

FY 2011 Federal Annual Monitoring and Evaluation (FAME) Report

on the

HAWAII OCCUPATIONAL SAFETY AND HEALTH (HIOSH)



**FY 2011 Report Period
October 1, 2010 – September 30, 2011**

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Occupational Safety and Health Administration
Region IX**



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I. Executive Summary

A. Summary of Report

This report provides an assessment of the Hawaii Occupational Safety and Health (HIOSH) program performance during the federal Fiscal Year (FY) 2011. It includes an evaluation of the State's mandated activities and its progress toward achievement of the annual performance plan goals and five-year strategic goals. OSHA identified the need for the State to take immediate corrective actions in several areas to ensure the safety and health protection of workers in the state.

This report also provides a status on OSHA's FY 2010 Federal Annual Monitoring and Evaluation (FAME) report which contained a total of forty-five recommendations. During FY 2011, corrective actions were completed for 32 of the 45 enforcement-related recommendations. Thirteen of the items were still not corrected and will be rolled over into the FY 2011 recommendations.

The evaluation of the Whistleblower program showed little activity with approximately eight complaints filed in FY11. This could be tied to the decrease in enforcement activity and contact with the public. This report includes five findings and recommendations for the whistleblower program.

There are 36 findings and recommendations associated with OSHA mandated activities and the HIOSH goals in its annual performance plan. Sixteen of these were repeated instances of deficiencies found in the FY2010 EFAME. Funding, lack of training and experienced mentors, the inability to efficiently fill positions and the lack of fiduciary expertise are to account for the number and variety of findings. Management needs to focus attention on the proper training and development of newly hired compliance personnel, grant management, complaint processing, and strategic goal setting and planning.

HIOSH has made some progress but in many areas significant issues still remain. The extreme funding and personnel cuts that occurred previously and the difficulties in re-filling those positions have been a challenge. Additionally, the loss of the Program Administrator after the end of the fiscal year further compounds the challenges HIOSH will face in rebuilding the program.

B. State Plan Introduction

Hawaii was one of 27 States and American territories approved to operate its own safety and health enforcement program. States are required to adopt standards and conduct inspections to enforce those standards and demonstrate a program that is at least as effective as the Federal program.

During the evaluation period, the Hawaii State plan was administered by the Hawaii Occupational Safety and Health Division (HIOSH) under the State Department of Labor and Industrial Relations (DLIR). A new Governor was elected and took office in December 2010. Up until that point, the State Plan Designee was Pearl Imada Iboshi, Director of DLIR and Ryan

Markham was the HIOSH Administrator. After taking office, the Governor appointed Mr. Dwight Takamine as the State Plan Designee and Director of DLIR. Jennifer Shishido became the HIOSH Administrator in January 2011.

HIOSH was comprised of two major sections: (1) an Occupational Safety and Health (OSH) division, which administered the Hawaii Occupational Safety and Health Law and (2) the Boiler and Elevator Safety division, which administered the Hawaii Boiler and Elevator Safety Law. The Boiler and Elevator Safety division was not part of the OSHA grant.

The OSH section was comprised of four branches—Administration and Technical Support, Occupational Safety, Occupational Health, and Consultation and Training.

HIOSH started FY 2011 with a 23(g) base award of \$1,445,400. The grant included funding for the following full-time staff:

- 9 OSH Compliance Officers;
- 9 Environmental Health Specialists;
- 4 Managers
- 1 Public Sector Health Consultant
- 3 Clerical Staff Members
- 2 Statisticians

The 23(g) grant included research statisticians who were integral to the OSH section operations, but were not organizationally under HIOSH. The research statisticians were part of DLIR's Research and Statistics office. They provided various program data in support of the HIOSH mission, such as the inspection-scheduling list, activity reports, and workers' compensation data.

The Hoisting Machine Operators' Certification Board was organizationally under HIOSH, but was not funded by the 23(g) grant. The function of the board was to oversee the administration of a hoisting machine operator's certification program and to advise HIOSH on hoisting machine safety.

HIOSH provided public sector consultation under the 23(g) grant and private sector consultation under the 21(d) cooperative agreement. The private sector consultation performance results will be covered under a separate report, the FY 2011 Regional Annual Consultation Evaluation Report.

C. Data & Methodology

Eighty-one case files were reviewed including eight fatality cases. Thirty-four complaints were also reviewed on site. The case files were selected randomly from a list of inspections closed in FY 2011. The whistleblower program review was conducted by Regional Office staff who reviewed, off-site, copies of the two cases indicated as closed in IMIS in FY11 as well as three additional cases which did not appear in the system. A financial review was also conducted on-site by the Regional Office Accountant. The analysis of this report was based on information and data gathered from:

- FY 2011 Quarterly Meetings between NIOSH and OSHA
- OSHA Integrated Management Information System (IMIS)
- FY 2011 State's Corrective Action Plan (CAP)
- FY 2011 State OSHA Annual Report (SOAR)
- FY 2011 State Information Report (SIR)
- FY2011 State Activity Mandated Measures (SAMM)
- State Field Operations Manual
- Whistleblower Manual

Because this FAME focused on HIOSH's operations in FY 2011, the Whistleblower program was reviewed against the policies and procedures outlined in the Whistleblower Investigations Manual, DIS-0.09. However, during the last week of FY 2011, a new Whistleblower Investigations Manual was issued, CPL 02-03-003. All of the recommendations discussed in this report would be applicable under CPL 02-03-003. In addition, references to HIOSH's Discrimination Investigation Manual (DIM) are included where appropriate.

D. Findings and Recommendations

The findings for the current evaluation span a broad range of categories. Complaints were not being properly screened, processed and addressed in a timely manner. The management of the complaint process was not consistent nor in accordance with established procedures. Staffing was, and continues to be an issue. Newly hired staff were not given strong guidance and training to develop them properly. Overall guidance and management of compliance officers' work is not being done. Lapse times continued to be excessive. Managers were not using all tools available, such as IMIS reports and on the job evaluations (OJEs), to monitor the work to ensure the Strategic goals were on track.

Goals that were set by HIOSH were much too low to provide an effective enforcement presence in the state. These goals, although low, were still not met due to the fact that there was no well developed plan nor sufficient staff to focus enforcement activities towards meeting them.

Standards adoption and Federal Program Changes were not being responded to and made in a timely manner.

Fiscal management of the grant funding had not been done in accordance with acceptable procedures. Several instances of inappropriate or inadequate documentation and procedures were noted.

The whistleblower program had also been affected by the lack of properly trained staff and management. The number of whistleblower complaints processed was very low.

II. Major New Issues

Although corrections have been made, several issues identified in the FY 2010 FAME were repeated in the current evaluation. Staffing continued to be an issue for HIOSH in FY 2011 even though positions previously cut from the program were re-authorized. The program has not established appropriate enforcement goals and HIOSH's enforcement presence continued to decrease. Only 290 inspections were completed in FY 2011, which, based on the grant funding, projected staffing and employment numbers, was significantly lower than the expected number of more than 900 inspections per year. Financial management of the program continues to be problematic in that HIOSH's staff lacks someone with the proper qualifications, experience and training to manage the program's grant.

The lack of enforcement affects other aspects of the program as well. The whistleblower program in Hawaii does not have the activity one would expect from a fully functioning enforcement program. Activity is low, possibly due to the lack of inspections, outreach and historical response to complaints.

III. State Response to FY 2010 FAME Recommendations

With the addition of the new HIOSH Administrator, the agency was able to make some progress toward correcting the 45 findings from the previous EFAME. The previous financial and personnel cut backs prevented many basic functions from operating as intended (complaints, inspection review, training and mentoring). Many of the items were still being corrected as they involved a revision of programs, training and personnel.

During FY 2011, 16 of the 45 findings remained uncorrected or were repeated during the evaluation period. There was a focused effort on case file reviews to ensure adequate and sufficient documentation, but the process affected the efficiency of the overall operation. The citation lapse times increased and the number of inspections decreased and was not within the expectations of the grant awarded.

A specific listing of previous items identified and the current status is included in Appendix B.

IV. Assessment of State Performance

A. Enforcement

1. Complaints

Complaints were received through a complaint line set up and monitored by one of the two supervisors. E-complaints filed on the OSHA website (www.osha.gov) were forwarded to the general complaint e-mail address (dhir.hiosh.complaints@hawaii.gov), which was also monitored by the supervisors. HIOSH followed the "10th Letter" policy in which every 10th non-formal complaint was scheduled for an onsite inspection.

Complaints were screened to determine whether they warranted an on-site inspection or could be handled through non-formal methods. In five cases, complainants were asked to provide more information when the information received was enough to initiate the investigation. This delay in responding to complaints resulted in workers being unnecessarily exposed to potential hazards.

It was noted that one of the complaints was handled as an inquiry, or non-formal complaint, when it should have been handled as a formal complaint. The complaint, alleging ergonomic issues at a hotel, was filed by the national union's headquarters and signed by the union president. It was later upgraded to an onsite, formal complaint after the Federal OSHA Office informed them of the coordinated effort nationally. HIOSH coordinated and communicated their efforts with the local Area Office from that point on.

Finding 11-1: Complaints were not being properly screened and efficiently processed.

Recommendation 11-1: Ensure complaints are properly screened and processed.

Information from non-formal complaints was given to the typing pool to create the letters to the employer and to the complainant. In six of the cases reviewed, it was noted that this process added up to two days to the complaint processing. Of the 111 complaints received, 45 of these were investigated via phone and fax. The required one day response time was missed in 36% of them. Of the 57 complaints that resulted in an inspection, only 81% of the inspections were initiated within the 5-day goal.

Finding 11-2: Complaint inquiries were not being responded to within one-day of receipt.

Recommendation 11-2: Manage the complaint process to ensure that complaint inquiries (non-formal) are initiated within one day of receipt.

Finding 11-3: In 81% of the formal complaints received, inspections were not opened within five days of receipt.

Recommendation 11-3: Manage the complaint process to ensure that formal complaint inspections are initiated within five days of receipt.

There were inconsistencies in the letters being sent out for non-formal complaints. Almost half of the letters gave the employer 20 days to respond to the complaint items, the rest gave employers 5 days. This may be due to different administrative staff members using different letter templates. Employers' response time to hazards is important to ensuring the protection of workers. An extended period could lead to a delay of abatement of hazards in the workplace and continued exposure of workers. Requirements placed on employers need to be consistent.

Finding 11-4: Complaint letters to the employer were not consistent allowing employers from five to 20 days to respond to alleged hazards for non-formal phone/fax investigations.

Recommendation 11-4: Ensure non-formal investigation letters to employers are consistent and only allow five days to respond to alleged complaint items.

Diary sheets, chronicling activities associated with the complaints from receipt to close out, were not kept in all instances as required by OSHA's Field Operations Manual (FOM). Diary sheets

provide a ready record and summary of all actions relating to a case. They reflect important activities related to the inspection, especially those not noted elsewhere in the file. During the review of the case files, it was difficult to identify whether individuals were contacted or what communications were associated with the complaint.

Finding 11-5 (10-10): Diary sheets were not fully completed for all complaint and inspection files.

Recommendation 11-5: Ensure that complaints and inspections have complete diary sheets.

