

GAO

Report to the Chairwoman, Subcommittee  
on Government Activities and  
Transportation, Committee on  
Government Operations, House of  
Representatives

September 1988

# WHISTLEBLOWERS

## Management of the Program to Protect Trucking Company Employees Against Reprisal



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United States  
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Washington, D.C. 20548

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General Government Division

B-231224

September 22, 1988

The Honorable Cardiss Collins  
Chairwoman, Subcommittee on Government  
Activities and Transportation  
Committee on Government Operations  
House of Representatives

Dear Madam Chairwoman:

In response to your request, we have reviewed the Department of Labor's implementation of the "whistleblower protection" provisions of the Surface Transportation Assistance Act of 1982. As delegated by the Secretary of Labor, the Assistant Secretary for the Occupational Safety and Health Administration is responsible for administering the program.

As agreed with the Subcommittee, we plan no further distribution of this report until 30 days after the issue date unless you announce its contents earlier. At that time, we will send copies to the Secretaries of Labor and Transportation and other interested parties and make copies available to others upon request.

Sincerely yours,

A handwritten signature in cursive script that reads "Richard L. Fogel".

Richard L. Fogel  
Assistant Comptroller General

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# Executive Summary

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## Purpose

Traffic accidents represent one of the leading causes of death and injury in the United States. Interstate motor carriers were involved in an estimated 114,938 accidents that resulted in injuries or fatalities between 1980 and 1985. The Surface Transportation Assistance Act of 1982 was enacted, in part, to reduce safety and health hazards in the interstate trucking industry by protecting employees against reprisal when they report violations of commercial motor vehicle laws and regulations by their employers.

The Chairwoman, Subcommittee on Government Activities and Transportation, House Committee on Government Operations, requested GAO to review the Department of Labor's implementation of the "whistleblower protection" provisions of the act and their relationship to law enforcement efforts of the Department of Transportation.

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## Background

Section 405 of the act requires the Secretary of Labor to investigate, issue findings, and, if warranted, order corrective action within 60 days of receiving a complaint from an employee of an interstate motor carrier. These complaints must allege that discipline, discharge, or acts of discrimination were taken against employees in reprisal for refusing to violate, or for reporting that the employer violated, federal commercial motor vehicle safety regulations. The Secretary delegated responsibility for administering this program to the Occupational Safety and Health Administration (OSHA). GAO used the 60-day standard Congress mandated in determining OSHA's timeliness in investigating and issuing findings in the Section 405 cases closed by OSHA in a 20-month period from October 1, 1986, through May 31, 1987.

In the Department of Transportation, the Federal Highway Administration's Office of Motor Carriers (OMC) is responsible for reducing commercial motor vehicle accidents and related fatalities, injuries, and property loss. It issues regulations and administers an enforcement program that governs the safe operation of interstate commerce motor carriers. GAO analyzed OMC information on safety violations and accident histories of motor carriers named in the Section 405 cases GAO reviewed.

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## Results in Brief

GAO found that OSHA has not devoted enough management attention to the whistleblower protection program. It did not investigate and issue findings on whistleblower complaints within 60 days, as required by law, on the majority of the cases closed by OSHA in the 20-month period GAO reviewed.

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GAO believes OSHA can do more to publicize the whistleblower protection program and provide guidance in filing complaints to persons covered under the act. For example, OSHA could distribute its pamphlet describing employee rights and procedures for filing a complaint at truck stops. It could also make public service announcements on radio and television and publish notices in magazines and trade publications that have wide circulation among truck drivers and other employees covered under Section 405 of the act.

OMC could use OSHA information from whistleblower complaints to help strengthen its motor carrier safety enforcement efforts. Similarly, OMC can use the information from whistleblower complaints as a factor in determining what penalties to impose on motor carriers who have violated safety regulations. Where these carriers also have a serious pattern of safety violations, they are subject to strong sanctions under the Motor Carrier Safety Act of 1984, as amended.

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## Principal Findings

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### Stronger Management Attention to the Whistleblower Protection Program Is Needed

OSHA did not comply with the statutory requirement that it investigate and issue findings on whistleblower complaints within 60 days in about 56 percent (229 of 406) of the cases it closed in fiscal year 1986 and the first 8 months of fiscal year 1987. OSHA attributed delays to a variety of reasons, such as difficulties in locating witnesses, lack of cooperation from respondents, the requirement that respondents be given 20 days to reply to the complaint before OSHA can issue a finding, and a limited number of investigators available (47 as of June 1988) to handle Section 405 and other whistleblower complaints. However, OSHA is not sure how much of a role each of these factors played in individual cases. OSHA did not have information that would enable it to determine the status of whistleblower complaints, identify obstacles, and take timely action to ensure Section 405 cases were decided in compliance with the 60-day statutory requirement. It plans to have a new management information system in operation by January 1989 which will provide direct access to data maintained in OSHA regional offices on Section 405 cases.

Aside from a press release at the start of the program and two notices published in the Federal Register in 1983 and in 1986, OSHA took no formal action to publicize the program until May 1987 when it issued a pamphlet describing employee rights. The pamphlet was distributed to

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OSHA's regional offices. OSHA officials acknowledged that better publicity directed to employees covered by the whistleblower program could result in an increase in whistleblower complaints.

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### Use of Whistleblowers' Information Could Help Strengthen Motor Carrier Safety Enforcement Efforts

OSHA and OMC do not have procedures to provide OMC with information from the large majority of whistleblower complaints alleging motor carrier safety violations. GAO believes OMC could use this information to help (1) identify carriers in violation of motor carrier safety regulations, (2) target follow-up review and investigation efforts to ensure corrective actions have been taken, (3) determine what penalties to impose where a pattern of, or serious, violations are found, or (4) intervene in motor carrier operations to alleviate conditions that pose an "imminent hazard" to public safety. Information OSHA obtains in the course of investigating these whistleblower complaints may reveal patterns of violations and hazards to public safety that otherwise might not come to the attention of enforcement authorities.

GAO found that many of the motor carriers named in whistleblower complaints had a record of prior violations of motor carrier safety regulations and a history of serious accidents. GAO found that OMC's inspections during calendar years 1980 through 1985 of 117 of the motor carriers named as respondents in OSHA whistleblower cases resulted in citations against 113 carriers for a total of 8,362 violations and 2,189 actions by OMC to place the vehicles or drivers "out-of-service."

Ninety-six motor carriers named in whistleblower cases, representing less than one-tenth of 1 percent of the approximately 191,960 interstate motor carriers over which OMC has jurisdiction, were involved in about 13 percent (15,323) of the 114,938 accidents resulting in death or injury involving motor carriers during this period. And 24 of the 35 carriers named in more than one whistleblower complaint accounted for about 79 percent (12,117 of the 15,323) accidents that involved motor carriers named in whistleblower complaints.

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### Recommendations

GAO recommends that the Secretary of Labor direct the Assistant Secretary for Occupational Safety and Health to

- ensure that the management information system being developed will provide accurate and up-to-date information on the current status of Section 405 cases;

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- identify the problems, factors, and conditions that are causing delays in case processing and take action to correct them; and
  - develop and implement a better, more comprehensive public information program and mechanism to ensure that trucking company employees are aware of their rights and protections under the act.

GAO recommends that the Secretary of Transportation develop, in cooperation with OSHA, a procedure for obtaining information from whistleblower complaints alleging motor carrier safety violations and use the information as a factor to consider in

- identifying and following up on motor carriers alleged to have violated federal laws and regulations and
- deciding what penalties to impose on motor carriers that have committed repeated or serious violations.

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## Agency Comments

Although GAO did not obtain written agency comments on this report, the views of responsible agency officials were sought during the course of its work and are incorporated where appropriate. The officials agreed with GAO's conclusions and recommendations.

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**Abbreviations**

DOL	Department of Labor
DOT	Department of Transportation
GAO	General Accounting Office
OMC	Office of Motor Carriers
OSHA	Occupational Safety and Health Administration

# Introduction

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Truck drivers, mechanics, and other trucking company employees sometimes become aware of safety hazards that place them and the public at risk of injury or death. On such occasions the employee may voice his or her concerns with fellow employees; complain directly to management, state, or local police; or file safety or health complaints with OSHA or some other regulatory agency on violations of safety or health hazards that trucking companies should correct and, in certain instances, may refuse to operate a vehicle in violation of motor carrier safety regulations. Some employers may take punitive actions against the “whistleblower” (such as dismissal) rather than take steps needed to resolve the problem, and the hazardous conditions remain uncorrected. As a result, other employees in the trucking industry may be inhibited from reporting unsafe conditions for fear of reprisal and the belief that nothing will be done to correct the problem. In enacting the Surface Transportation Assistance Act of 1982, Congress provided a mechanism to protect employees from reprisal to encourage them to report safety hazards.

