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UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

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HUMAN RESOURCES DIVISION

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SEPTEMBER 15, 1981

The Honorable Raymond J. Donovan
The Secretary of Labor

Dear Secretary Donovan:

Subject: Improvements Needed in Assessing Penalties and Controlling Penalty Collections Resulting from Occupational Safety and Health Inspections, (HRD-81-150)

The Occupational Safety and Health Administration's (OSHA's) inspection program is its primary means of insuring safe and healthful working conditions for about 73 million employees protected by the Occupational Safety and Health Act of 1970. During fiscal year 1980, about 132,000 violations were cited and penalties totaling about $23 million were proposed. We reviewed the adequacy of the accounting controls and procedures used by OSHA and the Office of the Solicitor for processing penalty cases and collecting and safeguarding penalty payments.

Our review showed that (1) weaknesses exist in internal controls and the recordkeeping system used to account for penalties and (2) it is taking too long to deposit penalties received into the U.S. Treasury. We are also providing information on regional solicitors' policies for processing contested and collection cases.

OSHA has recognized that improved internal controls and recordkeeping are needed and has made a commitment to develop improved controls and records.

BACKGROUND

The Occupational Safety and Health Act of 1970 authorizes the Secretary of Labor to establish national occupational safety and health standards and enforce compliance through workplace inspections and penalties for violations. The Secretary has delegated these responsibilities to the Assistant Secretary for Occupational Safety and Health.

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OSHA compliance officers inspect workplaces, and when a violation is found, the employer is sent a written citation of the standard violated, the period of time for its correction (abatement period), and any proposed penalty. As required by the act, the penalty is based on the type of violation and other circumstances (e.g., the size of the employer's business and the history of previous violations).

The employer may contest the citation by submitting a written notice to OSHA within 15 working days after receiving the citation. If the employer does not contest within that time, the citation and proposed penalty become final. In 1980, employers contested about 13 percent of the citations. When an employer files a notice of contest, the OSHA area office refers the case to Labor's regional solicitor, who negotiates settlements and litigates contested cases. The Occupational Safety and Health Review Commission must agree to any settlements before they become final. The regional solicitor's office also processes collection cases.

OBJECTIVES, SCOPE, AND METHODOLOGY

We performed audit work at OSHA and the Office of the Solicitor headquarters offices in Washington, D.C., and in OSHA area offices and Solicitor regional offices in Denver, Atlanta, New York City, and Washington, D.C. We examined applicable laws, regulations, and directives relating to the assessment, collection, control, and remittance of penalties. We interviewed OSHA and Office of the Solicitor officials to determine the policies and procedures followed in assessing and collecting penalties and to determine the criteria and/or basis used to settle contested cases.

We examined case files at the OSHA area offices and the regional solicitors' offices to verify the policies and determine procedures used to process penalty and contested cases and the methods used to document the actions taken. The files reviewed included contested and uncontested cases referred to the regional solicitor.

Our examination in the New York and Washington, D.C., areas did not include all tests and audit procedures performed in the Atlanta and Denver areas. For example, in the New York and Washington, D.C., areas, we did not determine how long penalty checks were held by the regional solicitors' offices before forwarding to OSHA area offices.

IMPROVEMENTS NEEDED IN INTERNAL CONTROLS AND RECORDKEEPING

We found that

--OSHA's management information system was not providing accurate data showing penalty balances due and

--penalty receipts were often transmitted between offices without adequate internal controls and acknowledgement of receipt.

One report generated by OSHA's management information system concerns penalties and contains such data as the establishment inspected, date of inspection, proposed penalty, adjustments to the penalty, amount remitted, and amount due. Our review showed that the data on amounts due were inaccurate and unreliable.

For example, in the New York (Manhattan) area office, we randomly selected 35 cases from the management information system report of "open" penalty cases with amounts due as of April 30, 1980, and compared the amounts due in this report with the case files to determine if the report was correct. The area office staff was unable to locate 2 of the case files, but our comparisons for the other 33 cases showed that the penalty amounts due on the management information system report were incorrect for 28 cases. In 21 cases the penalties had been paid and no amount was due, in 2 cases the penalties were "vacated" or closed and there was no amount due, and in 5 cases the amounts actually due from employers were less than those reported by the management information system report.