None of the reviewed complaints which were received via the E-Complaint process were properly coded with the log number.

Finding 11-6: Complaints received via e-mail (E-Complaints) were not coded properly in IMIS

Recommendation 11-6: Provide training for, and ensure that these complaints are coded N-11-LOGXXXX

The complaint process could be better managed to be more effective and more efficient. The process that was followed contained unnecessary delays and duplicative efforts, thus causing a drain on limited resources. For example, during the screening process, complainants were required to provide information beyond what was required to make a determination of actions. Only the two supervisors monitor and screen complaints; they do not take advantage of other resources available. Once the complaint information was obtained, it was forwarded to the typing pool to issue the letters. The information could be entered into IMIS while it was being obtained from the complainant. The complaint letters could easily be generated by the system, minimizing any delay. In six cases reviewed, letters were both faxed and mailed to employers - this inefficient practice resulted in a drain to limited resources.

Finding 11-7: The complaint procedures were causing a delay in response time and did not utilize resources efficiently.

Recommendation 11-7: Review the complaint processing procedures to eliminate inefficient and unnecessary steps.

Overall, the evaluation of the issues alleged in complaints was satisfactory. All of the complaint items were properly addressed and appropriate response provided to the complaint in 33 of 34 case files reviewed.

2. Fatalities

HIOSH made improvements to their overall handling of fatality inspections. In the eight fatality case files reviewed, early contact was made with the family and was updated on the status of enforcement actions. Response to fatalities was timely. One of the fatalities involved a multiple fatality inspection resulting in multiple victims.

Death from falls in construction dropped from two in FY 2010 to none in FY 2011, but a trend has developed in falls during tree trimming operations. A total of four fatalities in this industry occurred during the evaluation period. HIOSH identified this trend and partnered with the

Hawaii's Aloha Arborists Association to bring awareness and training to tree trimmers in FY 2012.

The results of the fatality investigations resulted in findings and citations which were appropriate.

3. Targeting Programs

During FY 2011, a total of 288 inspections were conducted; 34% were programmed planned. Nationally, this number is 58%. Programmed inspections allow an agency to be proactive in addressing industries with higher than average injury and illness rates. HIOSH's Strategic Plan had identified four industries with higher than normal workers comp rates. The number of inspections in each of these areas were well below the targeted goals, leaving these employees at risk – a risk identified and acknowledged by HIOSH.

HIOSH had developed and used only two targeting programs. As mentioned above, the programs were intended to target the industries identified in their Strategic Plan which they identified through workers compensation rates. These industries were Specialty Trade Contractors, Accommodation, State Government (Department of Education), and Local Government (Police Department)

One of these targeting programs was called the Inspection Scheduling System (ISS). The targeting list was derived from workers compensation data obtained from the Hawaii Research and Statistics (RNS). It addressed three of the four industries in HIOSH's Strategic Plan (Department of Education, Police Department and Accommodations). The goals for these industries were not met. HIOSH conducted only 4 of 26 planned inspections with the Department of Education (14% of goal), 1 of 4 planned inspections for the Police Department (25% of goal) and 26 of 75 planned inspections in the Accommodation industry (35% of goal).

A similar list was also maintained for the Specialty Trade Contractors, the fourth industry identified in HIOSH's Strategic Plan. HIOSH conducted 38 of 75 planned inspections (51% of goal).

Planning and coordination of enforcement activity was not done with respect to the goals set in the Strategic Plan. The inspections were conducted by ten compliance officers for an average of 29 inspections each. Because of the eight vacancies throughout the evaluation period, the number of inspections was not appropriate for the number of businesses and the grant awarded. Inspections were not assigned in a manner that maximized the time and resources of the compliance staff. The Compliance Officers would select an establishment from the available lists when they felt they needed another assignment. According to management, compliance staff typically will open and close a case file before moving on to a new assignment, only having one or two inspection case files open at a time. During the write up of a case file, there are periods of times when the compliance officer is waiting for additional information from the employer or other sources. With only one or two case files, compliance officer's time is not being used to the maximum efficiency.

There were a variety of reports available to track compliance work loads and activities such as citations pending, open tracker reports, case audit, enforcement and inspection micro-to-hosts, outstanding abatements, etc. Supervisors are not taking advantage of these reports to assist in managing inspections, citation processing and work assignments to achieve the Strategic goals. As a result, citations are not being issued promptly, abatements are not being verified, penalties are not getting paid, inspections numbers are low, follow ups are not being done, and other processes are not meeting program expectations.

Two compliance officers reside on the Big Island of Hawaii. They schedule their own planned inspection activity and are given unprogrammed inspections by management when they arise. The inspection activity for these two compliance officers account for 45% of the overall inspection activity for HIOSH. Programmed activity accounted for 61% of their inspection activity, self-referrals brings that number up to 85%. Left to their own devices, these two compliance staff were accomplishing the mission of the agency – this same level of activity is not consistent with the staff located on Oahu – the island with the most industry and construction activity. Management maximized the travel budgets by having compliance officers scheduled to conduct targeted programmed inspections in the other outer islands to coincide with complaint inspections, but there still wasn't a consistent and continual presence on these islands.

Finding 11-8 (10-07): The case load for compliance staff is not being appropriately managed to maximize efficiency and use of resources, and ensure adequate coverage state-wide.

Recommendation 11-8: Focus on the annual goals set for the office and assign inspection to maximize resources.

Finding 11-9: Management is not effectively using standard reports to monitor compliance staff case load.

Recommendation 11-9: Use the available reports, such as the “Citations Pending” and “Open Tracker” reports to manage enforcement activities and compliance staff’s case loads.

Finding 11-10 (10-6): Strategic goals are not being met

Recommendation 11-10: Improve management of inspection activity to focus on overall goals of the office.

In FY11, 53 of the 228 safety inspections (23%) and 24 of the 60 health inspections (39%) were in-compliance. In five of the 11 in-compliance cases reviewed, the inspections had narratives that were incomplete or did not fully detail the issues and conditions observed at the worksite to ensure that items weren't missed.

Finding 11-11: In-compliance case files did not contain a full description of the observations made during the inspection.

Recommendation 11-11: Ensure that attention to documentation is provided for in-compliance issues as it is done for items to be cited.

For the most part, hazard identification has shown some improvement. In only 2 of 79 cases there were potential violations that could have been cited but were not. One inspection involved potential respiratory violations concerning the use of dust masks. There was no indication that

employees were given copies or provided the information in Appendix D of the respirator standard. Another inspection did not have OSHA 300 logs in the case file but there was no indication whether the employer maintained the logs.

HIOSH cited on average 3.6 violations per inspection for FY 2011, which was above the National average of 2.9. Overall, 63% of the violations cited were Serious, Willful or Repeat violations, which is less than the National average of 73%. A large number of the violations were classified as Other-than-serious (35%) as compared to a National average of 22%. This may be due to the fact that HIOSH does not have the ability to issue “de minimus” violations.

Number and percentage of Serious, Willful, Repeat Violations

Classification	Number of Violations (percent) 2011	Number of Violations (percent) 2010	Number of Violations (percent) 2009
Serious	446 (62.5%)	386 (56%)	493 (59%)
Willful	7 (1%)	4 (.5%)	1 (.1%)
Repeat	9 (1.3%)	6 (.9%)	9 (1%)

4. Citations and Penalties

The lapse times for the issuance of safety citations decreased from 103 in FY10 to 84 in FY11. Although this is an improvement, it is still significantly higher than the reference standard of 51.9 (see SAMM, Appendix D). The lapse time for health inspections increased from 49 to 83 days. This is more than the reference standard of 64.8. The average penalty per serious is \$917.80, which is significantly lower than the National average of \$2,132.60. HIOSH did not adopt the administrative changes that Federal OSHA implemented. The Hawaii Legislature recently approved an increase of 10% on the base of all penalties associated with HIOSH citations. This went into effect in June of 2011. When penalties were calculated, they appeared to be appropriately calculated and assessed.

Finding 11-12(10-19): Lapse times for health and safety case files was significantly higher than the reference standard.

Recommendation: Properly manage case file processes in order to issue citations in a timely manner.

5. Abatement

It appears that HIOSH is granting appropriate abatement periods for the citations that have been issued. Only one case out of 81 reviewed lacked actual abatement documentation, but did contain the certification of abatement signed by the employer.

In four of the cases reviewed, a notation was made in the case file to perform a follow-up inspection, but three of the four cases did not have one completed. Follow-up inspections provide assurances that hazards are adequately abated in those cases where there is a reasonable expectation that the employer will not abate, where there are overexposures to air contaminants,

where there are high gravity serious, willful or repeat violations, or at the supervisor's discretion. In addition, follow-up inspections are ideal training tools for new or inexperienced compliance staff and could be used as a training tool. In FY 2011, there were four follow up inspections (1.4%) conducted.

Finding 11-13 (10-21): Follow-up inspections were not being completed when required.

Recommendation 11-13: Perform follow up inspections as required and use them to aid in the training of new and inexperienced compliance staff

6. Employee and Union Involvement

Of the 79 cases reviewed, 70 (89%) had some indication of employee interviews. Recent changes to procedures included an employee interview sheet which listed all of the employees contacted and was separate from the information entered into the NCR. This allowed management a means to easily identify those employees were interviewed and involved in the inspection. All employee interviews that were completed were well documented and copies were kept in the case file.

Union participation in inspections was not happening consistently or was not documented. Of the 79 cases reviewed, 11 did not have an indication that the union was involved in the opening conference, walk around, closing conference nor participated in the informal settlement conference.

Finding 11-14 (10-14a, b, c): Union involvement in inspection activity either was not happening consistently or was not adequately documented.

Recommendation 11-14: Ensure that Union participation or declination of participation is done and is clearly indicated in the case file.

The following findings were not corrected during the evaluation period:

Finding 11-15 (10-5): HIOSH health inspectors conducted sampling in only five of 12 health health inspections conducted in 2009.

Recommendation 11-15: HIOSH must ensure tht health inspectors are conducting appropriate sampling during inspections and properly entering the information into IMIS.

Finding 11-16 (10-9) Case file documentation and required forms in HIOSH inspection files were not organized and ordered consistently.

Recommendation 11-16: Ensure that all files contain documentation and forms in a consistent order.

B. Review Procedures

The inspection case file reviews conducted by the supervisors added a significant amount to the lapse times for safety and health inspections. The lapse times for case file issuance were 60 days for safety case files and 58 days for health. These were well above national averages and

delayed the official notification of hazards to employers and extended the abatement time required. This resulted in an increased length of exposure of hazards to employees in the workplace.

Case files for inspections conducted by Compliance staff on the island of Hawaii were required to be physically sent to the office on the island of Oahu before they were reviewed, saved and issued. There were technologies available but not utilized that could make this process more efficient and lessen the delay. As a result, there were delays in issuing citations. Supervisors need to utilize all tools available to them to effectively manage the work of compliance staff in order to monitor progress toward achieving their goals.

Recent tools, such as check lists, implemented as a result of previous findings and recommendations have improved the quality of reviews and helped to ensure that all the proper documentation was included in the case files.