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## Background

Section 405 of the act (49 U.S.C. 2305, as amended; Public Law 97-424), requires the Secretary of Labor to investigate complaints filed by certain employees, such as drivers of commercial motor vehicles, mechanics, freight handlers, and other employees of commercial motor carriers, who directly affect commercial motor vehicle safety, alleging that their employer disciplined, discharged, or discriminated against them in reprisal for refusing to violate, or after alleging that their employers violated, federal commercial motor vehicle safety regulations. The act specifies that within 60 days of receipt of the complaint, the Secretary shall investigate and determine whether there is reasonable cause to believe the complaint has merit and notify the complainant and the person alleged to have committed the violation (respondent) of the findings. In those cases where the complaint is found to have merit, the Secretary is to issue a preliminary order, ordering the respondent to take affirmative action to abate the violation and reinstate the complainant to his or her former position, together with the compensation (including back pay), terms, conditions, and privileges of the former position, and may award compensatory damages. Either the complainant or the company alleged to have committed the violation may, within 30 days, file objections to the findings or preliminary order and request a hearing. Upon conclusion of the hearing, the Secretary of Labor shall issue a final order within 120 days. If no objection is filed or no hearing is requested, the preliminary order becomes a final order. The Secretary may, at the request of the complainant, assess against the employer all costs and

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expenses (including attorney's fees) reasonably incurred by the complainant, as determined by the Secretary, in connection with bringing the complaint. In July 1983, the Secretary delegated authority and assigned responsibility for administering Section 405 to the Assistant Secretary for the Occupational Safety and Health Administration (OSHA).

In the Department of Transportation (DOT), the Federal Highway Administration's Office of Motor Carriers (OMC) has primary responsibility under 49 U.S.C. 3101-3104 and 49 U.S.C. Appendix 2501-2520 and 1801-1812 for reducing commercial motor vehicle accidents and related fatalities, injuries, and property loss. It issues regulations and administers an enforcement program for the safe operation of interstate commerce motor carriers. The Federal Motor Carrier Safety Regulations (49 C.F.R., parts 390-397) govern the safe interstate transport of passengers and property by requiring drivers to meet certain qualifications and not operate vehicles beyond the number of hours specified as safe by the Secretary of Transportation. The regulations also require that vehicles used in interstate commerce (including those carrying hazardous materials intrastate) meet certain standards of safety and that records be maintained to help assure that motor carriers comply with federal laws in the interest of public safety. OMC conducts safety reviews of these carriers.

OSHA's investigations of Section 405 complaints involve employees of the same motor carriers over which OMC has regulatory and safety enforcement jurisdiction.

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## How OSHA Processes Whistleblower Complaints

Using OSHA's Investigator's and Field Operations Manuals, we constructed a flow chart of the stages in filing and resolving Section 405 complaints and obtained OSHA's comments on the draft to assure its accuracy and representativeness. As shown in the flow chart in figure 1.1, to begin an investigation of a whistleblower complaint, an employee must make a complaint to any OSHA office within 180 days of the alleged incident of discrimination. All complaints are forwarded to an OSHA regional supervisory investigator or regional investigator, who interviews the complainant by telephone or in person. On the basis of this interview, the investigator determines whether the activity is protected under Section 405 and whether the complaint is appropriate for investigation. The complainant is notified of this determination, informed of protections available and his or her rights under the act, and options available to him or her in dropping or pursuing the complaint. If, in this initial determination, it is found that there was no violation of the

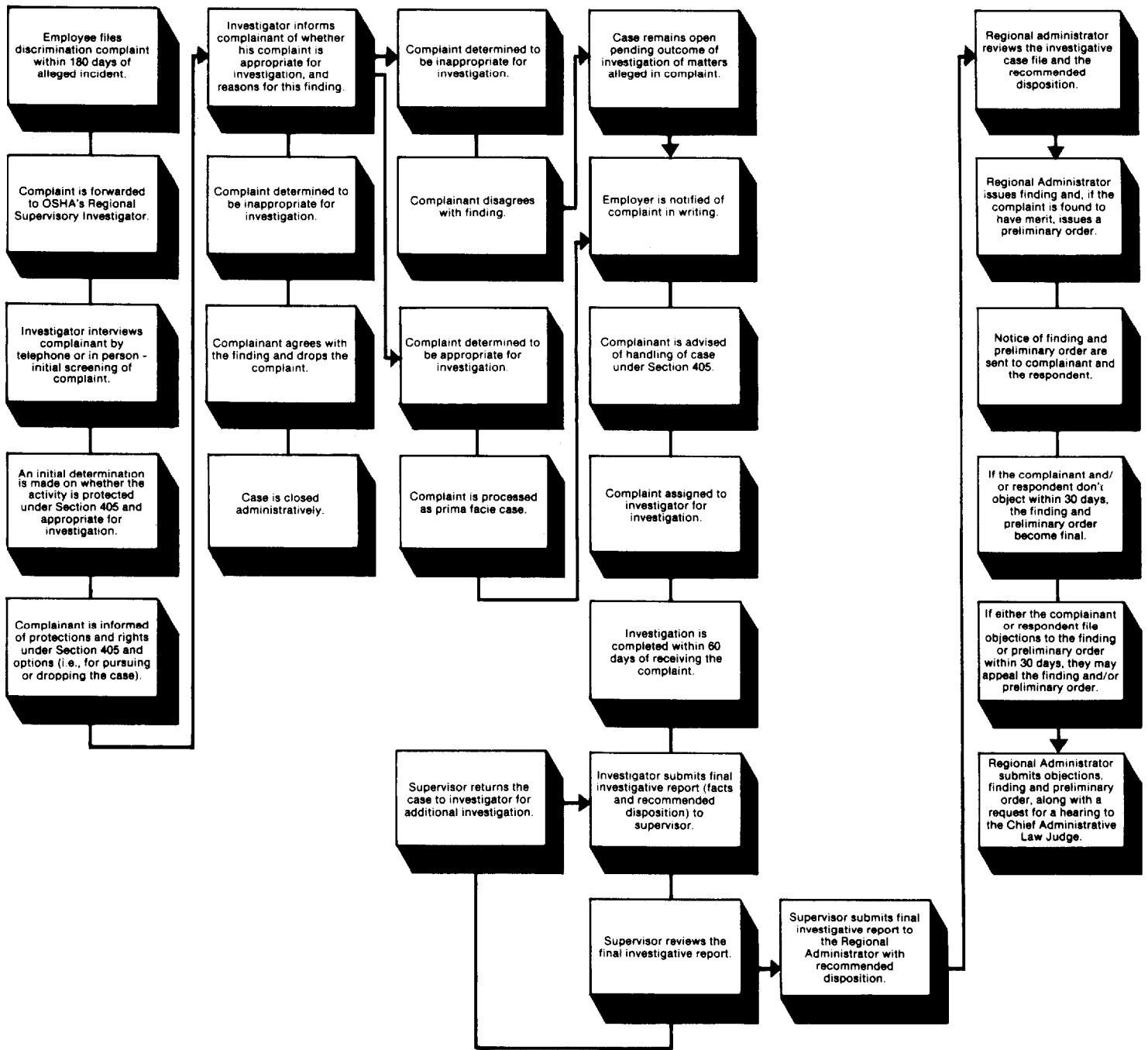
employees' rights to protection under the whistleblower provisions of the act and the complainant agrees, the case can be closed administratively. However, if the complainant disagrees with this determination and wishes to pursue the complaint, the case remains open pending the outcome of an investigation of the matters alleged in the complaint.

If the investigator determines that the case is appropriate for investigation the investigator continues with OSHA notifying the employer of the complaint in writing and the complainant is advised as to how the case will be handled under Section 405. The complaint is assigned to an OSHA regional investigator for investigation. The investigation and findings must be made within 60 days from the date the complaint was received by OSHA. Upon completion of the investigation, a final report is submitted to the investigator's supervisor with a recommended disposition. After reviewing the investigative report, he or she either returns it to the investigator assigned to the case for further investigation or submits it to the OSHA regional administrator with a recommended disposition.

