enforcement and outreach efforts on establishments with the highest injury and illness rates. Its inspection priority system would remain unchanged—highest priority would still be given to unscheduled inspections—but its process for scheduling programmed inspections would be based on these establishment-specific data. In addition, OSHA said the data collection system would enhance the agency's ability to measure its performance in achieving established goals for reducing injuries, illnesses, and fatalities.

Although the proposed overall rule to revise the record-keeping and reporting requirements had not been completed, in February 1996, OSHA initiated its survey of employers to collect injury and illness data for calendar year 1995. In March 1996, the American Trucking Associations and others filed a lawsuit challenging OSHA's authority to compel employers to participate in this survey in the absence of a final rule. A federal district court ruled that OSHA did not have the authority to issue citations to employers who did not complete and return the survey. In February 1997, OSHA issued a final rule implementing its authority to

survey employers and cite them for failing to respond. Also in February 1997, OSHA and the parties involved in the lawsuit agreed that OSHA would not use the survey data collected in 1996 for enforcement purposes, but it could use the data for other purposes.

OSHA Considered Industrywide Injury and Illness Data and Establishment Size in Designing Its Data Collection Surveys

OSHA used a two-stage process for selecting industries and establishments to include in its data collection surveys. First, OSHA selected the industries for its surveys using mainly industrywide data on injuries and illnesses. Second, within the industries selected, OSHA chose individual establishments to survey on the basis of establishment size. OSHA's objective was to survey all establishments of a specific size in the industries with the highest injury and illness rates. OSHA said a major determinant of the number of establishments it could survey in a year, however, was the amount of funds available for conducting the survey. With about \$2.6 million available annually to fund the surveys in 1996, 1997, and 1998, OSHA determined it could survey up to 80,000 establishments each year.

Selection of Industries

To select the industries among the most hazardous, OSHA used data obtained from BLS' annual surveys together with other factors such as work-related fatalities and the number of establishments most likely to be included in the survey in each industry. Because data and documentation supporting these decisions were not available, however, we could not assess the extent to which each factor contributed to OSHA's selecting—or excluding—an industry.

According to OSHA officials, the agency decided to include in its first three surveys all manufacturing and nonmanufacturing industries considered most likely to be hazardous for which it has responsibility.⁸ OSHA officials said it included all manufacturing industries because (1) manufacturing industries are required to maintain OSHA injury and illness records, (2) OSHA compliance standards to a large extent focus on manufacturing industries, (3) some manufacturing industries have injury and illness rates that are among the highest in all the SIC codes, and (4) the large number of manufacturing SIC codes (and the large number of establishments in each

⁸OSHA excluded the construction industry from the surveys for several reasons, according to OSHA officials. For example, a construction business may have many contractors and subcontractors. Although each contractor and subcontractor at a construction site is required to keep injury and illness records, some of them (for example, plumbers and electricians) may have a primary SIC code in an industry other than construction. For them, establishment injuries and illnesses would be recorded in their primary SIC codes, not in a construction code. OSHA officials said construction industries may be included in future surveys.

manufacturing group) made it impractical to separate high-hazard manufacturing industries from low-hazard manufacturing industries for the surveys.

According to OSHA, the main factor it used to identify nonmanufacturing industries most likely to be hazardous was the industry three-digit SIC code LWDII rate as reported by BLS. OSHA also considered work-related fatalities when selecting industries to survey. Other factors OSHA considered in its selection process for those years included whether the injuries reported by establishments occurred at a fixed facility or at an off-site location and the number of establishments in each industry that would most likely be included in the surveys.

1996 and 1997 Surveys

For the 1996 and 1997 surveys, OSHA chose all manufacturing industries, six industry groups (three-digit SIC codes), and eight specific industries (four-digit SIC codes) in nonmanufacturing SIC codes. The nonmanufacturing industries selected had high LWDII and injury and illness incidence rates at the three-digit SIC code level, according to calendar year 1993 BLS data. Four of the specific industries and one industry group that OSHA selected, according to the agency, also had high numbers of fatalities during the previous 10 years. (See fig. 1.)