1. Informal Conferences

Of the 81 cases reviewed, 38 had informal conferences. Justification for modifying citations and penalties were included and properly documented in all reviewed cases; notes were legible and complete. In 21 of these, the penalties had an average reduction of 55% of the original penalties, and in only five instances were the violations vacated or reclassified. When a citation was deleted during the informal conference, the information was not properly entered in IMIS. Citations were marked “deleted due to error” rather than “deleted due to an informal conference”. This was the case in both cases that had citations deleted during the informal conference.

Finding 11-17: Citations deleted during an informal conference were incorrectly entered in IMIS.

Recommendation 11-17: Ensure information from informal conferences is entered correctly.

2. Formal Review of Citations

Contest data indicated most citations were upheld. In FY 2011, HIOSH continued to successfully sustain a high percentage of both violations during contests, but the percentage of penalty has reduced dramatically. 20.8% (27 out of 130) of violations were vacated, 9.2% (12 out of 130) were reclassified, and 31.3% (\$62,985 out of \$201,450) of the penalties were retained. The penalty retained percentage was almost half of the rate of retention of the federal amount (62.3%). The other two indicators were within range of federal data 23.5% for Violations Vacated and 13.3% for Violations Reclassified (SIR E1-E3).

In FY 2011, the program’s average lapse time from the date of contest to a first level decision was 182 days as compared to the national average of 200 days (SAMM 12).

C. Standards and Federal Program Changes Adoption

Standards Adoption

An ATS Manager was hired in May of 2011 to help manage the Automated Tracking System (ATS) which tracks Federal Program Changes, State Initiated Changes and CASPAs. This has greatly improved HIOSH's response to new standards and Federal Program Changes. Standards are adopted in Hawaii through the following process: Prior to holding a public hearing, standards are reviewed and edited by HIOSH management, the Designee, the Attorney General's Office, the Department of Department of Business, Economic Development and Tourism, and Budget and Finance, who must all give their approval. Once everyone has approved the standard, a notice is published in the newspaper 30 days in advance of the public hearing. Testimony from the hearing is summarized and added to a letter to the governor requesting permission to adopt the standard. After the governor grants permission, the documents are sent to the lieutenant governor's office for filing. A standard becomes final 10 days after filing.

States are required, by 29 CFR 1953.5, to adopt Federal standards or a more stringent amendment within six months of the date of promulgation of a new Federal standard. In FY 2011, OSHA published five Federal Registers that required States to adopt an equivalent standard. The program was not timely in notification response of intent for all four standards and was not timely in adoption of the standards in two instances (CPL-02-01-049 *PPE in Shipyard Employment*, and CPL-02-01-050 *PPE in General Industry*).

<i>Date of Directive</i>	Directive Number	<i>Adopt?</i>	<i>Identical</i>	<i>Display Title</i>	<i>Date of Adoption</i>	<i>Timely Response</i>
06/13/2011	CPL-02-00-151 2011 445	Y	Y	<i>Commercial Diving Operations</i>	September 26, 2011	no
05/20/2011	CPL-02-01-051 2011 443	Y	Y	<i>Confined Spaces in Shipyards</i>	September 20, 2011	no
02/10/2011	CPL-02-01-050 2011 422	Y	Y	<i>PPE in General Industry</i>	September 26, 2011	no
11/04/2010	CPL-02-01-049 2011 402	Y	Y	<i>PPE in Shipyard Employment</i>	September 20, 2011	no

Federal Program/State Initiated Changes

There were seven Federal Program Changes published in FY 2011. The program responded to four within the required time interval, CPL-02-03-003 *Whistleblower Investigations Manual*, CPL-02-11-03 *Site-Specific Targeting 2011 (SST-11)*, CPL-02-01-052 *Enforcement Procedures for Incidents of Workplace Violence* and STD 03-11-002 *Compliance Guidance for Residential Construction* (which was not adopted); was untimely for three, CPL-03-00-013 *NEP Primary Metals*, CPL-02-00-150 *Revisions to Field Operations Manual – April 2011*, and CPL-03-11-01 *NEP Microwave Popcorn Processing Plants*.

Comparison documents have not been submitted for Federal Program Changes (the Whistleblower Investigations Manual, the Site-Specific Targeting 2011 Program, and the Field Operations Manual) which have been adopted as different from federal, nor had the links to the published final rule conveyed to update the ATS system.

Date of Directive	Directive Number	Adopt?	Identical	Display Title	Date of Adoption	Timely Response
09/20/2011	CPL-02-03-003 2011 464	-	N	Whistleblower Investigations Manual	March 20, 2012	yes
09/09/2011	CPL-02-11-03 2011 463	-	N	Site-Specific Targeting 2011 (SST-11)	TBD	yes
09/08/2011	CPL-02-01-052 2011 462	-	Y	Enforcement Procedures for Incidents of Workplace Violence	September 26, 2011	yes
05/19/2011	CPL-03-00-013 2011 444	-	Y	NEP Primary Metals	September 26, 2011	no
04/22/2011	CPL-02-00-150 2011 442	Y	N	Revisions to Field Operations Manual - April 2011	TBD	no
01/18/2011	CPL-03(11-01) 2011 423	-	Y	NEP Microwave Popcorn Processing Plants	May 20, 2011	no
12/16/2010	STD-03-11-002 2011 403	N		Compliance Guidance for Residential Construction	NA	yes

During this evaluation period there were no state initiated plan change supplements submitted for review.

Finding 11-18 (10-27): HIOSH had not responded and adopted Standards in a timely manner.

Recommendation 11-18: Ensure Standards are responded to and adopted within the required timeframes.

Finding 11-19 (10-28): HIOSH had not responded to Federal Program Changes in a timely manner.

Recommendation 11-19: Ensure Federal Program Changes are responded to within the required timeframes.

D. Variances

Two variances were requested in FY11. One for fall protection for workers maintaining planters along the highway and one for fall protection for workers installing can lights in hotels. The protection, proposed under the variances, afforded for employees ensured that they were protected.

E. Public Employee Program

Twenty inspections of Public Sector employers were opened in FY11. This accounts for about 7% of total inspections. HIOSH is continuing to work towards a goal of 10% of inspection activity in the Public Sector. Both public and private sector employers are subject to monetary penalties.

F. Discrimination Program

Make-up of the State Program

HIOSH did not have a separate discrimination branch. The Health Branch Manager managed the 11(c) program with three environmental health specialists assigned discrimination investigations as collateral duties. The Health Branch Manager and two of the Environmental Health Specialists spent a significant amount of their time on non-whistleblower enforcement activities during 2011. The third Environmental Health Specialist was assigned to spend the majority of

his time handling whistleblower complaints. In May of FY 2011, one of the environmental health specialists retired and was not replaced. During FY 2011, the Health Branch Manager conducted the intake and screening of all complaints alleging discrimination.

According to IMIS data, there were seven discrimination investigations opened and two investigations closed during FY 2011. However, the screening log kept by the Health Branch Manager showed eight cases opened during FY 2011. It also showed that an additional three cases were closed in FY 2011 but was not listed as closed in IMIS.

Methodology

HIOSH reported on IMIS that it closed two cases in FY 2011. Due to the small number of cases reported closed in IMIS, Federal OSHA Region IX originally requested that HIOSH provide copies of both cases for review. Subsequent to making this request, HIOSH provided internal data that was not reported on IMIS showing that they closed an additional three cases in FY 2011 and also administratively closed two cases. To increase the sample size, Federal OSHA Region IX requested that HIOSH provide copies of the three additional cases. Four of the cases that were investigated were dismissed on the merits and one case was settled. In addition, Federal OSHA requested that HIOSH provide a copy of two cases it administratively closed.

Investigative Case File Reviews

Screening

According to HIOSH's policies and procedures, the Health Branch Manager was in charge of handling all calls and correspondence regarding discrimination complaints. In FY 2011 the Health Branch Manager screened all new complaints and documented them in a screening log. He also documented all complaints that were administratively closed in the log. The cases listed in the screening log appear to have been properly screened. Screening memos in the individual files reflect proper screening analyses.

Although HIOSH's DIM still indicated that orally filed complaints would not be accepted, the Health Branch Manager stated that HIOSH amended its practice to accept orally filed complaints. The DIM is being revised.

The HIOSH opening letter did not contain reference to complainants' dual filing rights with federal OSHA, and the screening materials reviewed do not indicate that HIOSH informed complainants of such rights. There was no evidence that complainants were consistently informed of their dual filing rights, as required under DIS 0-09 Chapter 7 (VI)(D).

Finding 11-20: Discrimination complainants were not informed of their right to dually file with HIOSH and with Federal OSHA.

Recommendation 11-20: HIOSH shall inform discrimination complainants of their right to dually file with HIOSH and Federal OSHA.

Investigation

In general, investigations were properly conducted. HIOSH interviewed the complainants in all cases, requested documents as appropriate and interviewed respondent and third party witnesses. The files contained signed statements by witnesses, usually in their own handwriting. Although the questions asked of witnesses were properly designed to elicit information relevant to the investigation, in two of the five cases reviewed the investigators did not pursue lines of questioning related to elements of nexus (treatment of similarly situated employees, animus, prior discipline and conduct of complainant) where nexus was at issue, as required by DIS 0.09 Chapter 3 (IV)(A)(4), Chapter 3 (IV)(G & I). In one case, HIOSH failed to obtain information relating to disparate treatment by questioning respondent's treatment of similarly situated employees. In the other case, the investigator did not seek to elicit evidence related to additional protected activity that occurred after the complaint was filed but prior to the alleged adverse action. Such deficiencies appeared to have contributed to HIOSH's inadequate analysis of these two cases, which is further discussed below.

Nexus cannot always be established by direct evidence and may involve one or more of several indicators such as animus (exhibited animosity) toward the protected activity or safety and health, proximity in time between the protected activity and the adverse action (timing), disparate treatment of the complainant compared to other similarly situated employees, false testimony or manufactured evidence, and pretextual defenses by the respondent

Report Writing

All Final Investigative Reports (FIRs) were properly organized and contain clear chronologies of relevant events. However, in the two cases in which the investigator did not seek necessary evidence relating to nexus, as discussed above, the analyses in the FIR was conclusory and incomplete. In one case, HIOSH failed to address clear evidence of animus, strong temporal proximity, and respondent's failure to properly provide a credible explanation as to why a long-term employee with a spotless record suddenly faced conduct-based discipline following a safety complaint. In the other case, the investigator's failure to recognize protected activity that occurred subsequent to the initial protected activity but prior to the adverse action led to an incomplete analysis in the FIR. FIRs should contain a thorough analysis of the evidence uncovered, as required under DIS 0-09 Ch. 3, 5(IV)(B)(11) and HIOSH DIM Ch. 3(IV)(I), 4(III). Questions of credibility and reliability of evidence should be resolved and a detailed discussion of the essential elements of a violation should be presented.

Finding 11-21: Nexus was not properly investigated resulting in discrimination Final Investigation Reports that were incomplete and contained conclusory analysis.

Recommendation 11-21: HIOSH shall investigate whether there is a causal link between the protected activity and the adverse action where nexus is at issue in the discrimination investigation and evaluate the facts presented in the FIR as they relate to the four elements of a violation.