The regional administrator then issues a finding and, where the complaint is found to have merit, a preliminary order (such as a reinstatement of the employee to his previous position) is sent to both the complainant and the employer named in the whistleblower complaint. If the complainant or the employer do not file an objection within 30 days, the preliminary order becomes final. Should either the complainant or the employer object, they may appeal the finding and/or preliminary order to the DOL Chief Administrative Law Judge.

OSHA also has responsibility for a similar program to provide whistleblower protection to all employees working in industries covered under Section 11 (c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 660 (c), as amended; Public Law 91-596.) Section 11 (c) provides all such workers with protections against reprisal when they exercise their rights to file a safety or health complaint, testify about hazardous conditions on the job, and, under certain conditions, when they refuse to engage in work activities which they believe put them in danger of death or serious injury in violation of federal regulations. Any employee who believes that he or she has been discharged or otherwise discriminated against, for one or more of these reasons, may, within 30 days, file a complaint with the Secretary of Labor alleging such discrimination. Upon receipt of such complaint, an investigation is made as the Secretary deems appropriate, and the complainant is to be notified of

Figure 1.1: Caseflow Model of Steps in Processing Whistleblower Complaints



the Secretary's determination within 90 days after receipt of the complaint. If the Secretary determines that an employee has been discriminated against in violation of Section 11 (c), he or she shall bring action in any appropriate U.S. District Court against the employer. The District Court may order all appropriate relief including rehiring or reinstatement of the employee to his or her former position with back pay.

Section 405 of the Surface Transportation Assistance Act of 1982 differs from Section 11 (c) of the 1970 OSHA Act in several respects. Protections available under Section 405 are limited to individuals employed in the trucking industry. Also, OSHA decisions on Section 405 complaints can be appealed to an administrative law judge. There are administrative differences in how cases are processed. For example, in complaints brought under Section 11 (c), the employee has 30 days from the alleged incident of reprisal to file the complaint with OSHA, and OSHA must make a determination and notify the complainant within 90 days. Under Section 405, employees have 180 days in which to file a complaint and OSHA must make an investigation and issue a finding within 60 days of receipt of the complaint.

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## Objective, Scope, and Methodology

The Chairwoman of the Subcommittee on Government Activities and Transportation, House Committee on Government Operations, asked us to review the Department of Labor's (DOL) implementation of the "whistleblower protection" provisions (sec. 405) of the Surface Transportation Assistance Act of 1982. As agreed with the Subcommittee we determined

- the extent to which OSHA investigates and issues decisions on complaints within the 60 days required by the act;
- whether OSHA has promulgated regulations and guidance for implementing this provision;
- what actions OSHA has taken to publicize the whistleblower protection program and acquaint employees covered by the act of the protections available and the procedures to be followed in filing a complaint;
- how OSHA has defined what persons are covered by the Section 405 provisions;
- whether OSHA has developed investigation criteria or standards for reaching decisions on complaints;
- what procedures have been established by DOL and DOT for gathering, sharing, and using information about commercial motor carriers alleged to be operating unsafe vehicles; and

- the relationship between OSHA's whistleblower protection cases and OMC's motor carrier safety enforcement efforts.

Because Congress was concerned that whistleblower complaints be handled in an expeditious manner, we used the 60-day standard Congress mandated in determining OSHA's timeliness in investigating and issuing findings on Section 405 complaints. OSHA headquarters did not have information showing how long OSHA took to investigate and dispose of Section 405 complaints. Therefore, we had to use data compiled by supervisory investigators in OSHA's 10 regional offices to determine the number of Section 405 cases decided within the 60-day limit. The OSHA headquarters official in charge of the Section 405 program directed the regional offices to provide listings of all Section 405 cases closed during fiscal year 1986 and through May 31 of fiscal year 1987.<sup>1</sup> The regions identified 406 such cases —252 for fiscal year 1986 and 154 in fiscal year 1987. For each case, the regional offices were instructed to provide the complainants' and respondents' names, the case number, the date on which the complaint was filed and a determination was made (i.e., case closed), and the number of calendar days the case was open.

For 9 of the 10 OSHA regions, we verified OSHA's calculations of the length of time the cases were open using the dates provided. We were not able to verify OSHA's calculations of the length of time cases were open in the remaining region because it did not provide both the beginning and ending dates; however, this region indicated the number of days each case was open. We did not independently compare the information provided by the regions with the source documents that were located in individual case files maintained in OSHA's 10 regional and 85 area offices. In examining the data, we found 91 errors in OSHA's computations of the number of days the cases were open, ranging from 1 to 100 days. In 82 of these cases, the difference in the number of days was 5 or less. And, in 42 of these 82 cases, the difference was 1 day. For those cases where such discrepancies were noted, we used the results of our calculations in our analysis. Using our calculations rather than OSHA's had little effect on the tally of the number of cases that were investigated and decided within the 60-day standard. In only two instances did the use of our calculations change the category of the case from meeting to exceeding the 60-day standard and vice versa. In the

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<sup>1</sup>OSHA defines closed cases as those cases that were administratively closed (e.g., withdrawn), settled, or where a finding and a preliminary order pursuant to the 60-day statutory requirement was sent to the complainant and respondent outlining OSHA's decision on the case. For purposes of our review, we refer to these cases as being decided, determined, resolved, or otherwise disposed of.

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first instance, OSHA's calculation indicated the case took 61 days but our calculation showed the case took 60 days, thus meeting the statutory requirement. In the second instance, use of our calculation resulted in a change of 100 days (from 39 to 139 days), with the case exceeding the 60-day standard.

We also obtained data on the number and disposition of Section 405 complaints received by OSHA during fiscal years 1984 through 1987. We did not evaluate the adequacy of OSHA's investigations or the appropriateness of decisions OSHA reached on individual whistleblower cases. The results of our analysis are discussed in chapter 2.

We obtained information from OMC on violations of federal motor carrier safety regulations and accident histories of motor carriers of property named as respondents in 215 of the 406 whistleblower cases closed by OSHA in the 20-month period during fiscal year 1986 and fiscal year 1987 through May 31, 1987. Although we tried to obtain this information for all of the carriers named in the 406 whistleblower cases, we could not obtain the motor carrier census numbers<sup>2</sup> that we needed to be able to access violation and accident history files in OMC's automated Motor Carrier Safety Action Profile data base for motor carriers named in the other 191 Section 405 cases. For 187 motor carriers for which we were able to obtain an OMC census number, OMC provided us with records for 117 motor carriers it had inspected at least once during calendar years 1980 through 1985. There were no records for the other 70 motor carriers because OMC had not done an inspection of these carriers during this time period. The results of our analysis are discussed in chapter 3.

In addressing the other issues, we examined relevant statutes, regulations, and other available documentation and interviewed officials at OSHA's national office and DOL's Office of Inspector General headquarters in Washington, D.C. To obtain a perspective on program operations in the field, we interviewed an official in OSHA's Denver Regional Office, one of 10 OSHA regional offices. We also interviewed OMC officials in Washington, D.C., to determine what role OMC plays in the implementation of the whistleblower protection provisions of the act. We did not verify the accuracy of OSHA's estimates of the number of investigators assigned to handle whistleblower complaints in fiscal years 1983 through 1986 or verify whether OSHA's practice of temporarily assigning

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<sup>2</sup>Census numbers are assigned by OMC to each motor carrier subject to federal motor carrier safety regulations. The number assigned serves as a unique identifier for storage and retrieval of information on safety violations, accident histories, enforcement actions, and other data in OMC's Motor Carrier Safety Action Profile data base.



investigators from one regional office to another resulted in a reduction in case backlog. We also did not determine the extent to which trucking company employees are aware of their rights to protection against reprisal and how to file a whistleblower complaint under Section 405 of the act or what specific actions OSHA has taken to address deficiencies found in reviewing whistleblower case files. Because records in OMC's Automated Motor Carrier Safety Action Profile data base were incomplete, we could not confirm what actions OMC has taken against trucking companies named in whistleblower complaints, what penalties OMC has imposed, or the amount of fines it has collected.

Our work was done from March 1987 through June 1988 in accordance with generally accepted government auditing standards. Although we did not obtain written agency comments on a draft of this report, the views of responsible agency officials were sought during the course of our work and are incorporated where appropriate. The officials agreed with our findings, conclusions, and recommendations.