Figure 1: Industries Selected for OSHA Surveys, 1996, 1997, and 1998

1996–1997				1998			
SIC Code	Industry	LWDII Rate ^a	Incident Rate ^a	SIC Code	Industry	LWDII Rate ^a	Incident Rate ^a
20–39	Manufacturing	5.3	12.1	20–39	Manufacturing	5.3	11.6
0783 ^b	Ornamental Shrub and Tree Services	5.6	10.7	0783	Ornamental Shrub and Tree Services	4.6	10.5
				421	Trucking and Courier Services, Except Air	8.3	14.1
4214	Local Trucking With Storage	8.5	14.0				
4215	Courier Services, Except by Air	8.5	14.0				
422	Public Warehousing and Storage	6.1	11.9	422	Public Warehousing and Storage	5.5	10.6
				423	Trucking Terminal Facilities	8.8	14.9
				449	Water Transportation Services	6.1	11.0
4491 ^b	Marine Cargo Handling	7.1	12.3				
				451	Air Transportation, Scheduled	8.9	14.5
458	Airports, Flying Fields, and Services	6.5	13.1	458	Airports, Flying Fields, and Services	6.4	11.3
4783	Packing and Crating	8.4	14.7	4783	Packing and Crating	8.2	16.3
4953 ^b	Refuse Systems	7.2	13.7	4953	Refuse Systems	7.1	14.0
				501	Motor Vehicles, Parts, and Supplies	5.1	10.7
				505	Metals and Minerals, Except Petroleum	5.8	12.5
5051	Metals Service Centers and Offices	6.0	13.3				
5093 ^b	Scrap and Waste Materials	4.4	9.2	5093	Scrap and Waste Materials	4.1	8.1
514	Groceries and Related Products	7.0	12.5	514	Groceries and Related Products	6.4	11.6
518	Beer, Wine and Distilled Beverages	6.6	13.1	518	Beer, Wine and Distilled Beverages	7.0	13.7
521 ^b	Lumber and Other Building Materials	6.4	13.6	521	Lumber and Other Building Materials	5.9	11.7
805	Nursing and Personal Care Facilities	8.9	17.3	805	Nursing and Personal Care Facilities	8.8	18.2
National Average		3.8	8.5			3.6	8.1

^aLWDII and incident rates for 1996-97 are BLS data reported for calendar year 1993. Rates for 1998 are BLS data reported for calendar year 1995. Also, rates for four-digit codes are the same as those provided by BLS at the three-digit level of which they are a part. For example, rates for codes 4214 and 4215 are those reported by BLS for SIC code 421.

^bSelected SIC code also has a high fatality rate.

As shown in figure 1, all 14 nonmanufacturing industry groups and specific industries OSHA selected in 1996 and 1997 had LWDII rates and injury and illness incidence rates that exceeded the national averages for all industries. Furthermore, most industries selected were among those with the highest LWDII rates. Because data were not available, however, we could not assess the extent to which each factor contributed to OSHA's selecting or excluding industries.

1998 Survey

OSHA expanded the 1998 survey to include additional industries in the survey database. According to OSHA, it included all manufacturing industries and the 14 nonmanufacturing industry groups or specific industries in the previous surveys again. It replaced four specific industries on the survey list with the three industry groups of which the specific industries are a part. OSHA also included three industry groups in 1998 that were not in the previous surveys. As a result, for 1998, OSHA selected a total of 16 nonmanufacturing industry groups or specific industries for the survey. According to OSHA, it based selections for the 1998 survey exclusively on calendar year 1995 injury and illness data obtained from BLS; fatalities and other safety and health factors were not considered. Each of the newly selected industry groups included in OSHA's 1998 survey had LWDII and injury and illness incidence rates that exceeded the national averages for all industries. (See fig. 1.)