Case File Management

Contrary to the requirements of both DIS 0.09 Chapter 5 (IV)(B)(10) and HIOSH's DIM whistleblower discrimination manuals, none of the FIRs reviewed cited to exhibits in the file.

Because only copies of the original case files were reviewed during this FAME, no findings can be made regarding the adequacy and propriety of case file management.

Timeliness

Of the two cases listed on IMIS as having been closed in FY2011, one was closed as settled within 90 days of filing, while the other was dismissed on the merits after pending for 133 days. The three cases that were shown as closed in the screening log but not on IMIS were all dismissed on the merits. Based on the complaint filing dates and the dates upon which closing letters were issued in these cases, all three of these cases were completed within the 90-day statutory period.

Appropriateness of State Findings and Decisions

In three of the five files reviewed, HIOSH made appropriate findings and conclusions based on the evidence. As discussed above, two of the five case files lacked adequate investigation to base dismissal findings.

Policies and Procedures

Other than what is discussed in this report, there were no other issues with HIOSH's policies and procedures. Although not a finding, it was noted that HIOSH only received a total of eight new whistleblower complaints filed in FY 2011, which appears be low. HIOSH should consider doing more outreach to employees, including labor groups, to ensure that workers know that HIOSH has a program to investigate claims of whistleblower retaliation for reporting occupational safety and health complaints.

Program Management

Web IMIS

As discussed above, HIOSH did not maintain accurate data in IMIS during FY2011. One of eight cases opened and three of five cases closed during FY2011 were not recorded in IMIS.

Finding 11-22: Data regarding whistleblower cases opened and closed in FY 2011 was not accurately entered into and maintained in IMIS.

Recommendation 11-22: HIOSH shall ensure that all discrimination cases opened and closed are accurately entered into and maintained in IMIS.

Other Data Management Reports

According to the Health Branch Manager, the screening log discussed above was the only other data management report maintained by HIOSH regarding discrimination complaints.

Appeals

No negative issues were found relating to appeals during this audit.

Administratively Closed Cases

No negative findings were made relating to administrative closures in this audit. HIOSH administratively closed cases properly prior to investigation where either the complaint was

untimely, HIOSH lacked jurisdiction, or the complainant failed to allege a prima facie case of retaliation (protected activity, employer knowledge, adverse action, and nexus).

Merit, Settlement, Litigation and Timeliness Rate

Of the five cases closed in FY 2011, one case settled and no merit cases were recorded. Of the four cases dismissed, only one case took longer than 90 days to investigate from the filing date. HIOSH's 20% merit rate (including the settled case as a merit case) is consistent with the program nationally.

Resources

Training

No HIOSH investigator attended OSHA's 1420 Basic Whistleblower Investigation course. The Health Branch Manager and another investigator (who investigated cases in 2011 but has since transferred to another branch) attended a one-day training conducted by Federal OSHA staff over five years ago. The Health Branch Manager and another investigator attended the nationwide Whistleblower Investigators Conference (at which minimal training was offered) in September 2011.

Finding 11-23: Investigators involved in the discrimination program and the Health Branch Manager have not received adequate training in conducting whistleblower retaliation investigations.

Recommendation 11-23: Investigators involved in the discrimination program and the Health Branch Manager should attend OSHA's 1420 Basic Whistleblower Investigations course and receive on the job training (OJT).

Number of Resources Assigned

In FY 2011, there were four HIOSH employees assigned to work on discrimination cases. In addition to the Health Branch Manager, who both managed the program and investigated cases, three Environmental Health Specialists were assigned to investigate whistleblower complaints. Although a precise count of cases active during 2011 cannot be made due to the discrepancies in available data, the Health Branch Manager and the two investigators interviewed during this FAME indicated that investigators investigated approximately two to three cases each during FY 2011.

G. CASPAs

Two CASPAs were received in FY2011. All of these were 11(c) related. In both, the complainant had not exhausted all of their appeal rights and the CASPAs were closed.

CASPA 2011-HI 23 - Hawaii Air Ambulance. It was alleged that HIOSH dismissed the 11c case without doing a credible investigation, that none of the complainant's witnesses were interviewed, the complainant was never given an opportunity to see the respondent's submission and that HIOSH insisted that the complainant submit a handwritten statement. In this instance, the complainant was informed that the complainant had to exhaust appeal rights with the state before Federal OSHA could open a CASPA.

CASPA 2011-HI 25 – Shell Vacation Club. Complainant had not exhausted all appeals with the state. The case was on appeal with the Hawaii Labor Relations Board.

H. Voluntary Compliance Program

The VPP program was managed by the 21(d) Consultation group in FY11. Recently, the safety supervisor attended the VPP course with the intention of transferring the program to the Enforcement Branch. There were three companies in the VPP program; no new companies were approved in FY 2011 and no companies have submitted applications. The VPP program was not promoted due to the lack of resources available to evaluate applications and conduct on-site evaluations.

Finding 11-24: HIOSH's VPP program is not fully supported or endorsed due to a lack of resources.

Recommendation 11-24: Utilize Special Government Employees (SGEs) and other resources if possible and continue to encourage employer's participation in the program.

I. Public Sector On-site Consultation Program

Due to vacancies in the Consultation Branch, no goals were set for public sector on-site consultation visits and there were no public sector visits conducted in FY11.

Finding 11-25: Develop goals for the Public Sector On-site Consultation Program including promotional strategies and visits that reflect the grant funding.

Recommendation 11-25: Ensure goals are developed and manage the program to achieve these goals.

J. Program Administration

Training

Five new compliance staff were hired in FY11. There were an additional 10 vacancies that needed to be filled. This was 50% of the enforcement staff which demanded a very focused and concerted effort for training. There were many opportunities, besides formal training, to assist in the development of compliance staff. These took the form of mentoring, On-The-Job-Evaluations (OJE), On-The-Job-Trainings (OJT) and job sharing. Management has not conducted on the job evaluations (OJEs) with the new compliance staff to determine the quality of inspections conducted or to determine training needs. Senior compliance staff have been relied on to perform on the job training (OJT).

In FY 2011, two core OSHA Training Institute courses were conducted in Hawaii; these were OTI course 1310 Investigation and Interviewing Techniques and OTI 2450 Evaluation of Safety and Health Management Systems. Holding the courses in Hawaii allowed a larger number of

participants for much less money. HIOSH also took advantage of several OTI-sponsored webinars.

An effective on-the-job training (OJT) program needs to be developed to ensure newly hired compliance officers are able to apply the classroom instruction to field activities. Due to budget cuts and hiring freezes, there were insufficient resources to provide adequate and effective OJT for newly hired compliance officers. In many of the case files reviewed, there were excessive volumes of information which did not support any of the violations cited. There was greater documentation beyond what was needed to support the classification of the hazards. Compliance Officers relied heavily on checklists to ensure their case files contain needed information, regardless of whether it pertains to the case or not. As a result, compliance officers were spending more time in documenting cases than was necessary leading to longer lapse times and delays in issuing the citations. The time would have been better utilized on other enforcement activities. Compliance officers should be able to identify what and how much information is needed in a case file to properly document a violation. This is developed over time through effective training, both in the classroom and through OJT in the field.

Finding 11-26: Management did not effectively evaluate staff through OJEs and did not ensure effective OJT was provided.

Recommendation 11-26: Management needs to ensure compliance officers receive on the job training and to evaluate training through OJEs to ensure consistency and proper guidance for compliance staff.

Funding

The Administrative Services Office (ASO) is responsible for processing and maintaining financial documents, drawing down Federal funds and completing the Federal Financial Report (FFR), SF-425. A cost accounting system for recording accounting transactions was used and met the requirement for maintaining adequate accounting and internal controls. The system generates monthly reports useful for monitoring budgeting and accounting activities.

Program Resources

For FY 2011, 23(g) grant program costs were funded using 50% Federal and 50% State funds as noted below.

Source	Base Award	Reduction	Final Award	*Final Expenditures
Federal	\$1,445,400	\$ 175,000	\$ 1,270,400	\$ 1,138,347
State	\$1,445,400	\$ 175,000	\$ 1,270,400	\$ 1,138,347
Total	\$2,890,800	\$ 350,000	\$ 2,540,800	\$ 2,276,694

Budget

The Status of Obligational Authority, Report 60, compares the budget plan to program expenditures and obligations, and shows the variance between the budget and actual expenditures. Budget plans may be adjusted during the year without OSHA approval provided no more than 10% of the total grant amount is transferred into or out of a direct cost category or

for any change to the indirect cost category. The Grant Amendment, OSHA Form 113, must be submitted to the Regional Office and approved prior to such a reallocation or change. To allow sufficient time for processing, an amendment must be submitted to the Regional Office no later than the middle of August.

In late September 2011, HIOSH requested amendments be made to the FY2011 23(g) and 21(d) grants. The letters were received on October 3, 2011, without the OSHA Form 113, and too late to be processed for FY 2011. The amendments for both agreements reflected significant adjustments to the budget plans. More than 10% of the total funding for the 21(d) program was moved into the equipment category without proper notification and prior approval.

Finding 11-27: The 23(g) grant fund was reallocated between cost categories without prior approval from the OSHA Regional Office.

Recommendation 11-27: The OSHA Regional Office shall be notified of significant changes to the budget plans and pre-approval obtained when reallocating more than 10% of total grant funds between cost categories.

Federal Financial Reporting

The FFR, SF-425, provides the status of the Federal funds requested and the expenditures and unobligated balances for the Federal and State share of the program expenses. FFRs are to be submitted and certified within 30 days after the end of a quarter. The closeout FFR is required to be submitted and certified within 90 days after the end of the grant period. A request for an extension to the closeout period may be submitted no later than December 1 if additional time is needed. During FY 2011, the ASO certified three of four quarterly FFRs by the due date. The June 30, 2011 report was certified on August 11, 2011 making it 12 days late. The final quarterly report was certified prior to the October 30, 2011 due date, however, corrections were required and the final report was submitted past the due date. The Regional Office accepted the final quarterly report on December 13, 2011.

Finding 11-28: The June 30 and October 30, 2011 FFRs and the close out report were not certified in a timely manner.

Recommendation 11-28: Ensure FFRs and the closeout report are certified in a timely manner.

Cash Management

During the past two fiscal years, HIOSH requested amendments to their agreements to reduce the funding for both programs. Even with this amendment Federal funds lapsed resulting in a significant amount of total unused grant funds. Reports generated by the cost accounting system were accessible and available to monitor expenditures throughout the year. The State should use these reports to continually monitor and manage program funds.

Grant	Unused Federal Funds FY 2010			Unused Federal Funds FY 2011		
	De-obligated	Lapsed	Unused	De-obligated	Lapsed	Unused
23(g)	\$600,000	\$27,973	\$627,973	\$175,000	\$132,053	\$307,053

Finding 11-29 (10-35): In FY 2011, 21% of the 23(g) grant fund was not properly managed as evidenced by the large amount of unused funds.

Recommendation 11-29: The 23(g) grant fund must be properly managed to support the goals of the program.

Draw down of Federal Funds

The request for Federal funds should coincide with the payment for program related expenses to minimize the lapse time between the receipt and disbursement of the funds. Federal funds were only requested when the cash account for the Federal programs was low on cash. This cash account did not include matching Federal and State funds as indicated by the fact that no Federal grant funds were requested until March 16, 2011 – six months into FY 2011.