The penalty amounts due were incorrect because data were not entered into the system to record regional solicitor adjustments to penalties proposed by OSHA area offices and contested by employers. A specific form had been prescribed to record changes in citations--including changes in penalty amounts--and to input these changes into the system, but it was not being used at any of the locations we visited. Representatives in two regional solicitor offices stated that the form was not prepared and submitted for input to the system because they did not believe this was the regional solicitor's responsibility, and they did not have enough time or staff to do so.

Effective April 1, 1981, after completion of our fieldwork, OSHA headquarters representatives told us that OSHA had taken steps to improve its debt collection process, including changes

to insure the completeness and reliability of data in its management information system. OSHA and the Office of the Solicitor have agreed that, in disposing of contested cases, OSHA area offices will complete a revised form to record changes in citations and penalty amounts and submit it for processing. The Office of the Solicitor also issued a February 23, 1981, memorandum to its field offices, instructing them to promptly return closed case files to OSHA area offices together with all documentation related to the case so that the area offices will have complete information to prepare the revised form for recording changes, including penalty adjustments. These changes, if effectively implemented, should improve the accuracy of management information system data on the status of open cases, including penalty amounts due.

Our review also showed that penalty receipts are often transmitted between offices without adequate internal controls and acknowledgement of receipt. Three of the four OSHA area offices we visited (Denver, New York, and Washington) were mailing penalty checks to OSHA headquarters without an accompanying list showing checks enclosed or the total amount remitted. OSHA headquarters deposited these checks in the U.S. Treasury without sending the area offices acknowledgement of receipt.

Penalty payment checks or money orders are required to be made payable to the U.S. Department of Labor, so there is limited opportunity for fraud or conversion of penalty payments to improper use. However, penalty receipts may become lost in the mails or otherwise misplaced, and without adequate internal controls, such a loss might not be detected.

The Atlanta area office remitted penalty receipts to OSHA headquarters accompanied by a list identifying each check and the amount thereof. The Atlanta area office maintained copies of the lists, but OSHA headquarters destroyed these lists, as well as those sent by some other area offices, as soon as they were received. The Atlanta area office also remitted penalty receipts by registered mail, which provided verification of receipt, even though this practice was discouraged by OSHA's field operations manual.

As a result of our review in the Denver OSHA area office, new procedures were instituted for processing penalty payments. One such procedure was the preparation of a list identifying each check and the amount transmitted to OSHA headquarters. The original list is forwarded to OSHA headquarters along with the checks, and a copy is kept by the area office. The Denver area office also asks that receipt of the checks be acknowledged, but OSHA headquarters does not do so. In fact, the OSHA field operations manual discourages such an acknowledgement.

Our review also showed that penalty checks received by regional solicitors' offices were sometimes being mailed to OSHA area offices without acknowledgement of receipt. The New York and Washington regional solicitors' offices forwarded checks individually to OSHA area offices with an accompanying transmittal memorandum, but the area offices did not acknowledge receipt of the checks. The Denver solicitor's office forwarded checks to the OSHA area office together with the closed case files, but the area office did not acknowledge receipt. In contrast, the Atlanta solicitor's office forwarded checks individually to the area office by certified mail with an accompanying transmittal memorandum. Thus, the Atlanta solicitor's office had an effective control to insure that checks transmitted were received by the area office.

Conclusions and recommendation

OSHA's management information system was not providing accurate data on penalties due from employers. However, the system changes made by OSHA in April 1981, if effectively implemented, should correct this problem.

We believe that internal controls over remittance of penalties could best be achieved through a two-step process:

1. Require sending offices to prepare a list identifying each check and money order and the total amount being remitted--with one copy of the list to be retained by the sending office until receipt is acknowledged, and two copies to be transmitted with the remittances.

2. Require receiving offices to acknowledge receipt of the remittances by signing and returning one copy of the list to sending offices--with the other copy to be retained by receiving offices.