Selection of Establishments

OSHA selected establishments to survey for all 3 years from within each of the chosen industries on the basis of establishment size. OSHA officials said they did this to include in the surveys all establishments of certain sizes in each of the industries selected, rather than survey a sample of establishments in these industries. For the 1996 and 1997 surveys, OSHA mailed surveys to all establishments with 60 or more employees in manufacturing industries and in each of the 14 selected nonmanufacturing industries. For the 1998 survey, OSHA mailed survey forms in March 1998 to all establishments in the newly selected industries with 50 or more employees. It also mailed forms to some of the establishments included in the 1997 survey: (1) those that did not return their forms, (2) the largest establishments in each state, and (3) those that had reported an LWDII rate of 7.0 or higher.

Establishments Already Compile Injury and Illness Data That OSHA Collects

For its 1996, 1997, and 1998 surveys, OSHA asked employers to provide summary information on their employees' injuries and illnesses during the previous calendar year. Because OSHA already requires the establishments to compile this information, employers are not required to develop new data sets. OSHA also asked employers to provide certain employment information for the establishments.

Although OSHA and BLS collect the same injury and illness and employment data from establishments that participate in their respective programs, BLS collects the data from a small sample (less than 3 percent) of all private-sector industry establishments and uses the information to generate aggregate statistics on occupational injuries and illnesses at the state and national levels. Because BLS pledges confidentiality of the data to employers, it does not share these data with OSHA. OSHA, on the other hand, needs establishment-specific data to identify individual establishments' LWDII rates and injury and illness incidence rates to more effectively and efficiently carry out its regulatory and enforcement activities. Because it cannot obtain these data from BLS and they are otherwise unavailable, OSHA collects injury and illness data from all establishments of a certain size within selected industries.

The OSHA data collection survey form is identical to a portion of the BLS annual survey of occupational injuries and illnesses form. The wording of the instructions, examples, and questions on the OSHA survey form is identical to that on the BLS survey form. In addition to the injury and illness and employment data, both data collection forms ask for the name, telephone number, date, and signature of the person to contact if any questions arise about the information provided. This contact information also allows OSHA and BLS to verify the data provided. BLS also collects information that OSHA does not on the demographics of injured and ill workers and the circumstances of the injuries and illnesses for a sample of cases that required recuperation away from work.

To minimize employers' burden, OSHA and BLS instruct employers responding to their surveys to copy on their survey forms the requested injury and illness data from the log and summary of occupational injuries and illnesses they are required to maintain. In addition, because some establishments from which OSHA collects data may be included in the BLS sample in a given year, OSHA has coordinated its data collection effort with BLS'. (BLS estimated that less than 10 percent of the establishments selected for the OSHA data collection effort would be included in the BLS sample in

any year.) Establishments required to report to OSHA and BLS may use a single form and send a copy to each agency.

The data collection form includes a section in which the respondent can provide summary information specific to the selected establishment. The first part of the summary section requests the average annual number of employees and the total number of hours that employees worked during the previous calendar year. It also requests information on conditions during the year, such as a strike or a shutdown, that might have affected the number of employees or the hours they worked.

The second part of the form requests the following information from the total line of the log and summary of occupational injuries and illnesses maintained by each establishment:

- total injuries, including the number of deaths as a result of injury, injuries with days away from work or restricted workdays or both, total days away from work, total days of restricted work activity, and injuries without lost workdays;
- total illnesses, including deaths as a result of illness, illnesses with days away from work or restricted workdays or both, total days away from work, total days of restricted work activity, and illnesses without lost workdays; and
- types of illnesses experienced by the workers, including skin diseases or disorders, diseases of the lungs due to dust, respiratory conditions due to toxic agents, poisonings, disorders due to physical agents, disorders associated with repeated trauma, and other occupational illnesses.

The information collected enables OSHA to compute each establishment's LWDII rate and injury and illness incidence rate. See the appendix for a copy of the OSHA data collection form.