FY 2011 Federal Expenditures to Federal Cash Receipt per Quarter		
Reported on FFR	Expenditures	Cash Receipts
First	\$208,027.85	\$0
Second	\$398,636.73	\$109,000.00
Third	\$690,307.89	\$392,000.00
Fourth	\$1,053,538.71	\$475,000.00
Closeout	\$1,138,347.13	\$1,138,347.13

Finding 11-30 (10-37): A request to draw federal funds did not coincide with the disbursement of the federal share for 23(g) program related expenses.

Recommendation 11-30: Implement procedures to ensure federal funds are drawn down as close as possible to the time a program expense is scheduled for payment.

Travel

Travel is approved prior to the travel date. Travelers using personal vehicles receive an allowance for day trips. Airfare is billed to a DLIR credit card. Travel advances are allowed for travel outside of Hawaii.

There were 15 travel documents reviewed of which 11 were employee reimbursements for travel.

Six claims were processed between two and three months after the travel occurred. One reimbursement claim was processed seven months after the travel date, and one travel claim

covered a nine month period. The review of the travel documents indicated that the employees were the reason for the delay in processing these documents. Only one payment was delayed after the employee submitted it for approval and payment.

The ASO stated they have been working with HIOSH on this issue. This process will help improve the previous concerns raised regarding HIOSH's cash management and draw down of federal funds.

Finding 11-31: Employee travel reimbursement claims were not submitted for payment until two or more months after the travel date.

Recommendation 11-31: HIOSH must ensure that employees submit travel claims timely to ensure reimbursement claims are processed within a reasonable time period.

Equipment

All computer equipment and software must be approved prior to purchase by the National Office. The guideline for this requirement is contained in the Appendix to the grant titled "23(g) OSHA Restrictions and Conditions." The procedures outlined in the 23(g) agreement regarding the purchase of equipment and computer items was not followed. Approximately \$365,000 was spent during the last four months of the fiscal year. The requisitions that were reviewed showed that HIOSH Administrator approval was provided in June 2011. However, the Regional Office was notified three months later in letters from the State Designee dated September 19, 2011, September 30, 2011 and December 5, 2011 that requested permission to make these purchases.

Finding 11-32 (10-36): The procedures as outlined in the grant agreement were not followed regarding the purchase of \$365,000 for equipment and computer items during the last four months of the fiscal year.

Recommendation 11-32: OSHA approval shall be obtained prior to making a purchase for items restricted by the 23(g) agreement.

Grant

The writing and approval process for the FY 2012 grant, which was written and submitted in FY 2011, was not in accordance with Regional and National guidelines. CSP 02-11-11, *FY 2012 Instructions for 23(g) State Plan Grants* require states to coordinate with their Regional Administrator to work with the State Plan to resolve all issues prior to authorizing the State's submission of the electronic grant application. Established and communicated deadlines for this cursory review were not met. This cursory review would have helped to ensure the grant was written, as directed by guidelines, in a standardized format with properly established goals and budgets and would minimize the need for replacement pages and would have expedited the approval of the application. The grant package was submitted to the grants.gov website without this final review, resulting in unnecessary delays and a more complicated review and correction process.

Finding 11-33: Grant documents were submitted without being reviewed by the Regional Office.

Recommendation 11-33: Adhere to the provided timeframes for early grant submittal so that problems and issues with the grants can be addressed before they are entered into the system.

Staffing

Throughout FY 2011, the State’s ability to fully staff compliance positions has been hindered by funding, hiring freezes and lack of viable candidates for the positions. Attracting and retaining a full workforce has also been difficult due to the fact that HIOSH’s compliance positions paid less than similar positions in the private sector. Responses to job announcements have not been as plentiful due to this reason.

At the beginning of the year, there were a total of 5 safety and 3 health compliance staff, and only 8 safety and 9 health positions authorized to be filled by the State Legislature.

	Filled Health Positions	Filled Safety Positions
October 1, 2010	3	5
January 1, 2011	3	5
April 1, 2011	5	5
July 1, 2011	7	5
September 30, 2011	6	5

Several times throughout the year hiring freezes were imposed further delaying the process of filling the positions.

At the end of the evaluation period, there were five safety and six health compliance staff on board for a total of 11 compliance staff. Of these, almost 50% had less than one year experience.

The challenges presented by the staffing issues for HIOSH impacted the State’s ability to adequately provide an effective safety and health presence for workers. Fewer inspectors were available to conduct thorough compliance inspections, and the lack of experience of the newer staff compounded this problem.

There are currently four of nine Safety positions vacant as well as one Supervisory Officer in the Occupational Safety Branch and three of eight Health Compliance positions vacant in the Occupational Health Branch.

The Program Administrator retired at the end of December and the position was in the process of being filled.

Besides the hurdles encountered internally with the hiring process, the pay levels for compliance staff remain much lower and therefore add to the difficulty in attracting and retaining a full workforce.

Finding 11-34 (10-39): There was an average vacancy rate of 50% of the compliance positions.

Recommendation 11-34: Use all available tools and resources to fill vacancies.

Information Management

NCR user skills continued to be an issue for HIOSH. Processing of Formal Settlement Agreements was still improperly handled. This was partially due to Hawaii's classification of settlements not matching the choices in the IMIS system and no set process in place to address this. Processing changes to citations, as mentioned in finding 11-15, has also been an issue. Federal OSHA had provided NCR user skills training in previous fiscal years and continued to offer support throughout the review period.

State Internal Evaluation Program

The Administrator has initiated several changes, checklists and training opportunities for management, administration and compliance staff based upon the findings of the previous FAME reports. Improvements have been made in some aspects of case file substance, but the overall process still needs to improve.

Management relies on senior staff to train new employees and has not performed any on-the-job evaluations (OJEs) as discussed under the section above on training. OJEs provide managers with an evaluation of the capabilities of compliance staff and assists in developing training plans to ensure the quality of the work is maintained. Management who review cases, monitor productivity and are overall responsible for the work products need to be active in the developmental process.

V. Assessment of State Progress in Achieving Annual Performance Goals

HIOSH established and implemented a new five-year strategic plan for FY 2011 through FY 2015. Each year HIOSH developed an annual performance plan which supported the achievement of its strategic goals, and submitted the plans to OSHA for review and approval. HIOSH developed and submitted its original FY 2011 annual performance plan as part of its application for federal funds and then updated it in December 2011.

The following is OSHA's assessment of HIOSH's performance toward meeting its FY 2011 annual goals and the state's progress in achieving the two broad goals in its FY 2011 to 2015 Strategic Plan. HIOSH's detailed report on its accomplishments with respect to the 2011 Annual Performance Plan goals was attached as Appendix F, the State OSHA Annual Report (SOAR).

Strategic Goal 1: Reduce the number of workplace injuries and illnesses in construction and general industry by 5% by focusing on the injuries and illnesses with the highest percentage of reported workers' compensation (WC) cases.

Annual Performance Goal 1.1: Reduce the number of injuries and illnesses in the Specialty Trade Contractors (SIC 1711 - 1799) industry by 1%

<i>Performance Goal</i>	<i>FY11</i>	<i>GOAL</i>	<i>% of Goal</i>
1.1 Specialty Trade Contractors			
<i>ALL Inspections in SIC 1711-1799</i>	101	150	67%
<i>No. of ISS (Programmed) inspections</i>	38	75	51%
<i>No. of violations (cited, includes abated)</i>	160	300	53%
<i>No. of employees employed in establishment</i>	365	1500	24%

OSHA's Assessment: HIOSH failed to meet any of the goals set for this industry. Targeted inspections were only 51% of planned, and the associated indicators also fell well below established goals.

Annual Performance Goal 1.2: Reduce the number of injuries and illnesses in the Accommodations (SIC 7011) industry by 1%

<i>Performance Goal</i>	<i>FY11</i>	<i>GOAL</i>	<i>% of Goal</i>
1.2 Accommodation			
<i>ALL Inspections in SIC 7011</i>	36	90	40%
<i>No. of ISS (Programmed) inspections</i>	26	75	35%
<i>No. of violations (cited, includes abated)</i>	183	180	102%
<i>No. of employees employed in establishment</i>	6675	4500	148%

OSHA's Assessment: The key goals of number of programmed inspections and overall inspections in this industry were not met. The goals for number of violations and the number of employees were met and exceeded indicating that this industry was properly targeted. Compliance Officers were citing an average of 5.1 violations per inspection. This data indicates that a significant impact could have been made in this industry if the inspection goal was met.

Annual Performance Goal 1.3: Reduce the number of injuries and illnesses in State government by 1% by focusing on the departments with the highest numbers of injuries and illnesses (Department of Education, SIC 8211, ownership C)

<i>Performance Goal</i>	<i>FY11</i>	<i>GOAL</i>	<i>% of Goal</i>
1.3 State Government (DOE)			
<i>ALL Inspections in SIC 8211, ownership B</i>	4	28	14%
<i>No. of ISS (Programmed) inspections</i>	4	26	15%
<i>No. of violations (cited, includes abated)</i>	31	52	60%

<i>No. of employees employed in establishment</i>	472	1400	34%
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OSHA’s Assessment: None of the goals set for this industry were met. Targeted inspections were only 15% of the projected goal and the associated indicators also fell well below established goals. There was an average of 7.8 violations cited per inspection indicating that a significant impact could have been made if the inspection goal was met.

Annual Performance Goal 1.4: Reduce the number of injuries and illnesses in Local government by 1% by focusing on the departments with the highest numbers of injuries and illnesses (Police Departments, SIC 9221, Ownership B)

<i>Performance Goal</i>	<i>FY11</i>	<i>GOAL</i>	<i>% of Goal</i>
1.4 Local Government (Police)			
<i>All Inspections in SIC 9221, ownership C</i>	1	6	17%
<i>No. of ISS (Programmed) inspections</i>	1	4	25%
<i>No. of violations (cited, includes abated)</i>	1	12	8%
<i>No. of employees employed in establishment</i>	186	60	310%

OSHA’s Assessment: The key goals set for this industry were not met. The only goal met for this performance goal was the number of employees in the establishments. However, there was minimal impact to reducing the injury and illness numbers.

Strategic Goal 2.0: Reduce the number of fatalities associated with the leading causes of workplace death in construction and general industry

Cause	Construction			General Industry		
	FY10	FY11	Change +/-	FY10	FY11	Change +/-
Fall from elevation	2	0	-2	1	4	+3
Electrocution	0	0		0	0	
Caught in or between	0	1	+1	1	1	
Struck by	0	0		0	2	+2

OSHA’s Assessment: Overall, there was an increase in fatalities in FY 2011, especially in General Industry. Fatalities in tree trimming operations increased and HIOSH partnered with the local Arborists Association to present a series of training sessions in FY 2012. The number of inspections steadily decreased over the years from over 882 in FY 2007 to less than 300 in FY 2011. The overall inspection goals that have been set were not based on the funding levels of the grant. The goals were set based on the experience levels and positions filled, rather than on benchmark levels. The goals developed to address the targeted industries have not been met and resulted in a minimum impact to safety and health conditions in the state. The budget cuts and hiring freezes have resulted in low staffing numbers and are not commensurate with the benchmarks that would ensure an effective safety and health program.