We recommend that you require OSHA and the Office of the Solicitor to develop and implement a recordkeeping system to provide improved management controls over penalty receipts in transit between Labor offices. At a minimum, such a system should require receiving offices to acknowledge receipt of payments.

PENALTY PAYMENTS NOT PROMPTLY DEPOSITED

When collections are not deposited promptly, access to the funds by Treasury is delayed and the potential for loss or misplacement of funds is increased. Undue delays in depositing collections means that the Treasury is denied use of the funds; as a result, it must borrow funds--increasing the Government's interest costs.

Because timely deposits are important, GAO, Labor, OSHA, and the Department of the Treasury include guidance in their accounting procedure manuals on the frequency of depositing collections. The GAO Policy and Procedures Manual for Guidance of Federal Agencies and Labor's Financial Management Manual stipulate that collections be deposited daily if possible. The Treasury Department's Fiscal Requirements Manual for Guidance of Departments and Agencies states that (1) collections of $1,000 or more should be deposited daily, (2) smaller collections may be accumulated and deposited when they total $1,000, and (3) deposits must be made at least weekly regardless of the amount accumulated. OSHA's field operations manual requires area directors to mail collections on the day of receipt to OSHA headquarters for deposit in the Treasury.

Our review showed that OSHA collections were not being deposited promptly in accordance with these standards. In the Atlanta regional solicitor's office, we examined the records relating to a random sample of 22 checks received between December 3, 1979, and September 25, 1980. We found that these checks were kept in the regional solicitor's office an average of 11 days between the date of receipt and date of transmittal to the Atlanta OSHA area office. For example, the regional solicitor's office held one check for $6,840 for 17 days and another check for $6,000 for 30 days.

The Denver regional solicitor's office did not maintain adequate records to enable us to determine for a representative sample of cases the average length of time checks were kept before forwarding to the area office. However, in at least some instances, checks were held in the regional solicitor's office for excessive periods. In one case, the regional solicitor's office held a $725 check for 93 days, and in another case, a $640 check was held for 85 days.

We did not determine how long checks were held by the New York and Washington regional solicitors' offices.

In the Denver, New York, and Washington OSHA area offices, penalty payments were usually remitted on the day of receipt or the following day to a post office box in Washington, D.C. However, large amounts of penalty payments were frequently being held in the Atlanta OSHA area office for several days before they were remitted to the box. During April through June 1980, the Atlanta office made 13 remittances with a total of 64 checks amounting to about $45,000. These 64 checks were held in the office an average of 4.5 days before being remitted. Eleven of the 13 remittances contained checks for more than $1,000. For example, on April 28, 1980, the Atlanta area office remitted seven checks totaling about $10,000 which had been held an average of 5.6 days.

The Division of Financial Management in OSHA headquarters collected remittances sent by OSHA area offices from the post office box in Washington, D.C., and mailed these remittances to the Federal Reserve Bank in Baltimore on the same day. However, the remittances were collected from the box at erratic intervals--sometimes as infrequently as every 17 days.

Usually the remittances collected from the post office box totaled large sums. The following schedule shows the date receipts were collected from the box during March and April 1980, the elapsed days since the prior collection, and the amount collected.

Date receipts collected (1980)	Elapsed days since prior collection	Amount collected
March 7	8	$ 237,504
March 24	17	463,745
April 1	8	288,291
April 3	2	162,505
April 15	12	241,503
April 17	2	144,576
April 28	11	257,826
		$1,795,950

We could not determine when area offices' remittances were placed in the post office box. However, assuming that many area offices are making remittances on the day of receipt or the following day, it is probable that remittances are being placed in the post office box daily and that large sums of penalty collections were allowed to remain in the box for several days.

Recommendations

We recommend that you:

--Require OSHA and the Office of the Solicitor to emphasize to their field offices the importance of forwarding penalty receipts promptly. Receipts should be forwarded on the day of collection, or at least by the following business day.

--Require OSHA headquarters to make daily collections and deposits of penalty receipts from the post office box.

REGIONAL SOLICITORS' POLICIES FOR PROCESSING CONTESTED AND COLLECTION CASES

Employers who do not contest citations are required to pay the full penalty, but our review of selected case files showed that most employers who contest citations receive substantial reductions.