OSHA Plans to Use Establishment-Specific Data in Various Ways, but So Far Use Has Been Limited

OSHA, in announcing its plans to collect establishment-specific injury and illness data by mail, indicated that such information would be used in a variety of ways to help OSHA carry out its responsibilities more efficiently and effectively. The intended uses were (1) directing OSHA's program activities, including the scheduling of establishment inspections under its enforcement program and the targeting of mailings of safety and health information to employers under its nonenforcement programs; (2) monitoring and tracking injury and illness incidents; (3) developing information for promulgating, revising, and evaluating OSHA's safety and

health standards; (4) evaluating the effectiveness of OSHA's enforcement, training, and voluntary programs; and (5) providing pertinent information to the public. In addition, OSHA stated that the establishment-specific data were necessary for it to meet GPRA requirements, which direct federal agencies to implement a program of strategic planning, develop systematic measures of performance to assess the impact of individual government programs, and produce annual performance reports.

Although OSHA collected establishment-specific injury and illness data during 1996 and 1997, as of April 1998, it had made only limited use of the data. None of the intended purposes has been fully implemented, and the data have not been used for other purposes. About 70,000 establishments responded to both the 1996 and 1997 surveys—about 88 percent of the establishments surveyed.

According to OSHA officials, firm plans for using the data involve enforcement activities and meeting performance goals it established under GPRA. The data will be used as part of Labor's performance measurement system to track the impact of OSHA's enforcement and compliance assistance interventions. For example, to measure the extent to which OSHA achieves its goal of reducing injuries and illnesses by 15 percent in high-hazard industries, such as food processing and logging, the agency will track survey data from employers in these industries.

According to OSHA's directive (CPL 2-0.119), the agency also plans to use survey data to schedule enforcement activities for establishments with the highest LWDII rates. OSHA will use the data to identify the 500 establishments with the highest rates and schedule them for on-site inspections. In addition, OSHA wants to use the establishment-specific injury and illness data to identify employers for participation in its new Cooperative Compliance Program (CCP). Under this program, OSHA would invite employers who report high LWDII rates on the survey to work cooperatively with OSHA to eliminate the hazardous working conditions. These employers would be put on a list of those most likely to be inspected; however, if these employers agree to participate, they must agree to establish an effective safety and health program. They must also agree to (1) find and remove hazards, (2) work toward reducing injuries and illnesses, (3) fully involve employees in their safety and health program, (4) share injury and illness data, and (5) provide OSHA with information from their annual injury and illness records. Under CCP, employers with 100 or fewer employees who choose to participate and agree to seek free assistance from their state OSHA consultation program to

establish effective safety and health programs reduce their likelihood of being inspected by OSHA to 10 percent. CCP participants with more than 100 employees and smaller employers not using consultation services face a 30-percent chance of being inspected. If identified employers do not agree to participate in the program, they will remain on OSHA's list for on-site inspection.

According to OSHA officials, inspections of CCP participants will most likely be shorter than regular inspections and result in lower penalties than normal because of these employers' commitment to finding and eliminating hazardous working conditions in their establishments. OSHA believes that those who successfully fulfill the requirements of the program should reduce injuries, illnesses, and fatalities, leading to lower workers' compensation costs and reduced insurance costs. In addition, workers whose employers join the program will be more involved in establishment safety and health issues and should experience fewer injuries and illnesses and have an improved quality of work life. OSHA will also benefit by extending its resources and expanding the base of employers with safety and health programs, which OSHA believes is a major difference between employers with low injury rates and those with high rates.

OSHA used the information it collected in 1997 to develop a list of about 12,500 establishments with the highest LWDII rates—that is, LWDII rates of 7.0 or higher. OSHA scheduled the 500 establishments with the highest LWDII rates for inspection and began these inspections in December 1997. In November 1997, OSHA invited about 12,000 of these establishments—less than 20 percent of those that responded—to participate in the CCP. According to OSHA officials, more than 89 percent of the employers invited by OSHA agreed to participate in the program. In response to a lawsuit filed by the U.S. Chamber of Commerce and others claiming that OSHA had not followed proper procedures in implementing the CCP, however, a federal court of appeals ordered OSHA in February 1998 to halt the enforcement program that includes CCP until the court decides whether the program is valid. According to OSHA officials, oral argument is scheduled for December 1998, and a decision is unlikely to be issued until some time in 1999. The order also required OSHA to stop conducting its inspections of the 500 establishments with the highest LWDII rates; 89 of these inspections had been completed when OSHA was told to stop conducting them. OSHA officials stated that this delay in implementing the CCP will adversely affect many of its enforcement and nonenforcement activities.