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# Stronger Management Attention to the Whistleblower Protection Program Is Needed

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OSHA did not comply with the statutory requirement that it investigate and issue findings on whistleblower complaints within 60 days in the majority of the cases closed during the period we reviewed. Absence of an information system to monitor the status of individual whistleblower cases hampered OSHA's ability to identify obstacles and take timely action to ensure that investigation and issuance of findings on Section 405 cases were made within the statutory 60-day time period. OSHA has not issued final regulations for implementing Section 405 of the Surface Transportation Assistance Act, which has been in effect for more than 5 years. OSHA can do more to publicize the program to employees of interstate trucking companies. Although OSHA has developed criteria and standards for handling whistleblower complaints, they are not consistently followed. OSHA and OMC lack procedures for sharing information and coordinating enforcement activities.

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## OSHA Has Not Complied With the 60-Day Statutory Complaint Processing Requirement

As shown in table 2.1, OSHA did not comply with the statutory requirement to investigate and issue findings on Section 405 whistleblower complaints within 60 days in 229 (56.4 percent) of the 406 cases it closed<sup>1</sup> between October 1, 1985, through May 31, 1987.

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<sup>1</sup>OSHA defines closed cases as those cases that were administratively closed (e.g., withdrawn), settled, or where a finding and a preliminary order pursuant to the 60-day statutory requirement was sent to the complainant and respondent outlining OSHA's decision on the case. For purposes of our review, we refer to these cases as being decided, determined, resolved, or otherwise disposed of.

Chapter 2  
 Stronger Management Attention to the  
 Whistleblower Protection Program Is Needed

**Table 2.1: Time Elapsed in Processing Section 405 Complaints in Fiscal Years 1986 and 1987 Through May 31, 1987**

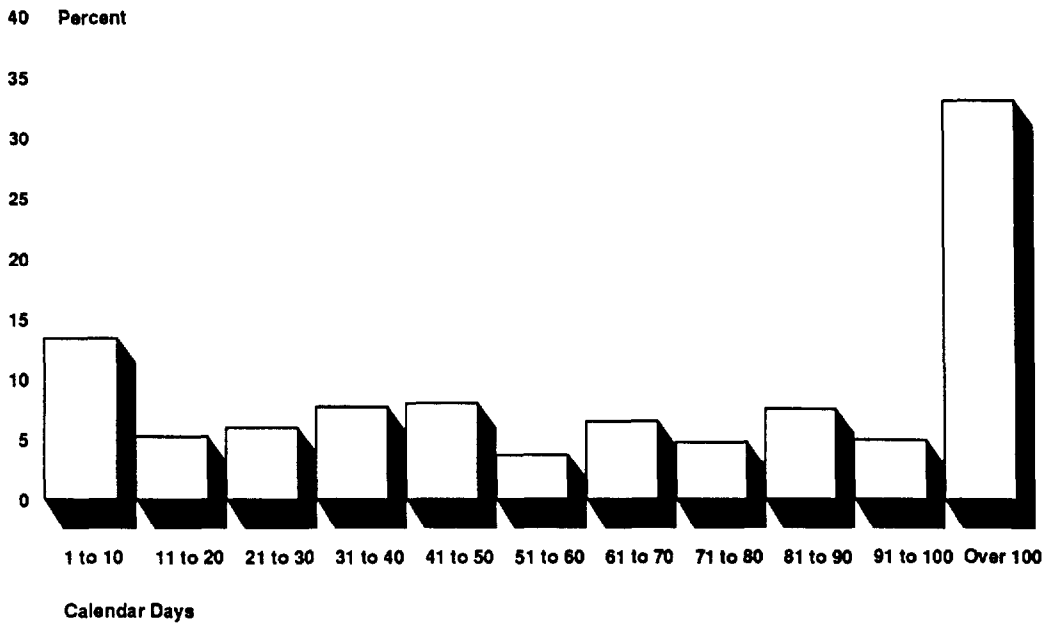
Calendar days	Number of cases	Percent
1 - 10	54	13.3
11 - 20	21	5.2
21 - 30	24	5.9
31 - 40	31	7.6
41 - 50	32	7.9
51 - 60	15	3.7
61 - 70	26	6.4
71 - 80	19	4.7
81 - 90	30	7.4
91 - 100	20	4.9
Over 100	134	33.0
<b>Total</b>	<b>406</b>	<b>100.0</b>

The number of days the 406 cases remained open ranged from 1 to 1,113 days. As a mean average, it took OSHA 95.9 days to investigate and issue determinations in the 406 cases. Because some of the cases were open an exceptionally long time and may have distorted the relevance of the mean (the standard deviation about the mean was 108.6 days), we also calculated the median number of days the cases were open. One-half of the cases were open 71 days or more and one-half were open 70 days or less. Figure 2.1 shows the elapsed time, in 10-day increments, it took OSHA to investigate and decide the 406 whistleblower cases.

To determine if there was any regional difference in timeliness of processing Section 405 complaints, we examined how long it took each of the 10 OSHA regional offices to investigate and resolve cases they closed in fiscal years 1986 and 1987 through May 31, 1987. As shown in table 2.2, we found that the percentages of cases decided in compliance with the 60-day statutory requirement ranged among the 10 regions from a low of 21.1 percent in Region I (Boston) to a high of 73.3 percent in Region II (New York). Figure 2.2 illustrates this information graphically.

**Chapter 2  
Stronger Management Attention to the  
Whistleblower Protection Program Is Needed**

**Figure 2.1: Time Elapsed in Processing Section 405 Complaints in Fiscal Year 1986 and Through May 31, 1987**



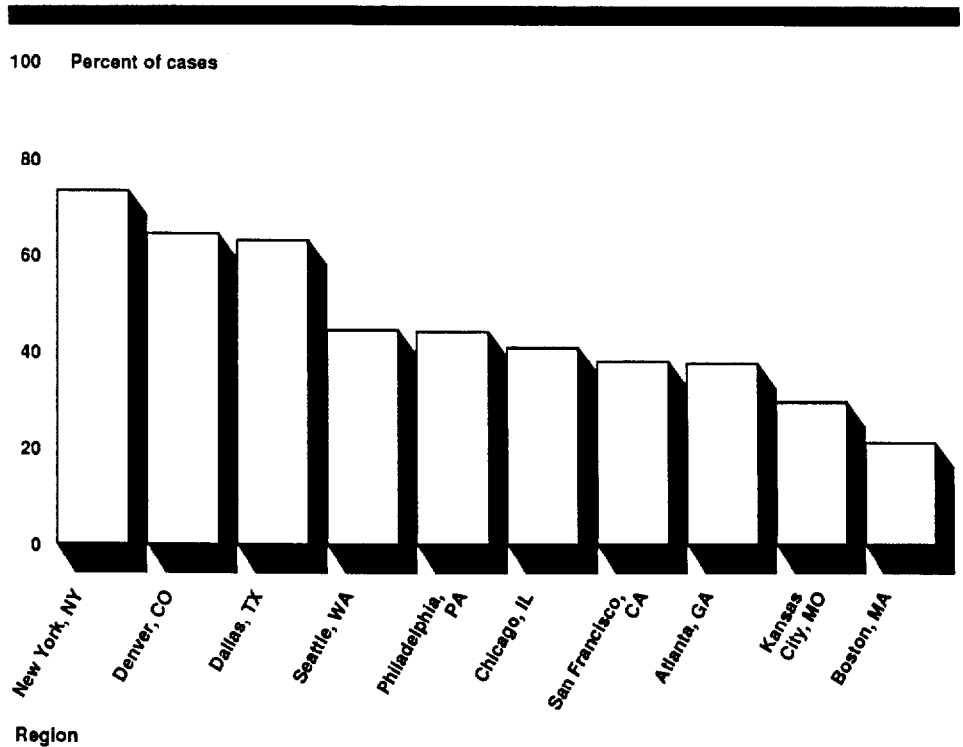
Note 1 - OSHA processed a total of 406 cases during this period.

**Table 2.2: Number of Section 405 Complaints Decided, by Region<sup>a</sup>**

OSHA region	Cases open 60 days or less		Cases open more than 60 days		Total cases
	Number	Percent	Number	Percent	
I (Boston)	4	21.1	15	78.9	19
II (New York)	11	73.3	4	26.7	15
III (Philadelphia)	15	44.1	19	55.9	34
IV (Atlanta)	40	37.4	67	62.6	107
V (Chicago)	31	40.8	45	59.2	76
VI (Dallas)	29	63.0	17	37.0	46
VII (Kansas City)	8	29.6	19	70.4	27
VIII (Denver)	18	64.3	10	35.7	28
IX (San Francisco)	17	37.8	28	62.2	45
X (Seattle)	4	44.4	5	55.6	9
<b>Total</b>	<b>177</b>	<b>43.6</b>	<b>229</b>	<b>56.4</b>	<b>406</b>

<sup>a</sup>Section 405 cases closed during the period fiscal year 1986 and fiscal year 1987 through May 31, 1987.