Finding 11-35 (10-24 and 10-42): HIOSH did not meet established Strategic Goals in key industries.

Recommendation 11-35: Ensure that goals are communicated and prioritized with all staff members.

Finding 11-36: HIOSH did not establish goals that reflect grant funding.

Recommendation 11-36: Inspection goals must be set based on a fully staffed and functioning office.

Appendix A
 FY 2011 Hawaii State Plan FAME Report
 Findings and Recommendations

FY11 Fame Finding Number	Finding	Recommendation	Corresponding FY10 Fame Number
11-1	Complaints were not being properly screened and efficiently processed.	Ensure complaints are properly screened and processed.	New
11-2	Complaint inquiries were not being responded to within one-day of receipt.	Manage the complaint process to ensure that complaint inquiries (non-formal) are initiated within one day of receipt.	New
11-3	In 81% of the formal complaints received, inspections were not opened within five days of receipt.	Manage the complaint process to ensure that formal complaint inspections are initiated within five days of receipt.	New
11-4	Complaint letters to the employer were not consistent allowing employers from five to 20 days to respond to alleged hazards for non-formal phone/fax investigations.	Ensure non-formal investigation letters to employers are consistent and only allow five days to respond to alleged complaint items.	New
11-5	Diary sheets were not fully completed for all complaint and inspection files.	Ensure that complaints and inspections have complete diary sheets.	10-10
11-6	Complaints received via e-mail (E-Complaints) were not coded properly in IMIS	Provide training for, and ensure that these complaints are coded N-11-LOGXXXX	New
11-7	The complaint procedures were causing a delay in response time and did not utilize resources efficiently.	Review the complaint processing procedures to eliminate inefficient and unnecessary steps.	New

11-8	The case load for compliance staff is not being appropriately managed to maximize efficiency and use of resources, and ensure adequate coverage state-wide.	Focus on the annual goals set for the office and assign inspection to maximize resources.	10-7
11-9	Management is not effectively using standard reports to monitor compliance staff case load.	Use the available reports, such as the “Citations Pending” and “Open Tracker” reports to manage enforcement activities and compliance staff’s case loads.	New
11-10	Strategic goals are not being met	Improve management of inspection activity to focus on overall goals of the office.	10-6
11-11	In-compliance case files did not contain a full description of the observations made during the inspection.	Ensure that attention to documentation is provided for in-compliance issues as it is done for items to be cited.	New
11-12	Lapse times for health and safety case files is high.	Properly manage case file processes in order to issue citations in a timely manner.	10-19
11-13	Follow-up inspections were not being completed when required.	Perform follow up inspections as required and use them to aid in the training of new and inexperienced compliance staff	10-21
11-14	Union involvement in inspection activity either was not happening consistently or was not adequately documented.	Ensure that Union participation or declination of participation is done and is clearly indicated in the case file.	10-14a, b, c
11-15	HIOSH health inspectors conducted sampling in only five of 12 health health inspections conducted in 2009.	HIOSH must ensure tht health inspectors are conducting appropriate sampling during inspections and properly entering the information into IMIS.	10-5
11-16	Case file documentation and required forms in HIOSH inspection files were not organized and ordered consistently.	Ensure that all files contain documentation and forms in a consistent order.	10-9

11-17	Citations deleted during an informal conference were incorrectly entered in IMIS.	Ensure information from informal conferences is entered correctly	New
11-18	HIOSH had not responded and adopted Standards in a timely manner.	Ensure Standards are responded to and adopted within the required timeframes.	10-27
11-19	HIOSH had not responded to Federal Program Changes in a timely manner.	Ensure Federal Program Changes are responded to within the required timeframes.	10-28
11-20	Discrimination complainants were not informed of their right to dually file with HIOSH and with Federal OSHA.	HIOSH shall inform discrimination complainants of their right to dually file with HIOSH and Federal OSHA.	New
11-21	Nexus was not properly investigated resulting in discrimination Final Investigation Reports that were incomplete and contained conclusory analysis.	HIOSH shall investigate whether there is a causal link between the protected activity and the adverse action where nexus is at issue in the discrimination investigation and evaluate the facts presented in the FIR as they relate to the four elements of a violation	New
11-22	Data regarding whistleblower cases opened and closed in FY 2011 was not accurately entered into and maintained in IMIS.	HIOSH shall ensure that all discrimination cases opened and closed are accurately entered into and maintained in IMIS.	New
11-23	Investigators involved in the discrimination program and the Health Branch Manager have not received adequate training in conducting whistleblower retaliation investigations.	Investigators involved in the discrimination program and the Health Branch Manager should attend OSHA's 1420 Basic Whistleblower Investigations course and receive on the job training (OJT).	New
11-24	HIOSH's VPP program is not fully supported or endorsed due to a lack of resources.	Utilize Special Government Employees (SGEs) and other resources if possible and continue to encourage employer's participation in the program.	New

11-25	Develop goals for the Public Sector On-site Consultation Program including promotional strategies and visits that reflect the grant funding.	Ensure goals are developed and manage the program to achieve these goals.	New
11-26	Management did not effectively evaluate staff through OJEs and did not ensure effective OJT was provided.	Management needs to ensure compliance officers receive on the job training and to evaluate training through OJEs to ensure consistency and proper guidance for compliance staff.	New
11-27	The 23(g) fund was reallocated between cost categories without prior approval from the OSHA Regional Office.	The OSHA Regional Office shall be notified of significant changes to the budget plans and pre-approval obtained when reallocating more than 10% of total grant funds between cost categories.	New
11-28	The June 30 and October 30, 2011 FFRs and the close out report were not certified in a timely manner.	Ensure FFRs and the closeout report are certified in a timely manner.	New
11-29	In FY 2011, 21% of the 23(g) grant fund was not properly managed as evidenced by the large amount of unused funds.	The 23(g) grant fund must be properly managed to support the goals of the program.	10-35
11-30	A request to draw federal funds did not coincide with the disbursement of the federal share of the 23(g) program related expenses.	Implement procedures to ensure federal funds are drawn down as close as possible to the time a program expense is scheduled for payment.	10-37
11-31	Employee travel reimbursement claims were not submitted for payment until two or more months after the travel date.	HIOSH must ensure that employees submit travel claims timely to ensure reimbursement claims are processed within a reasonable time period.	New
11-32	The procedures as outlined in the grant agreement were not followed regarding the purchase of \$365,000 for equipment and computer items during the last four months of the fiscal year.	OSHA approval shall be obtained prior to making a purchase for items restricted by the 23(g) agreement.	10-36

11-33	Grant documents were submitted without being reviewed by the Regional Office.	Adhere to the provided timeframes for early grant submittal so that problems and issues with the grants can be addressed before they are entered into the system.	New
11-34	Staffing levels are below benchmarks	Increase staff levels through the hiring process.	10-39
11-35	HIOSH did not meet established Strategic Goals in key industries.	Ensure that goals are communicated and prioritized with all staff members.	10-24 10-42
11-36	HIOSH did not establish goals that reflect grant funding.	Inspection goals must be set based on a fully staffed and functioning office.	New

Appendix B
 FY 2011 Hawaii State Plan FAME Report
 Status of FY 2010 Findings and Recommendations

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
10-1	HIOSH did not notify all complainants of inspection results within 20 workdays of citation issuance or within 30 workdays of closing conference without citation.	HIOSH must ensure that complainants are notified of inspection results in a timely manner.	Retraining and follow-up	Apparently not resolved. Re-training and implementing procedures to flag certain cases are under discussion.	Corrected
10-2	Hawaii did not respond to two out of nine complaints classified as imminent danger within a day of receiving the complaint.	Review the complaint processing system and ensure there is adequate staffing to respond to complaints classified as imminent danger in a timely fashion.		Apparently not resolved, See SAMM 4. Retraining staff on performance indicators and denial of entry procedures	Corrected
10-3	Although the information had been entered into IMIS, there was no copy of the OSHA 170 in four of the five cases classified as FAT/CATs.	HIOSH must properly complete the OSHA 170 with sufficient details to describe the accident and include a copy in the case file.		Internal audit pending – further action pending results	Corrected
10-4	Families of the victims of occupational fatalities were sent the initial contact letter in one of the five fatality cases. There was no evidence of any other written contact with the families in the fatality case files.	HIOSH must follow their FOM and keep the families of victims of occupational fatalities informed by staying in contact with the families and by sending the appropriate letters in a timely fashion during the course of the inspection. While the State program was not required to and did not adopt CPL 02-00-137, Fatality/Catastrophe Investigation Procedures, OSHA strongly recommends adoption of similar procedures.		Review of case files indicate victim's families' letters have been sent in every case. HIOSH developed new procedures for different types of "Accident investigations". Draft document under review and comment.	Corrected

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
10-5	HIOSH health inspectors conducted sampling in only five of 121 health inspections conducted in FY 2009.	HIOSH must ensure that health inspectors are conducting appropriate sampling during inspections and properly entering the information into IMIS.	No indication of sampling in all cases for health	Internal audit pending. Health inspectors are to conduct monitoring in 100% of cases, with velometer readings at minimum and to develop monitoring expertise among new health inspectors	Repeated
10-6	HIOSH completed only 426 inspections (51 percent) of its goal of 835 inspections in FY 2009.	HIOSH must evaluate their staffing and enforcement efforts to ensure that they meet their inspection goals.	Attempting to hire to fill positions	Prior to September – positions were frozen. Not have difficulty in recruiting due to low salary.	Repeated
10-7	Enforcement inspection activities on the neighbor islands were not proportionate to the population of workers represented on each island, especially Maui.	HIOSH needs to evaluate resources or consider hiring additional personnel to ensure that proportionate inspection coverage is provided to the neighbor islands, especially Maui.	Developing plans to distribute targeted inspections	Still not proportional. Implemented re-assignment of cases among inspectors beginning December	Repeated
10-8	Construction contractors working on military bases were seldom inspected by HIOSH.	HIOSH must conduct a proportionate number of inspections of contractors on military bases until Federal OSHA gains jurisdiction.		Fed Register effective date 10/11/11	Corrected
10-9	Case file documentation and required forms in HIOSH inspection files were not organized and ordered consistently.	Ensure that all files contain documentation and forms in a consistent order.	No consistent order. Retraining and follow-up.	Pending results of internal audit. However, early indications are not case file order is still not consistent. Retraining and accountability follow-up	Repeated
10-10	In 10 of the 43 case files reviewed, there was no diary sheet in the case file.	Record all pertinent information onto the diary sheet in accordance with the HIOSH FOM and keep a copy of the diary sheet with the case file.	Retraining and followup	Case diaries are in cases, however, many are not completed properly. Retraining and accountability	Repeated
10-11	The OSHA 1 and the OSHA 1A were not always signed and dated.	Ensure that all compliance officers sign and date the OSHA 1 and the OSHA 1A as required.		Signed and dated by supervisor at minimum.	Corrected