In April 1998, OSHA began implementing an interim inspection scheduling plan. Under the plan, OSHA will schedule for inspection establishments in 99 industries with LWDII rates of 6.4 or higher, according to calendar year 1996 BLS data. Establishments in these industries for which OSHA collected data in 1997 with LWDII rates at or above the national average of the industry of which they are a part will be randomly selected for inspection. The interim inspection plan has no CCP component.

In our 1994 report,⁹ we noted that one problem with relying on employer-provided data is the risk that employers may underreport injuries and illnesses if they know OSHA is collecting data about their establishments that could be used to target them for on-site compliance inspections. To reduce the risk of employers underreporting injury and illness data, OSHA needs to have a successful combination of enforcement and education. Therefore, we recommended in that report that OSHA implement procedures for ensuring that employers accurately record occupational injuries and illnesses. Because of its concerns about the quality of the data provided by employers responding to its surveys, OSHA is conducting on-site audits of employers' injury and illness records to assess these records' accuracy. OSHA has completed all of the 250 records audits it had planned to conduct.

OSHA Gave Employers No Assurance of Confidentiality as Part of the Data Collection Initiative

OSHA gave no assurances about privacy rights or confidentiality associated with the data collected from employers selected to participate in the data collection survey. Privacy rights of individual employees did not present a problem because the only information about workers that OSHA collected was summary information on injuries and illnesses, which does not identify individual workers. OSHA said it took steps to protect employers' privacy rights and to maintain confidentiality of the information. OSHA did not pledge to employers that the data it collected in its surveys would be kept confidential, however, because the data could be subject to disclosure under FOIA. According to OSHA, this information would be made available to the public only in response to specific FOIA requests. The injury and illness data OSHA collected, however, are the same data that employers are required to post in their establishments each year.

In contrast with OSHA, BLS pledges confidentiality to the full extent permitted by law to all participating establishments and informs the respondents that the data will be used for statistical purposes only. BLS tabulates and publishes data aggregated at the national and state levels by

⁹GAO/HEHS-94-10, Feb. 28, 1994.

various characteristics, such as industry group, occupation, and age. BLS does not tabulate or publish injury and illness data on individual establishments. Over the years, BLS has received FOIA requests for the data, including requests for establishment-specific injury and illness data but has refused to disclose the data, relying on the FOIA exemption for confidential commercial or financial information. A federal district court has upheld BLS' right to withhold from disclosure commercial or financial information that has been voluntarily provided to BLS under a pledge of confidentiality in large part because disclosure would impair the government's ability to obtain the data in the future.¹⁰ Whether OSHA would have a valid basis to rely on the same exemption has not been determined.

FOIA Requires Disclosure of Agency Records With Some Exceptions

Under FOIA, a federal department or agency is required to disclose information to anyone who requests it, unless the information is covered by one of the law's exemptions. Examples of such exemptions include trade secrets and individuals' medical files. The medical files exemption excludes from disclosure any data from establishments that identify individual employees' injuries and illnesses. Another exemption excludes information compiled for law enforcement purposes that would disclose techniques, procedures, or guidelines for law enforcement investigations. This exemption excludes from mandatory disclosure any data that might provide advance notice of an inspection. According to OSHA, it does not disclose collected establishment-specific data while such data are being used for scheduling inspections that might disclose the scheduling criteria. After the inspection is completed, however, the exemption no longer applies and the data may be subject to disclosure, OSHA officials said.

OSHA Has Received and Responded to Many FOIA Requests

From 1996 to 1998, OSHA received many FOIA requests about the data collection initiative. Many of these requests specifically related to requests about the CCP. The only establishments asked to participate in the CCP were those that responded to the data collection initiative, but, as already noted, implementation of the CCP has been postponed because of a lawsuit.