**Figure 2.2: Percent of Cases Decided  
 in 60 Days or Less by Region**



Percentages shown indicate the proportion of closed cases in each region which were open 60 days or less and were decided during the time period October 1, 1985 through May 31, 1987.

To see whether OSHA's performance in meeting the 60-day statutory requirement was improving we compared the number of days cases were open for those cases which were decided during the period October 1, 1985, through May 31, 1986, with the number of days cases were open for those cases which were decided during the period October 1, 1986, through May 31, 1987. Our analysis showed that OSHA's timeliness in processing cases was down slightly in fiscal year 1987 from fiscal year 1986.

- 52.7 percent (or 89) of the 169 fiscal year 1986 cases were open more than 60 days and
- 55.8 percent (or 86) of the 154 fiscal year 1987 cases were open more than 60 days.

Also, the average number of days it took OSHA to investigate and make determinations on Section 405 complaints increased from 95 days in fiscal year 1986 to 98 days in fiscal year 1987.<sup>2</sup>

### Disposition of Whistleblower Complaints

We also examined trends in OSHA's case disposition data for fiscal years 1984 through 1987 to determine (1) what proportion of the whistleblower complaints were screened out without OSHA making a full field investigation or were withdrawn by the complainant, (2) what proportion resulted in an OSHA finding that the complaint was without merit, and (3) in what proportion of the cases OSHA found the complaint had merit or a negotiated settlement was reached on terms favorable to the complainant. As shown in table 2.3, the proportion of whistleblower complaints screened out without OSHA making a full field investigation decreased from about 35 percent of the 283 complaints decided in fiscal year 1984 to about 18 percent of the 248 complaints decided in fiscal year 1987. Conversely, the proportion of cases which resulted in an OSHA finding that the complaint did not have merit increased from about 9 percent in fiscal year 1984 to about 36 percent in fiscal year 1987.

**Table 2.3: Dispositional Outcome of Section 405 Cases, by Fiscal Year**

Outcome	Fiscal Year							
	1984		1985		1986		1987	
	No.	Percent	No.	Percent	No.	Percent	No.	Percent
Screened/no full field investigation	98	35	48	16	55	20	45	18
Withdrawn by complainant <sup>a</sup>	100	35	110	36	101	36	69	28
Finding without merit	25	9	51	17	59	21	89	36
Finding with merit	25	9	50	16	23	8	12	5
Negotiated settlement	35	12	46	15	43	15	33	13
<b>Total</b>	<b>283</b>	<b>100</b>	<b>305</b>	<b>100</b>	<b>281</b>	<b>100</b>	<b>248</b>	<b>100</b>

<sup>a</sup> May occur at any stage in processing whistleblower cases.

### Reasons for Delays in Investigating and Deciding Whistleblower Complaints

When we briefed OSHA officials responsible for the Section 405 program on the results of our analysis of case processing timeliness, they were surprised to learn that more than one-half of the whistleblower complaints had not been investigated and decided within the 60-day statutory requirement. The OSHA headquarters official in charge of the Section 405 program said that, on the basis of general knowledge and

<sup>2</sup>Cases closed between October 1, 1986, through May 31, 1987.

experience, delays in investigating and deciding Section 405 complaints were due to a variety of possible factors including

- (1) difficulties in locating witnesses (e.g., truck drivers on the road are hard to reach and their schedules vary);
- (2) lack of cooperation from respondents (e.g., deliberate delays in the investigation caused by trucking firms named as respondents in the complaints);
- (3) regulations requiring OSHA investigators to notify employers named as respondents at the beginning of an investigation and give respondents 20 days in which to reply, submit written statements, or request to meet with OSHA to present their position before OSHA can issue a finding;
- (4) difficulties in getting parties to agree to terms of settlement agreements; and
- (5) the limited number of investigators (47 as of June 1988) available to handle both Section 405 and Section 11(c) complaints.

However, OSHA officials were not sure how much of a role each of these factors played in individual cases or to what extent each factor may have been responsible for OSHA's noncompliance with the 60-day statutory requirement in 56.4 percent of the cases closed in fiscal years 1986 and 1987. OSHA has not made a formal study of its case management system to determine whether and to what extent these and possibly other factors are causing delays in deciding whistleblower complaints.

We asked OSHA officials how many more employees they believed would need to be assigned to be able to properly investigate all complaints on a timely basis. The OSHA official in charge of the Section 405 program said that, based on the premise that the average investigator can complete about 50 cases each year and that OSHA receives an estimated 2,700 Section 11(c) and 300 Section 405 cases annually, OSHA would need to assign 60 investigators, instead of the 47 assigned as of June 1988. He estimated the number of investigators assigned to handle whistleblower complaints ranged from about 42 in fiscal year 1983 to about 50 in fiscal year 1986. We did not verify the accuracy of the OSHA estimates.

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## OSHA's Efforts to Address Delays

The OSHA headquarters official in charge of the Section 405 program said that OSHA is developing an automated management information system as a tool for monitoring cases. According to this official, revisions made to OSHA's field operations manual permit OSHA investigators to notify respondents by telephone or during a personal visit of Section 405 complaints that have been filed against them, rather than using the mail. The revisions to OSHA's Field Operations Manual were made effective on September 21, 1987. OSHA expects that this step will save time by permitting the OSHA investigator to obtain the employer's response to the complaint at the time of notification. An OSHA official estimated that this new procedure could save up to 20 days if employers are willing to respond to the complaint at the time they are notified, rather than exercising their right to the full 20 days. As of June 1988, OSHA had not determined whether this step has achieved the intended result.

OSHA officials told us they discussed the need for timely processing of Section 405 complaints at a training session for investigators held in April 1987 in El Paso, Texas. Several options were discussed including possible reorganization or reallocation of existing staff; use of a standardized, structured format for investigation reports; and examination of how the OSHA investigators use their time. However, the investigators did not reach any agreements.

## Use of Temporary Reassignments to Reduce Case Backlogs

An OSHA headquarters official said that on about six occasions between October 1, 1982, and June 30, 1988, OSHA detailed investigators from one OSHA region to another for periods of 2 weeks to 30 days at a time to help process cases. Although we did not examine the effects of each of these temporary reassignments, we reviewed one such arrangement and found that it was of questionable usefulness.<sup>3</sup> In August 1985, OSHA detailed eight investigators and a supervisor from the Dallas Regional Office to the San Francisco Regional Office for a period of 1 month to help the San Francisco Regional Office reduce its backlog of cases. Although such temporary assistance could have alleviated some of the pressure on the San Francisco Regional Office's caseload, any such

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<sup>3</sup>We selected the San Francisco Regional Office because it was the subject of a separate assignment requested by the Chairman, Subcommittee on Investigations, House Committee on Post Office and Civil Service. As noted in our report Employee Allegations Concerning OSHA Personnel Practices (GAO/HRD-87-5, Feb. 3, 1987), it was alleged that the Dallas staff improperly investigated 46 cases that they handled during the detail. The investigators allegedly told complainants that their cases were not worth pursuing and asked complainants to withdraw their complaints rather than investigating them. OSHA staff in the San Francisco Regional Office believed that some of the 46 cases were worth pursuing further. DOL had not released the results of its inquiry of these allegations as of June 1988.



effects were not long lasting. Substantial backlogs existed at San Francisco in fiscal years 1986 and 1987. As shown in figure 2.3, San Francisco and six other OSHA regions continued to experience significant delays in processing whistleblower complaints, in that one-half or more of the cases were open more than 60 days. For example, in San Francisco, 59 percent of the complaints the region decided during the first 8 months of fiscal year 1986 were open more than 60 days. During the first 8 months of fiscal year 1987, 69 percent of complaints decided were open more than 60 days. An OSHA official said that detailing staff from one OSHA region to another has not solved the backlog problem. The San Francisco Regional Office continues to have problems. He said that OSHA recently added two new staff members and assigned a new supervisor to address the region's low productivity.