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
10-12	In four OSHA 1Bs, the employee's address and/or phone number were not obtained. In one case with six 1Bs, there was no injury or illness documented. On five OSHA 1Bs, the incorrect standard was cited. In three cases, grouping was not used correctly.	HIOSH must complete the 1B correctly. HIOSH must follow the procedures in Section C of Chapter V of its FOM to determine when grouping of violations is appropriate.		CSHOs instructed to obtain phone numbers at minimum or state" refused to provide". Internal audit pending on injury or illness, correct standard and grouping	Corrected
10-13	S/W/R violations were not found in the same proportion of HIOSH programmed inspections as in OSHA programmed inspections.	OSHA continues to recommend that HIOSH refine their targeting system to ensure that the establishments selected are the ones that could most benefit from inspection.		Hawaii believes this is a recurring issue which can only be resolved with new performance measures currently being worked out between OSHA and State plans.	Corrected
10-14a	Evidence was not always included in the case file to show that union representatives had accompanied the walk around. There was no evidence to show that union representatives participated in the closing conference, were sent copies of the citations issued, or were notified of informal conferences.	HIOSH must ensure employee representatives are presented the opportunity to participate during each inspection.	Retraining and followup	Internal audit results pending.	Repeated
10-14b	Evidence was not always included in the case file to show that union representatives had accompanied the walk around. There was no evidence to show that union representatives participated in the closing conference, were sent copies of the citations issued, or were notified of informal conferences.	HIOSH must follow its FOM with respect to providing copies of the citation to union representatives.		Copies of citations are sent only if union representative wants a copy sent.	Repeated

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
10-14c	Evidence was not always included in the case file to show that union representatives had accompanied the walk around. There was no evidence to show that union representatives participated in the closing conference, were sent copies of the citations issued, or were notified of informal conferences.	HIOSH must follow its FOM regarding union notification of and participation in informal conferences.		Assigned secretary to handle informal conferences and to notify union representatives of informal conference request if information is provided in case file.	Repeated
10-15	In 24 of the 43 case files reviewed, HIOSH did not appropriately classify the violations and/or cite all of the obvious hazards. Seven other-than-serious violations (OTS) should have been classified as serious (S). There were 19 case files where the narrative or a photo provided sufficient information of document a hazard which was not cited. There was nothing in the case files to indicate why these hazards were not cited.	Mangers must thoroughly review case files to ensure that documentation is complete and citations and classification of violations are consistent and appropriate to the hazards identified during inspections.		Internal audit pending. However, we disagree that photo is conclusive evidence of a violation. Photo must be accompanied by narrative indicating potential hazard. Implemented use of Field 1-B to ensure all hazards are appropriately addressed.	Corrected
10-16	There was no documentation that all relevant safety and health programs required by the HIOSH standards were evaluated during programmed planned comprehensive inspections.	Ensure that the OSHA 1A narrative is completed to document the evaluation of all relevant safety and health programs for all programmed planned inspections and where appropriate for unprogrammed activity.		Safety inspectors are using 1A form in NCR to document compliance with programs, Health inspectors use 1-A narrative form. Hawaii will standardize.	Corrected
10-17	HIOSH did not cite any standard from 29 CFR 1910.38 during FY 2009.	HIOSH must ensure that compliance officers evaluate each workplace to determine if it is required to have an Emergency Action Plan during comprehensive and planned general industry inspections an that citations are issued as appropriate.		Training was provided in March 2011, and CSHOSs and manager/supervisor were reminded again in November 2011. Pending internal audit.	Corrected

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
10-18	Documentation that employer injury illness records were reviewed and evaluated as part of the inspection process was missing from the case files.	HIOSH must instruct managers and compliance officers to ensure that every inspection of an employer required to keep injury and illness records will include an examination and analysis of those records which is documented in the case file.	Follow up recommended	Pending internal audit.	Corrected
10-19	The average number of calendar days it took HIOSH to issue citations has more than doubled since FY 2007 to an average of 102 days, which is approximately twice as long as federal OSHA.	HIOSH must improve its citation processing system to effectively decrease citation lapse time. HIOSH must ensure the managers run Open Inspection reports on a weekly basis to track lapse time and intervene when appropriate to ensure that cases are completed in a timely manner. HIOSH should also consider eliminating the final review by the State Designee to reduce additional review time.	Training and follow up Identify reports to be run consistently which must be used by management to manage caseloads	Still an issue. Staff and managers have been given expected due dates for each stage of citation processing, and manager/supervisor holds daily meetings on status of cases.	Repeated
10-20	Penalties were not always calculated in accordance with chapter VI of its FOM.	HIOSH must ensure that citations are reviewed to confirm that the penalty calculation includes the appropriate probability and severity for the related employee exposure and type of hazard identified.		Internal audit indicates still outstanding. Pending final report to determine extent of problem.	Corrected
10-21	S/W/R violations were not always abated in a timely fashion, nor were follow-up inspections conducted in all instances when required.	HIOSH must ensure that abatement is achieved and entered in a timely fashion, and that follow-up inspections are scheduled and conducted when appropriate.	Training and followup	Still an issue in that while abatement verification is received, is not entered properly in NCR. Other issue is that staff is failing to properly evaluate the adequacy of the abatement by the employer.	Repeated

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
10-22	Case files did not contain documentation for the reasons why citations were changed during the informal conference.	HIOSH must ensure that management includes pertinent documentation of the informal conference in the case file, including the rationale for changing citations and related penalties.		Each informal conference is documented and notes taken on each outcome	Corrected
10-23	There was no evidence of the final outcomes of contested cases (i.e. copy of the Formal Settlement Agreement) in the files reviewed.	HIOSH should review and revise the contested case process to ensure that copies of the FSA and documentation of final resolutions are included in the case files prior to closing the files.	Working on training and follow-up	Clerical shortcoming. Clerks entering information incorrectly and not filing agreement and/or decision and order in original case file – keeping original in attorney file.	Corrected
10-24	The number and percentage of inspections HIOSH has conducted in the public sector has decreased in the past three years from 86 (10%) in FY 2007 to 30 (6%) in FY 2008 to a low of 22 (5%) in FY 2009. This corresponds disproportionately with the increase in the last three years in the public sector injury and illness rates.	HIOSH should increase its inspections in the public sector.		Increased to nearly 7% in FY 2011	Repeated
10-25	As of February 2010 HIOSH had not designated a back-up administrator.	HIOSH should designate a back-up system administrator.		System administrator is Robyn Sakai, Backup is Deirdre Yamasaki	Corrected
10-26	The current person designated as the System Administrator, the back-up systems administrator, as well as the entire Enforcement Branch has not had sufficient training in how to effectively use and maintain the NCR and the OSHA IMIS system.	HIOSH must ensure that the Systems Administrator, the back-up Systems Administrator and all Enforcement Branch personnel receive appropriate IMIS training.		It is not training that is the issue, it is practice and accountability. Staff needs to be held accountable for data entry mistakes. Staff has had numerous training in the past.	Corrected

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
10-27	HIOSH did not adopt federal OSHA standards within the six month requirement.	Develop and implement a tracking system for the adoption of new Federal Standards to ensure that the six month deadline is met.		No individual to adopt until May. Public hearing to occur in February 2011 for all catch-up standards. Changed process to annual adoption	Repeated
10-28	HIOSH has not yet adopted the Training Directive and OSHA's revision to the Field Operations Manual.	Adopt a Training Directive and provision to match OSHA's revision to the Field Operations Manual, and develop and implement a tracking system to ensure that new Federal Program Changes are evaluated and adopted in a timely manner.		Training Directive adopted in April, 2011. OSHA FOM revision and SVEP pending	Repeated
10-29	HIOSH did not ensure that 65% or more of serious hazards documented during consultation visits were abated on site or by the original abatement date.	HIOSH must ensure abatement of serious hazards as quickly as possible.		Latest MARC indicates all serious hazards verified corrected in a timely manner. Manager is regularly reviewing reports and following up on all abatement.	See RACR
10-30	Only four of 14 (29%) of discrimination cases were completed within the 90-day statutory period.	HIOSH needs to ensure that adequate resources are available to complete discrimination investigations in a timely manner.		In FY 2011, 3 of 8 were completed within 90 days. Three took additional time due to multiple ongoing discrimination cases by investigators and NI travel.	Completed

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
10-31	HIOSH does not accept verbal discrimination complaints.	HIOSH should accept and docket orally filed complaints in IMIS upon receipt and not require a Complainant to submit a complaint in writing.	Clarified requirements of the regulation and the process followed by HIOSH	Hawaii allows 60 days for complainant to file a discrim complaint. Further Hawaii makes determinations rather than recommending merit or no-merit for further action. We believe the term "filed" and "setting forth" means a written complaint. HIOSH has always put the complaint in writing for complainants signature for those unable to write. We believe this to be a non-issue	Completed
10-32	Not all of HIOSH staff knew that they could use unilateral settlements.	HIOSH should develop and enforce a consistent policy regarding unilateral settlements.		Again, they cannot. §396-8(e)(8) allows private right of action. There is no such thing as unilateral settlement if claimants can still pursue a separate legal remedy.	Corrected
10-33	One site has not been timely re-evaluated and has not been removed as a VPP participant.	HIOSH should revoke the employer's VPP status. HIOSH should take immediate steps to develop a team to evaluate the site, including the use of qualified SGEs and OSHA personnel.		This was due to misleading information from former "Operations Manager" . Re-evaluation was performed in August 2011 and re-certification is pending 90-day corrective items.	Corrected
10-34	HIOSH charged its VPP activities to the 21(d) grant.	Time spent on VPP activities must be charged to the 23(g) grant funds as 50/50.		Corrected. Now being performed by 23(g) enforcement staff.	Corrected

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
10-35	HIOSH lapsed \$144,096.38 at the end of FY 2009.	HIOSH must closely track expenditure of grant funds and ensure that funds are projected for expenditure by the grantee. Funds that are not projected to be expended by the end of the grant period must be returned to OSHA at the beginning of the fourth quarter.		Still ongoing. Fiscal reports are at least 1-1/2 months behind. HIOSH has no staff trained in fiscal and budget matters.	Repeated
10-36	Ten disbursements totaling \$377,000 have been made since December 29, 2009 without approval.	HIOSH must submit a written request for prior approval through the grant administrator 30 days in advance of the original award end date in accordance with OSHA directives, and must not take action unless it receives written authorization.		Corrected. Training provided to all procurement staff to submit appropriate documents for approval prior to purchase.	Repeated
10-37	Drawdown of grant funds was not uniform during the fiscal year.	HIOSH needs to closely monitor drawdown of funding from the grants on a monthly basis to ensure grant funds are properly managed.		Not corrected. Major expenditure for most programs is personnel costs. HIOSH was not allowed to fill positions for at least 8 months of the fiscal year.	Repeated
10-38	23g Grant funds were used to pay a temporary employee without requesting written permission to do so and to purchase and maintain a color copier in the Director's office.	HIOSH must ensure that expenditures and equipment purchases made with 23g funds are used for activities covered and authorized by the 23g Grant.		Corrected. Director's office understand limitations of OSHA funds.	Corrected
10-39	HIOSH staffing levels are below benchmarks.	HIOSH must develop a plan to address the critical vacancies for compliance and consultation personnel.		Not resolved. Still an issue. Plan is to hire above the minimum, however, must still go through recruitment to prove that salary is an issue.	Repeated