Labor agencies handle all FOIA requests on a case-by-case basis. Most of the requests OSHA has received and responded to about the data initiative asked for the names and addresses of establishments identified as having LWDII rates high enough to be invited to participate in the CCP. OSHA has provided these requesters with the names and addresses of the establishments only. OSHA has also provided its field offices with the names

¹⁰See *Husted v. Norwood*, 529 F. Supp. 323 (S.D. Fla. 1981).

and addresses of establishments in their regions to enable staff there to respond to similar requests. OSHA received one FOIA request for injury and illness data collected in the 1996 survey. As of April 1998, however, the agency had not released the requested information.

OSHA does not know the number of FOIA requests received by its headquarters and field offices about the data collection initiative. Labor is not required to and does not collect data on the specific subjects of FOIA requests. In addition, although federal agencies and departments must annually report to the Department of Justice on the number and cost of FOIA requests and responses, detailed information on the subjects of FOIA requests is not required. Moreover, although Labor has a national FOIA coordinator, it does not centrally track all FOIA requests received. FOIA requests concerning establishments identified by the data collection initiative are decentralized: they may be responded to by OSHA headquarters, regional, or area office staff. OSHA headquarters officials told us that generally they neither oversee nor approve FOIA responses handled by OSHA regional and area staff; nor are they informed of all FOIA requests received in the field. According to OSHA officials, however, area, regional, and national staff responsible for FOIA activities may coordinate efforts when preparing FOIA responses.

Agency Comments

We provided a draft of this report to the Department of Labor for its review and comment. Although Labor did not provide written comments on the draft report, officials from OSHA and other offices provided technical comments, which we have incorporated as appropriate.

As arranged with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 7 days after its issue date. At that time, we will send copies of this report to the Secretary of Labor and other interested parties. We will make copies available to others upon request.

If you or your staff have any questions about this report, please call me at (202) 512-7014 or Larry Horinko, Assistant Director, at (202) 512-7001.

Other major contributors to this report are John T. Carney, Evaluator-in-Charge; Ronni Schwartz, Senior Evaluator; and Robert G. Crystal, Assistant General Counsel.

Sincerely yours,

A handwritten signature in cursive script that reads "Carlotta Joyner".

Carlotta C. Joyner
Director, Education and
Education Issues

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Abbreviations

BLS	Bureau of Labor Statistics
CCP	Cooperative Compliance Program
FOIA	Freedom of Information Act
GPRA	Government Performance and Results Act
LWDII	lost workday injury and illness
OSHA	Occupational Safety and Health Administration
SIC	standard industrial classification

OSHA's Occupational Injury and Illness Data Collection Form

OSHA OCCUPATIONAL INJURY AND ILLNESS DATA COLLECTION FORM, 1997



U.S. Department of Labor
Occupational Safety and Health Administration



*Public Law 91-596
requires you to
participate in the data
initiative collection.*

OSHA estimates that it will take you, on average, 30 minutes to complete the forms in this data collection, including the time you'll spend reviewing the instructions, searching and gathering the data needed, and completing and reviewing the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. If you have any comments regarding these estimates or any other aspects of this data collection, send them to:

U.S. Department of Labor
Occupational Safety and Health Administration
Office of Statistics
Room N-3644
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Or:

U.S. Department of Labor
Office of IRM Policy
Room N-1301
200 Constitution Avenue, N.W.
Washington, D.C. 20210

**SEND COMPLETED
FORM TO ADDRESS
INDICATED ON
MAILING LABEL.**

Place Label Here

Please Make Any Necessary Corrections to your Establishment Site Address and SIC.

OMB No. 1218-0209
Approval Expires 12/31/98
OSHA Form 196B
(1/98)

**Appendix
OSHA's Occupational Injury and Illness Data
Collection Form**

Dear Employer:

The U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) is working with State agencies to compile occupational injury and illness data from employers within specific industry and employment size specifications. The information will be used to focus OSHA activities (inspections, outreach, consultations, technical assistance, and leveraging programs) and to measure the performance of the Agency in meeting its goal of reducing workplace injuries and illnesses.