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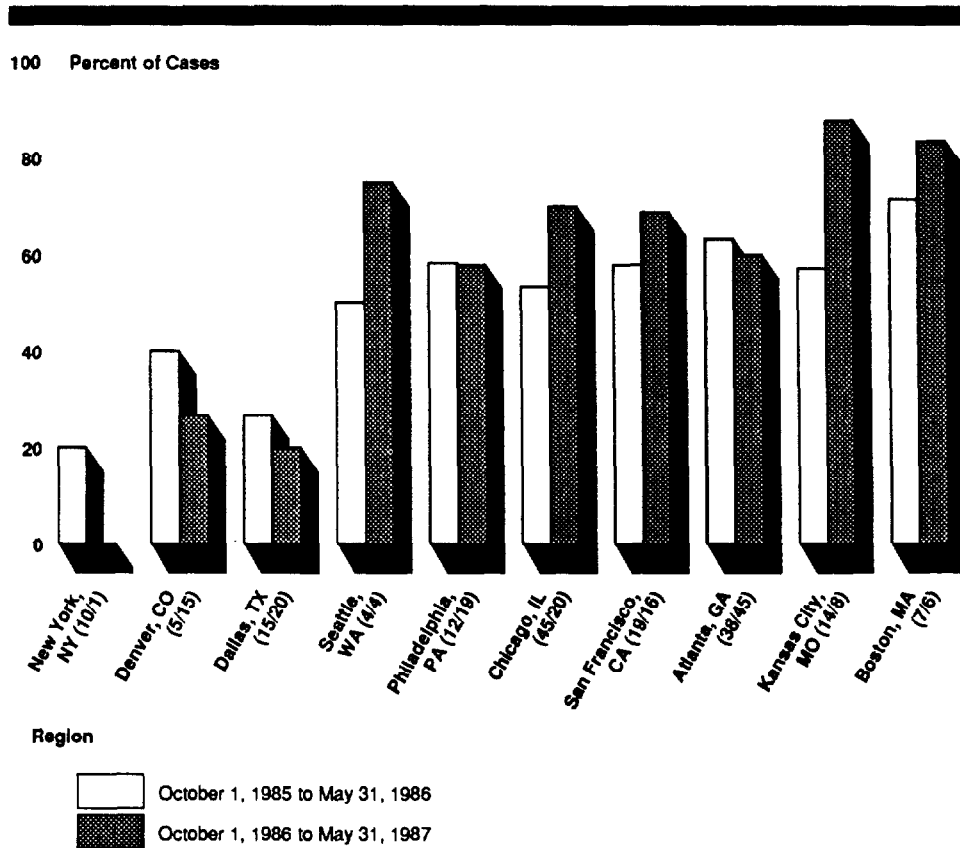
### Information on Timeliness of Case Processing Is Inadequate

OSHA's monthly activity reports on Section 405 cases are not adequate for monitoring OSHA regional office compliance with the statutory 60-day standard for investigating and deciding Section 405 complaints. OSHA compiles monthly activity reports on Section 405 case investigations on the basis of information received from each of its 10 regions. The reports show the caseload at the beginning of the month, number of new cases assigned and completed, the total number of cases open during the month, and the number of cases placed in backlog status that month. However, the report does not indicate how many days cases are open so that top OSHA management officials can determine whether, how many, and which cases are exceeding the 60-day processing requirement.

Our review indicated the status of Section 405 cases had been inaccurately reported. Section 405 cases were reported in backlog status along with Section 11(c) cases using the Section 11(c) case processing standard of 90 days rather than the 60-day time limit required by Section 405 of the act. For example, the fiscal year 1985 monthly activity report format showed the number of cases by respondent and complainant in a column titled "cases over 90 days old," which is the Section 11(c) standard. The fiscal year 1986 report format changed this column heading from "cases over 90 days old" to "backlog."

OSHA defines a Section 11(c) case in backlog status when the complainant is not notified of the determination within 90 days from receipt of the complaint. There are four conditions that represent exceptions to this rule and keep such cases from being placed in backlog status. For three of the conditions, a case should not be considered in backlog status

**Figure 2.3: Comparison of Percent of Cases Decided in More Than 60 Days, by Region and by Year**



Paired columns shown indicate the proportion of cases in each region which were open more than 60 days and were decided during an eight month period (October to May) in fiscal years 1986 and 1987.

The first number in parentheses after the region name indicates the number of cases which were decided during the time period of October 1, 1985 through May 31, 1986.

The second number in parentheses after the region name indicates the number of cases which were decided during the time period October 1, 1986 through May 31, 1987.

after 90 days if a determination has already been made and the delay is attributable to an OSHA action such as pursuing negotiation toward a settlement agreement. The fourth condition that can keep a case from being placed in a backlog status is the clear showing that a party is delaying the investigation or a subpoena is needed.

An OSHA official told us that he believed that regional office staff were aware of the criteria for reporting Section 405 cases in backlog status when they were in process over 60 days. Our analysis showed that the

data presented in the backlog column of the monthly activity report lumped together cases over 90 days old with cases over 60 days old. We noted that 5 of the 10 regional offices reported Section 405 cases in backlog status or "overage" after a 90-day period rather than the statutory 60-day period. It would appear that these OSHA regions used the Section 11(c) 90-day standard rather than 60-day Section 405 standard in reporting Section 405 cases as "overage." After we called this situation to OSHA's attention, OSHA issued a memo clarifying which standard (60 versus 90 days) should be used in designating a case in backlog status in completing overage reports for Section 405 and 11(c) cases. OSHA had provided no previous written guidance to OSHA regional office personnel to indicate how they should apply the definition of backlog and how the four conditions of exception apply to Section 405 cases.

OSHA officials said that a new automated management information system under development will permit direct access to data maintained on Section 405 cases in regional offices. As of June 1988, the new system was not in operation. The OSHA official in charge of the Section 405 program said that OSHA plans to have such a system implemented by January 1989.

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## OSHA Has Regulations for Implementing the Whistleblower Protection Program but They Are Not Final

The Surface Transportation Assistance Act of 1982 was enacted on January 6, 1983. Proposed "interim final" rules were published in the Federal Register on November 21, 1986. OSHA had not issued final rules of practice and procedure for implementing the whistleblower protection program as of June 1988. An OSHA official said that he anticipated that final rules would be issued by September 30, 1988.

OSHA has operated under these interim final rules and considers them to be in full effect. According to a DOL solicitor, no one has challenged them. We compared the interim final rules to the provisions of the law and found them consistent with the language set forth in authorizing statutes.

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## OSHA Could Do More to Publicize Protections Available to Employees

OSHA's efforts to make employees aware of protections available and how to file a complaint have been late in coming. It was not until May 1987, more than 4 years after the effective date of implementation of Section 405, that OSHA issued its first instructional/public information pamphlet describing employee rights and outlining procedures for filing Section 405 complaints. An OSHA official told us that copies of this pamphlet were distributed to all OSHA regional offices. Before this, the only

written OSHA references that OSHA officials could provide us as examples of guidance and coverage available to employees in the trucking industry appeared in an August 9, 1983, press release and in two notices in the Federal Register. The first Federal Register notice published on August 5, 1983, announced OSHA's then new Section 405 responsibility and the second notice, published on November 21, 1986, announced the interim final rules, which outlined OSHA's formal procedures for administering the program.

Most of OSHA's efforts to publicize whistleblower protections available under Section 405 are not directed to persons covered under the act. OSHA officials said that OSHA relies on cooperation and assistance from other agencies (such as OMC), interest groups (such as the American Trucking Association), and unions to inform persons who are members of the protected class of their rights and protections under Section 405. OSHA relies on personnel from these organizations to inform the public about the program and presumes that information on current Section 405 activities is spread by word-of-mouth among truckers and other employees of motor carriers. However, the OSHA official told us that OSHA has not done anything to verify that "the word about Section 405 is getting out."

In response to our inquiry about program publicity, the OSHA official in charge of the program contacted the OSHA regional offices to find out what they were doing to publicize the program and provide guidance and instruction to those affected. He said that he found that some of the OSHA regional offices have informal efforts ongoing to provide guidance and assistance. One regional office reported that its investigators' performance standards included outreach activities, such as making presentations to employers and union representatives. Another regional office reported that its investigators brief OMC field staff on the Section 405 program.

An OSHA regional supervisory investigator we talked with said that efforts to inform the public about section 405 in his region have been limited to discussions with personnel from other federal and state agencies that play a role in motor carrier safety, for the purposes of improving interagency cooperation. He said his regional office relies on these agencies to inform the public about the program because OSHA's staff time is devoted to enforcement activities on specific complaints.