For example, in the Atlanta area office, we examined 19 closed cases of the 341 contested cases referred to the regional solicitor from January 1, 1978, through September 30, 1980. In 17 of these cases, the regional solicitor negotiated and settled with the employers for substantial reductions in the proposed penalties. The reductions totaled about $17,000, ranged from 44 to 80 percent, and averaged 58 percent. The employers paid the full amount of the proposed penalty in only two cases. In the New York area office, we selected a random sample of 35 of the 194 open cases with penalties due as of April 30, 1980, as shown on the OSHA management information system report. Of these 35 cases, 30 were contested cases and 5 were collection cases. The area office was unable to locate two of the contested case files for our review, and two other contested cases had been vacated or set aside by the Occupational Safety and Health Review Commission. In all the remaining 26 contested cases, the regional solicitor had negotiated and settled with employers for substantial reductions. The reductions totaled about $39,000, ranged from 32 to 77 percent, and averaged 66 percent.

Regional solicitor representatives said that, in negotiating penalty reductions, they consider several factors--such as the anticipated costs of processing cases through the Occupational Safety and Health Review Commission and possibly the courts, the sufficiency of evidence to uphold OSHA's citation and proposed penalty, and their anticipation that the Commission may substantially reduce proposed penalties. However, they said that the primary objective of negotiating with employers was to obtain their commitment to abate hazards and that the amount of penalties reduced or collected was of secondary importance. Officials in Denver and New York told us that, when an employer agrees to abate the hazard and the penalty is the only issue, the attorney would begin negotiations by offering the employer a 50-percent reduction.

When employers contest the violation or the abatement date, the abatement date specified in the citation is suspended for each contested item. When the contest is resolved, the employer must make a commitment to abate the hazard; obtaining this commitment was the asserted primary objective of the negotiation process. Thus, employers who contest violations or abatement dates receive not only reduced penalties, but also additional time to abate hazards.

On September 8, 1980, the Office of the Solicitor and OSHA issued a joint memorandum authorizing OSHA area directors to enter into informal settlement agreements, when requested by employers, before a notice of contest is filed. In conjunction with regional solicitors, area directors can also enter into settlement agreements after a contest is filed. Area directors are authorized to amend the abatement date, reclassify the types of violation, adjust the penalty, or withdraw the citation. The memorandum stated that training would be provided to area directors on administering informal settlement agreements. However, as of July 1981, the training had not been provided.

We believe that the practice of negotiating substantial penalty reductions with employers who contest citations suggests that the proposed penalties may be too high, settlements may be too lenient, or both. If this practice is continued, we believe it is reasonable to expect more citations to be contested as employers increasingly become aware of the financial advantage of doing so.

Our review also showed that, for the areas we reviewed, the regional solicitors' offices followed inconsistent practices of initiating court suits to recover unpaid penalties in collection cases. When an employer fails to pay penalties due (a collection case), the regional solicitor usually sends one or two dunning letters to the employer. If the employer still does not pay, the regional solicitors, depending upon the amount involved, may initiate action in Federal district court for collection. Our review showed, however, that the regional solicitors' offices established different minimum penalties or cutoff points for pursuing court action.

The minimum penalty for court action was set at $100 by the New York and Washington, D.C., regional solicitors, $500 by the Denver regional solicitor, and $600 by the Atlanta regional solicitor. This policy results in inconsistent treatment of employers, depending on which solicitor's office a collection case is sent to for collection.

Recommendation

We recommend that you require the Office of the Solicitor to establish a uniform minimum penalty for regional solicitors to use in determining whether to pursue court action to recover unpaid penalties in collection cases.

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As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions taken on our recommendations to the House Committee on Government Operations and the Senate Committee on Governmental Affairs not later than 60 days after the date of the report 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 the report.

We are sending copies of this report to the chairmen of the four above-mentioned committees and the cognizant legislative committees. Copies are also being sent to the Director, Office of Management and Budget, and other interested parties.

We appreciate the courtesy and cooperation extended to our representatives during this review.

Sincerely yours,

Edward A. Densmore

for Gregory J. Ahart
Director