We are asking for the totals from your 1997 *Log and Summary of Occupational Injuries and Illnesses* (OSHA No. 200), as well as information about hours worked and employment at your establishment. The Occupational Safety and Health Act, 29 U.S.C. §§ 657 & 673, and reporting regulations at 29 C.F.R. Part 1904 authorize OSHA to collect the requested information. Please note that establishments that fail to submit a completed 1997 survey form may be issued a citation and assessment of penalties or may be scheduled for an on-site records inspection or issuance of an administrative subpoena for the information.

At this time the Bureau of Labor Statistics (BLS) and its State partners are collecting the 1997 Survey of Occupational Injuries and Illnesses, Part 1 of which solicits information similar to that OSHA is collecting. BLS has compared its survey sample with the OSHA establishment list to identify firms selected for both programs. For the convenience of employers identified as being in both programs, the BLS survey and the OSHA data request have been mailed together in the same envelope. Some employers, however, may not have been identified as being in both programs and, thus, will receive the BLS survey and the OSHA request separately. *If you have already received the BLS survey, you may (at your option) either (1) complete this form, or (2) send us a copy of your responses to the BLS survey (Part 1, pages 1 and 2).*

We recognize that responding to our questions may be time consuming for some employers and have made every effort to reduce the completion time while still obtaining the necessary information. In this spirit, we now provide two means of submitting your establishment information: (1) by mail or fax, using this hard-copy form, or (2) via the Internet, using a secure electronic version of this form available on our Web site. Instructions for use of the electronic form are displayed at the Web site. You can access an electronic survey form by pointing your browser to <http://www.osha.gov/form196/cy97.htm> and then, when prompted, inputting your establishment-specific number and password (provided in the label on the cover of this form).

If you need help in completing the OSHA survey form or if you have questions, please call the phone number printed on the cover.

OSHA has initiated a comprehensive approach to monitoring and improving data quality. We will continue to evaluate this initiative and will build on the lessons learned to improve OSHA's ability to protect the health and safety of America's workers sensibly and appropriately. We invite your comments as we proceed with this effort. Thank you for helping us collect accurate information and for participating in the effort to make America's workplaces safer and healthier.

Occupational Safety and Health Administration
U.S. Department of Labor

Who must complete this form?

All establishments that receive this form should complete and return it or respond via Internet within 45 days, even if they had no occupational injuries and illnesses recorded on their 1997 OSHA No. 200.

What else do you need?

- ▶ Employment average and hours worked at the establishment noted on the cover.
- ▶ Information from your 1997 *Log and Summary of Occupational Injuries and Illnesses* (OSHA No. 200).

What do you need to do?

- ▶ Check the address information printed on the cover. Make any corrections necessary on the hardcopy or website.
- ▶ Complete this form **only** for the establishment noted on the cover.
- ▶ Fill out *Summary of 1997 Occupational Injuries and Illnesses*.
- ▶ On the last page, fill in the name of the person we should call with questions and sign the form.
- ▶ Return this form in the enclosed envelope, fax, or respond via Internet within 45 days of the date your establishment received it.

**Appendix
OSHA's Occupational Injury and Illness Data
Collection Form**

Summary of 1997 Occupational Injuries and Illnesses

This form tells us about the number of employees in your establishment and the number of hours they worked. It also gives us a summary of the occupational injuries and illnesses that occurred in your establishment in 1997. To answer, you will need:

- ▶ information about employment and hours worked from your payroll, and
- ▶ your 1997 *Log and Summary of Occupational Injuries and Illnesses* (OSHA No. 200).

Tell us about your employees and the hours they worked

Be sure the information you supply refers only to the establishment noted on the cover.

1. What is the average number of employees who worked for your establishment during 1997?
If this number is not available, you can estimate it this way:

Employment Average

- ▶ **Add** together the number of employees your establishment paid in every pay period during 1997. Include all employees: full time, part-time, temporary, seasonal, salaried, and hourly.

- ▶ **Divide** that answer by the number of pay periods your establishment had in 1997. Be sure to include any pay periods when you had no employees.

- ▶ **Round** the answer to the next highest whole number. Write the rounded number in the blank marked *Employment average*.