An OMC official told us that OMC regional offices refer any complaints about employer discrimination to the OSHA office nearest the complainant. However, he was not certain how often such referrals are made.

In our view, OSHA can do more to publicize the whistleblower protection program and provide guidance to persons covered under the act on how to file a complaint. For example, OSHA could distribute its pamphlet, describing employee rights and procedures for filing a complaint, at truck stops, make public service announcements on radio and television, and publish notices in magazines and trade publications that have a wide circulation among truck drivers and other employees covered under Section 405 of the act.

OSHA officials acknowledged that OSHA has done very little to publicize the Section 405 program to covered employees since its inception in 1983. They said that OSHA did not have adequate funds to publicize the program. However, they also said that increased publicity could result in an increase in OSHA's whistleblower complaint caseloads. It was beyond the scope of our review to determine the extent to which employees are aware of the whistleblower protection program.

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## **OSHA's Definition of the Protected Class Is Consistent With the Law**

Our examination of OSHA's interim final rules, policies, and procedures implementing Section 405 indicates that OSHA used the definition of "employee" in the Surface Transportation Assistance Act of 1982 as amended by the Motor Carrier Safety Act of 1984 (49 U.S.C. 2301(2)) in defining members of the protected class. OSHA's definition is consistent with the statutory definition.

OSHA's interim final rules and the statute defined the employees covered as including

"a. the driver of a commercial vehicle (including an independent contractor while in the course of personally operating a commercial motor vehicle);

b. a mechanic;

c. a freight handler; and

d. any individual other than an employer who is employed by a commercial motor carrier and who in the course of his employment directly affects commercial motor vehicle safety; but such term does not include an employee of the United States, any State, or a political subdivision of a State who is acting within the course of such employment..."

OSHA's 1983 press release stated that OSHA will investigate timely filed complaints received from persons in the first three categories but did not mention the fourth general category, which could include any employee of a trucking company engaged in interstate commerce. OSHA's May 1987 pamphlet on the program stated that Section 405 "provides protection from reprisal for truckers and certain other employees in the trucking industry involved in activities related to interstate commercial motor vehicle safety and health."

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## OSHA Has Criteria and Standards for Handling Whistleblower Complaints but They Are Not Consistently Followed

Criteria and standards for investigating whistleblower complaints and making violation determinations are contained in OSHA's investigator's and field operations manuals. The investigator's manual also includes criteria for making decisions on the merit of cases. Additional guidance for administering the Section 405 program is provided in OSHA policy directives that pertain to enforcement activities under Section 11(c) of the Occupational Safety and Health Act of 1970. OSHA issues investigative guidelines in the form of updates to its investigator's manual and to the policy and procedures contained in the OSHA Field Operations Manual. These provide internal guidance to investigators and other OSHA personnel on what they are expected to do in carrying out their roles and responsibilities in handling Section 405 complaints.

The OSHA official in charge of the Section 405 program said that he ensures investigative criteria are followed and decisionmaking standards are adhered to in a consistent manner by reviewing summaries of final investigation reports and making periodic visits to regional offices to review samples of closed case files for both Section 11(c) and Section 405 cases. In one OSHA region, the supervisory investigator requires each of his staff to use a standard set of questions during each investigation and to include all responses to such questions in the case file.

We reviewed reports from four reviews of case files OSHA made in four different OSHA regions on the section 405 program, three in 1985, and one in 1986. It reported deficiencies such as

- Failure of regional investigators to follow headquarters directives.
- Low productivity.
- Failure to adhere to case processing procedures.
- Incomplete documentation of investigations.
- Failure to promptly do telephone interviews with complainants.
- Investigations having been made on cases that did not qualify (e.g., complaints filed after 180 days of the alleged incident of discrimination).

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Other problems noted included a lack of supervisory controls, confusion over when and how to declare an overage case in backlog status (see p. 23), and repeated errors in reporting of statistical information to OSHA headquarters. An OSHA official said that the results of reviews are discussed with the regional administrators in the regions in which the reviews were made. We did not determine what specific actions OSHA has taken to address these deficiencies other than those OSHA says it plans to take to address delays in case processing.

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## Conclusion

In our view DOL and OSHA have not devoted enough management attention to ensure effective administration of the Section 405 whistleblower protection program. OSHA is not in compliance with Section 405 of the Surface Transportation Assistance Act of 1982 in that it is not meeting the statutory requirement that it investigate and issue findings on discrimination complaints within 60 days. Absence of an information system for tracking individual whistleblower cases hampered OSHA's ability to monitor the status of investigations, identify obstacles to timely disposition of complaints, and take timely action to assure cases were decided within the 60-day standard.

We believe OSHA can take additional steps to publicize the whistleblower protection program and provide guidance in filing complaints to persons covered under the act. For example, OSHA could distribute its pamphlet describing employee rights and procedures for filing a complaint, at truck stops, make public service announcements on radio and television, and publish notices in magazines and trade publications that have wide circulation among truck drivers and other employees covered under Section 405 of the act.

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## Recommendations

We recommend that the Secretary of Labor direct the Assistant Secretary for Occupational Safety and Health to

- ensure that the management information system being developed will provide accurate and up-to-date information on the current status of Section 405 cases;
- identify the problems, factors, and conditions that are causing delays in case processing and take action to correct them; and
- develop and implement a better, more comprehensive public information program and mechanism to ensure that trucking company employees are aware of their rights and protections under the act.

# Use of Whistleblowers' Information Could Help Strengthen Motor Carrier Safety Enforcement Efforts

Information OSHA develops in investigating whistleblower complaints can be useful to OMC in its motor carrier safety enforcement efforts. OSHA and OMC do not have procedures which provide OMC with information on alleged violations of motor carrier safety laws and regulations. OMC could use this information to help (1) identify carriers in violation of motor carrier safety regulations, (2) target follow-up review and investigation efforts to achieve compliance and ensure that corrective actions have been taken, (3) determine what penalties to impose where a pattern of violations is found, or (4) intervene in motor carrier operations to alleviate conditions that pose an "imminent hazard" to public safety.

## OMC Could Use Whistleblower Information Available From OSHA to Target Motor Carriers for Review and Follow-Up Investigation

No formal liaison procedures have been established between OMC and OSHA to facilitate enforcement of federal laws and regulations affecting motor carrier safety. Carriers repeatedly found not to be in compliance with federal motor carrier safety regulations may warrant attention in the form of inspections and follow-up reviews or investigations to ensure that deficiencies associated with prior violations have been corrected, thereby improving public safety. Without such follow-up, DOT has no assurance that motor carriers have corrected the problems that resulted in noncompliance with safety regulations. Whistleblower information could be helpful to OMC in support of such follow-up efforts.

OSHA does not forward information from whistleblower complaints to OMC, and OMC has not asked that such information be provided on a routine basis. However, an OMC official said that he has received copies of "proceedings" of hearings on Section 405 cases where the initial determination is appealed and that this information is placed in the motor carrier's file in the cognizant OMC regional office. He said that this information is reviewed to see whether motor carrier safety regulations may have been violated by the carrier. If a possible violation is found, the OMC regional office may make an inspection of the carrier, especially if the complainant won the Section 405 case.

To resolve the apparent discrepancy concerning sharing of OSHA information on whistleblower cases we asked the OSHA official in charge of the Section 405 program whether it is possible that OSHA regional offices or some headquarters' unit within DOL might be providing OMC with information on Section 405 cases. He investigated the matter and told us that the Office of the Solicitor in DOL asked DOL's Chief Administrative Law Judge and the head of the Secretary's Office of Administrative Appeals to send OMC copies of final decisions on those cases they have handled on appeal. However, OMC does not receive information on the



large majority of the whistleblower complaints, which are resolved without appeal, including cases where the complaint is found to have merit and cases resulting in a negotiated settlement on terms favorable to the employee.

An OMC official said that OMC could use information from whistleblower complaints in targeting violators for follow-up but has no specific plans to do so. OMC uses other information in targeting OMC's inspection and compliance enforcement efforts. Each year, OMC compiles a list of motor carriers from among the approximately 191,960 motor carriers subject to OMC's jurisdiction that safety investigators are to use when they select carriers for safety reviews. OMC uses several criteria in prioritizing carriers for safety reviews, such as

- Accident rates.
- Less-than-satisfactory safety audits.
- Hazardous materials carriers.
- Lack of previous audit.