Example
Acme Construction pays its employees 26 times per year.
During 1997:
in this pay period Acme paid this many employees

1	10
2	0
3	15
4	30
5	40
↓	↓
24	20
25	15
26	10
	830 (sum)

Because Acme has 26 pay periods, it would divide its sum by 26.
830 divided by 26 = 31.92.

Acme would round 31.92 to 32 and write that number in the blank marked *Employment average*.

2. How many hours did your employees actually work during 1997? Include hours worked by salaried, hourly, part-time and seasonal workers, as well as hours worked by other workers subject to day to day supervision by your establishment (e.g. temporary help service workers).

Total Hours Worked

Do **not** include vacation, sick leave, holidays, or any other non-work time, even if employees were paid for it. If your establishment keeps records of only the hours paid or if you have employees who are not paid by the hour, please estimate the hours that the employees actually worked.

If this number isn't available, you can use this optional worksheet to estimate it.

Optional Worksheet

_____ **Find** the number of full-time employees in your establishment for 1997.

X _____ **Multiply** by the number of work hours for a full-time employee in a year.

_____ This is the number of full-time hours worked.

Add the number of any overtime hours as well as the hours worked by other employees (part-time, temporary, seasonal)

+ _____

_____ **Round** the answer to the next highest whole number. Write the rounded number in the blank marked *Total hours worked*.

**Appendix
OSHA's Occupational Injury and Illness Data
Collection Form**

3. Put an X in the box next to all conditions that might have affected your answers to #1 and #2.
- | | |
|---------------------------------------------------|---------------------------------------------------------------------------------|
| <input type="checkbox"/> Nothing unusual happened | <input type="checkbox"/> Natural disaster or adverse weather conditions |
| <input type="checkbox"/> Strike or lockout | <input type="checkbox"/> Shorter work schedules or fewer pay periods than usual |
| <input type="checkbox"/> Shutdown or layoff | <input type="checkbox"/> Longer work schedules or more pay periods than usual |
| <input type="checkbox"/> Seasonal work | <input type="checkbox"/> Other reasons: _____ |
4. Did you have ANY occupational injuries or illnesses during 1997?
- Yes. Go to the next section, *Tell us about the injuries and illnesses during 1997*.
- No. Go to *Sign and return this form*.

Tell us about the injuries and illnesses during 1997

If you had occupational injuries or illnesses during 1997, follow these steps.

- ➊ Go to your completed 1997 *Log and Summary of Occupational Injuries and Illnesses (OSHA No. 200)* form.
- ➋ Look at the totals line on the last page.
- ➌ Copy the 1997 totals from your OSHA No. 200 form into the columns below.

Total Injuries

Copy these totals from columns (1)-(6):

Deaths as a result of injury (column 1)	Injuries with days away from work or restricted workdays or both (column 2)	Injuries with days away from work (column 3)	Total days away from work (column 4)	Total days of restricted work activity (column 5)	Injuries without lost workdays (column 6)
_____	_____	_____	_____	_____	_____

Total Types of Illnesses

Copy these totals from columns (7a)-(7g):

Skin diseases or disorders (column 7a)	Dust diseases of the lungs (column 7b)	Respiratory conditions due to toxic agents (column 7c)	Poisoning (column 7d)	Disorders due to physical agents (column 7e)	Disorders associated with repeated trauma (column 7f)	Other occupational illnesses (column 7g)
_____	_____	_____	_____	_____	_____	_____

Total Illnesses

Copy these totals from columns (8)-(13):

Deaths as a result of illness (column 8)	Illnesses with days away from work or restricted workdays, or both (column 9)	Illnesses with days away from work (column 10)	Total days away from work (column 11)	Total days of restricted work activity (column 12)	Illnesses without lost workdays (column 13)
_____	_____	_____	_____	_____	_____

Sign and return this form

Fill in the name, title and phone number of the person we should call with questions about this form. Then date and sign the form.

Printed Name _____	() Telephone Number _____	Ext. _____	() Fax Number _____
Signature _____	Title _____	Today's date _____	

Return the forms and cover sheet of this packet in the inserted return envelope. If the return envelope is missing, send the package to the return address on the front cover. Remember to keep a photocopy for your records.

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