OMC guidelines permit regional offices to select and make safety management audits of carriers not on the list under certain circumstances but deviations are considered unusual and must be explained. Circumstances which could justify deviation from the selection list include requests for assistance from other agencies which pertain to motor carriers' noncompliance with federal motor carrier safety or hazardous materials regulations or complaints from third parties which necessitate immediate investigation of a motor carrier's operations. Depending on the results of the audit, investigators may choose from a number of courses of action, ranging from taking no action to initiating an enforcement case that could result in a fine. OMC believes that this approach enables it to focus its limited resources on those carriers that pose the greatest safety risk.

OMC has about 300 inspectors to carry out its responsibilities. Approximately one-half of the inspectors are entry-level staff (GS-5) assigned to make safety reviews of motor carriers not previously audited or reviewed by OMC. These reviews involve an examination of the motor carrier's administrative records and average from 4 to 6 hours each. At the end of the review the motor carrier is given a safety rating of satisfactory, conditional, or unsatisfactory. If the rating is conditional the carrier is required to participate in an educational and technical assistance program until a satisfactory rating is assigned. The other inspectors, who have more experience, carry out compliance and enforcement

activities; make special investigations of hazardous materials handlers; and oversee education, technical, and state/local assistance programs. If a motor carrier is given an unsatisfactory safety rating it is to be selected for a compliance review as part of OMC's Selective Compliance and Enforcement Program. Compliance reviews, according to an OMC official, are more rigorous than safety reviews. He said that OMC personnel are expected to make approximately 30,000 safety and 3,500 compliance reviews each year.

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## **OMC Does Not Use Information From Whistleblower Complaints in Sanctioning Motor Carriers Who Violate the Law**

An OMC official said that OMC headquarters does not use information from whistleblower complaints to help identify trucking companies with a pattern of safety violations or in deciding what sanctions to impose on motor carriers who have committed repeated and/or serious violations of federal motor carrier safety regulations.

OMC is empowered to assess fines and can order vehicles or the drivers "out-of-service" where it finds violations that pose an imminent hazard to public safety. The Motor Carrier Safety Act of 1984 increased the amount of monetary penalties that may be assessed to a maximum of \$2,500 for offenses stemming from a single violation, \$10,000 for a serious pattern of violations, and \$25,000 upon conviction for knowingly and willfully violating motor carrier safety regulations (49 U.S.C. 521(b)).

Under the 1984 act, the Secretary of Transportation is to take into consideration the nature, circumstances, extent, and gravity of the safety violations committed by the motor carrier and the violator's degree of "culpability," history of prior offenses, and other matters as justice and public safety may require in establishing the amount of the penalty (49 U.S.C. 521(b)). For example, the Secretary of Transportation has the authority to assess a civil penalty of up to \$10,000 for each offense determined to be a substantial health or safety violation, and he can shut down all or part of the operations of a trucking company until the hazard affecting those operations is abated. Such actions could serve to strengthen compliance as well as deter other motor carriers from committing similar violations that could endanger public safety.

OMC considers its enforcement activities to be remedial, not punitive, and attempts to influence the carrier's safety practices instead of fining them. OMC's policy is to use fines and other penalties where it finds patterns of serious violation. We believe use of whistleblower information could help OMC establish such a pattern.

**Motor Carriers Named in Whistleblower Complaints Often Have Records of Previous Safety Violations**

To get some perspective on the safety records of motor carriers named in Section 405 complaints, we examined the OMC violation and accident history records of 187 motor carriers named as respondents in 215 OSHA whistleblower cases included in our review.<sup>1</sup> Because records in OMC's nationwide Motor Carrier Safety Action Profile data base were incomplete, we were not able to determine what enforcement actions OMC has taken and what penalties it has imposed and collected.

We found that 117 of the 187 motor carriers had been inspected at least once by OMC during calendar years 1980 through 1985, and 113 of the 117 were found to have committed a total of 8,362 violations of federal motor carrier safety regulations. Table 3.1 shows the frequency of recorded violations committed by the 117 motor carriers during the period 1980 through 1985.

**Table 3.1: Motor Carrier Safety Violations Committed by Motor Carriers Named in Section 405 Complaints**

Number of violations per carrier	Violations	
	Number of motor carriers	Percent
None	4	3.4
1 - 5	29	24.8
6 - 20	31	26.5
21 - 100	30	25.6
Over 100	23	19.7
<b>Total</b>	<b>117</b>	<b>100.0</b>

Of the 117 carriers that had been inspected by OMC during this period, 31 were named in more than one whistleblower complaint and 29 of the 31 accounted for 4,924 (or 58.9 percent) of the violations recorded.

Table 3.2 shows the frequency of out-of-service actions ordered against motor carriers that had violations recorded during this time period.<sup>2</sup>

<sup>1</sup>Motor carrier census numbers for respondents named in the 191 other cases in our review could not be identified.

<sup>2</sup>OMC can order a vehicle and/or a driver out-of-service until the vehicle is repaired and/or the driver accumulates a certain number of off-duty hours or is found in compliance with safety regulations.

**Chapter 3**  
**Use of Whistleblowers' Information Could**  
**Help Strengthen Motor Carrier Safety**  
**Enforcement Efforts**

**Table 3.2: Out-Of-Service Actions Ordered for Motor Carrier Safety Violations Committed by Carriers Named in Section 405 Complaints**

<b>Number of out-of-service actions per carrier</b>	<b>Number of motor carriers</b>	<b>Percent</b>
None	12	10.6
1 - 5	43	38.1
6 - 20	34	30.1
21 - 100	20	17.7
Over 100	4	3.5
<b>Total</b>	<b>113</b>	<b>100.0</b>

OMC took 2,189 actions against 101 of the 117 inspected carriers named in Section 405 complaints, which involved placing the vehicle or driver out-of-service. Twenty-eight of the 31 inspected carriers named as a respondent in more than one OSHA whistleblower case had a total of 1,337 actions by OMC which resulted in placing the vehicles or drivers out-of-service, accounting for 61.1 percent of the out-of-service actions taken.

Accident records of 102 of the 187 motor carriers named in Section 405 cases were available from OMC. They showed, that 96 of the carriers had a total of 15,323 accidents that resulted in injuries or fatalities during calendar years 1980 through 1985. These motor carriers representing .05 percent of the approximately 191,960 carriers over which OMC has jurisdiction, accounted for 13.3 percent of the 114,938 accidents involving interstate motor carriers of property during the period 1980 through 1985 that resulted in injury or death. And, of 35 carriers named in more than one whistleblower complaint, 24 accounted for 12,117 (or 79.1 percent) of the 15,323 accidents involving motor carriers named in whistleblower complaints.

We asked OMC and OSHA officials for their views on the information we provided. The OMC Deputy Director said that he believes OMC should be notified on a routine basis of Section 405 complaints OSHA receives and that OMC needs to take whistleblowers' information into account in planning and managing OMC's regulatory and enforcement programs. He said that OMC should take advantage of the opportunity to use whistleblowers' information in (1) identifying which motor carriers OMC should select for follow-up review and investigation and (2) as one factor in OMC's decisions on what actions are warranted in setting penalties and in determining the amount of fines to be assessed against motor carriers found in violation of safety regulations.

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OSHA and OMC headquarters officials agreed that there is a need for formal coordination and/or liaison procedures between the two agencies at headquarters.

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## Conclusion

We believe OMC should obtain and use information from whistleblower complaints that OSHA can provide to deter motor carriers from permitting conditions to exist which might endanger the safety of the motoring public, by targeting follow-up and enforcement efforts on those carriers that have demonstrated lack of compliance with motor carrier safety laws and regulations. Similarly, whistleblower information could be useful to OMC in deciding what sanctions to impose, particularly in those cases where the motor carrier has committed serious or recurring violations of motor carrier safety regulations.

We also believe OSHA and OMC should have formal procedures for sharing information and coordinating their enforcement program activities to help in the investigation of whistleblower cases. Such steps could help employees of trucking companies feel confident that they will be protected against reprisal when they report violations and that actions will be taken to correct safety violations that endanger public safety.

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## Recommendations

We recommend that the Secretary of Transportation develop, in cooperation with OSHA, a procedure for obtaining information from whistleblower complaints alleging motor carrier safety violations and use the information as a factor to consider in

- identifying and following up on motor carriers alleged to have violated federal laws and regulations and
- deciding what penalties to impose on motor carriers who have committed repeated and/or serious violations.



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