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
10-40	Salaries paid to staff are not equivalent to the work activities being performed and all position duties are not accurately described in HIOSH's FOM nor in its other directives.	HIOSH must ensure that salaries paid to staff are equivalent to the work activities being performed and that all position duties are accurately described in its FOM and its other directives.		Corrected. Persons doing HIOSH work are all on grant, and persons not on grant are not doing HIOSH work.	Corrected
10-41	None of the employees in the enforcement branch had completed all of the required classes listed in OSHA's training directive, TED 01-00-018 Initial Training Program for OSHA Compliance Personnel.	HIOSH needs to ensure that all compliance staff receives at least the basic required OSHA courses. HIOSH must develop a training plan and allocate the necessary funds to do so.	Subject to monitoring and followup	Training plan developed. Training provided on interviewing techniques and safety and health program evaluation. Training log being maintained so that there is no question about what training was and was not received.	Corrected
10-42	Public Sector Injury and Illness Rates increased 10 percent from the baseline in 2005 to 2008. HIOSH did not complete as many public sector inspections and consultations as it projected in FY 2009.	HIOSH needs to re-evaluate its efforts to more effectively address reducing injury and illness in the public sector.		Still an issue. Despite plan to do public sector and neighbor island inspections early in the fiscal year. By the time plan was developed and could be implemented, 6 months of FY had already passed. At the same time HIOSH saw significant increase in fatality/accidents and had to divert staff to complete them	Repeated
10-43	In the State of Hawaii, the number of fatalities from falls to lower level went from three in FY 2007 to two in FY 2008 to zero in FY 2009, and then back up to three in the first half of FY 2010.	Develop and implement a combined enforcement and outreach initiative to address the increase in fall-related fatalities.		Done. Construction fatalities have significantly declined since enforcement and outreach initiative. We are seeing an increase in falls among tree trimmers. Training seminar planned for February 2012 in partnership with arborists.	Completed

APPENDIX C – Hawaii State Plan FY 2011 Enforcement Activity

	HI	State Plan Total	Federal OSHA
Total Inspections	288	52,056	36,109
Safety	228	40,681	29,671
% Safety	79%	78%	82%
Health	60	11,375	6,438
% Health	21%	22%	18%
Construction	152	20,674	20,111
% Construction	53%	40%	56%
Public Sector	20	7,682	N/A
% Public Sector	7%	15%	N/A
Programmed	97	29,985	20,908
% Programmed	34%	58%	58%
Complaint	62	8,876	7,523
% Complaint	22%	17%	21%
Accident	9	2,932	762
Insp w/ Viols Cited	181	31,181	25,796
% Insp w/ Viols Cited (NIC)	63%	60%	71%
% NIC w/ Serious Violations	91.2%	63.7%	85.9%
Total Violations	718	113,579	82,098
Serious	449	50,036	59,856
% Serious	63%	44%	73%
Willful	7	295	585
Repeat	9	2,014	3,061
Serious/Willful/Repeat	465	52,345	63,502
% S/W/R	65%	46%	77%
Failure to Abate	-	333	268
Other than Serious	253	60,896	18,326
% Other	35%	54%	22%
Avg # Violations/ Initial Inspection	3.5	3.4	2.9
Total Penalties	\$841,488	\$ 75,271,600	\$ 181,829,999
Avg Current Penalty / Serious Violation	\$ 946.70	\$ 963.40	\$ 2,132.60
% Penalty Reduced	34.5%	46.6%	43.6%
% Insp w/ Contested Viols	9.8%	14.8%	10.7%
Avg Case Hrs/Insp- Safety	22.5	17.1	19.8
Avg Case Hrs/Insp- Health	26.7	26.8	33.1
Lapse Days Insp to Citation Issued- Safety	60.8	35.6	43.2
Lapse Days Insp to Citation Issued- Health	58.1	43.6	54.8
Open, Non-Contested Cases w/ Incomplete Abatement >60 days	10	1,387	2,436

Note: Federal OSHA does not include OIS data.
The total number of inspections for Federal OSHA is 40,684.

APPENDIX D – FY 2011 State Activity Mandated Measures (SAMM) Report

U. S. D E P A R T M E N T O F L A B O R
 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
 STATE ACTIVITY MANDATED MEASURES (SAMMs)

NOV 08, 2011
 PAGE 1 OF 2

State: HAWAII

RID: 0951500

MEASURE	From: 10/01/2010 To: 09/30/2011	CURRENT FY-TO-DATE	REFERENCE/STANDARD
1. Average number of days to initiate Complaint Inspections	366 6.10 60	227 56.75 4	Negotiated fixed number for each State
2. Average number of days to initiate Complaint Investigations	104 2.26 46	0 .00 4	Negotiated fixed number for each State
3. Percent of Complaints where Complainants were notified on time	56 88.89 63	2 100.00 2	100%
4. Percent of Complaints and Referrals responded to within 1 day -ImmDanger	10 90.91 11	0 0 0	100%
5. Number of Denials where entry not obtained	0	0	0
6. Percent of S/W/R Violations verified			
Private	319 83.95 380	1 5.88 17	100%
Public	24 96.00 25	1 100.00 1	100%
7. Average number of calendar days from Opening Conference to Citation Issue			
Safety	15170 84.27	1625 108.33	2631708 51.9 National Data (1 year)

		180			15		50662	
		2724			420		767959	
Health		82.54			70.00		64.8	National Data (1 year)
		33			6		11844	

*HI FY11

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

U. S. D E P A R T M E N T O F L A B O R
 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
 STATE ACTIVITY MANDATED MEASURES (SAMMs)

NOV 08, 2011
 PAGE 2 OF 2

State: HAWAII

RID: 0951500

MEASURE	From: 10/01/2010 To: 09/30/2011	CURRENT FY-TO-DATE	REFERENCE/STANDARD
8. Percent of Programmed Inspections with S/W/R Violations			
	46	8	90405
Safety	56.10	80.00	58.5 National Data (3 years)
	82	10	154606
	8	2	10916
Health	88.89	100.00	51.7 National Data (3 years)
	9	2	21098
9. Average Violations per Inspection with Vioations			
	476	66	419386
S/W/R	2.23	3.14	2.1 National Data (3 years)
	213	21	198933
	250	35	236745
Other	1.17	1.66	1.2 National Data (3 years)
	213	21	198933
10. Average Initial Penalty per Serious Violation (Private Sector Only)	478550	122600	611105829
	1118.10	1886.15	1679.6 National Data (3 years)
	428	65	363838
11. Percent of Total Inspections in Public Sector	20	1	64
	6.94	8.33	6.1 Data for this State (3 years)
	288	12	1054
12. Average lapse time from receipt of Contest to first level decision	4182	0	3533348
	181.82	0	199.7 National Data (3 years)
	23	0	17693
13. Percent of 11c Investigations Completed within 90 days	1	0	100%
	50.00	0	
	2	0	
14. Percent of 11c Complaints that are Meritorious	1	0	1517
	50.00	0	23.0 National Data (3 years)
	2	0	6591

15. Percent of Meritorious 11c						
Complaints that are Settled		1			0	1327
		100.00				87.5
		1			0	1517
						National Data (3 years)

*HI FY11

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

APPENDIX E – State Information Report (SIR)

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1111011

U. S. D E P A R T M E N T O F L A B O R

PAGE 1

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2011

INTERIM STATE INDICATOR REPORT (SIR)

STATE = HAWAII

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		-----12 MONTHS-----		-----24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
C. ENFORCEMENT (PRIVATE SECTOR)								
1. PROGRAMMED INSPECTIONS (%)								
A. SAFETY	3694	25	8169	57	18137	81	40070	116
	61.3	52.1	61.4	46.3	62.5	38.4	63.7	26.7
	6026	48	13312	123	29042	211	62876	434
B. HEALTH	480	3	1020	5	2126	9	4357	51
	39.7	27.3	36.4	20.8	34.6	16.7	34.7	37.2
	1208	11	2806	24	6150	54	12569	137
2. PROGRAMMED INSPECTIONS WITH VIOLATIONS (%)								
A. SAFETY	3378	12	7266	29	14959	55	32614	101
	73.7	60.0	72.4	54.7	70.1	63.2	69.1	71.6
	4583	20	10036	53	21330	87	47196	141
B. HEALTH	456	2	890	4	1723	8	3487	33
	57.0	100.0	57.2	100.0	56.2	100.0	55.3	58.9
	800	2	1555	4	3068	8	6309	56
3. SERIOUS VIOLATIONS (%)								
A. SAFETY	11703	99	23768	200	48704	358	109064	651
	79.6	65.6	77.4	61.9	76.7	60.8	78.4	58.4
	14698	151	30703	323	63528	589	139117	1114
B. HEALTH	2634	14	5290	47	10266	87	21598	167
	66.6	60.9	64.7	75.8	64.4	76.3	66.7	64.2
	3957	23	8180	62	15930	114	32380	260
4. ABATEMENT PERIOD FOR VIOLS								
A. SAFETY PERCENT >30 DAYS	2394	32	4978	66	10776	96	23693	160
	16.6	24.4	16.8	25.7	17.9	20.6	17.9	19.4
	14465	131	29573	257	60243	465	132414	823
B. HEALTH PERCENT >60 DAYS	259	0	711	0	1451	0	3159	0
	6.5	.0	8.6	.0	9.4	.0	10.0	.0
	4006	16	8234	65	15507	114	31619	198

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2011

INTERIM STATE INDICATOR REPORT (SIR)

STATE = HAWAII

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		-----12 MONTHS-----		-----24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
C. ENFORCEMENT (PRIVATE SECTOR)								
5. AVERAGE PENALTY								
A. SAFETY								
	505479	0	1258835	1425	2803637	3475	5086228	5775
OTHER-THAN-SERIOUS	1181.0	.0	1195.5	356.3	1126.9	579.2	1055.2	577.5
	428	0	1053	4	2488	6	4820	10
B. HEALTH								
	219203	800	441915	1100	853346	1100	1667151	9975
OTHER-THAN-SERIOUS	1184.9	800.0	1077.8	550.0	980.9	550.0	958.7	1995.0
	185	1	410	2	870	2	1739	5
6. INSPECTIONS PER 100 HOURS								
A. SAFETY								
	6874	53	15417	135	33850	231	73070	470
	6.0	2.9	5.6	3.9	5.5	3.9	5.4	4.4
	1138	18	2730	35	6145	60	13476	107
B. HEALTH								
	1458	13	3330	29	7311	59	14958	157
	2.4	.0	2.2	.0	2.2	8.4	2.0	6.0
	615	0	1501	0	3390	7	7404	26
7. VIOLATIONS VACATED %								
	1270	0	3026	6	6577	6	12352	11
	5.6	.0	6.6	1.4	7.0	.8	6.2	.8
	22608	215	46128	438	93448	764	200310	1381
8. VIOLATIONS RECLASSIFIED %								
	737	0	1997	2	4456	3	9147	5
	3.3	.0	4.3	.5	4.8	.4	4.6	.4
	22608	215	46128	438	93448	764	200310	1381
9. PENALTY RETENTION %								
	19478404	95573	40012395	173107	77322520	302331	134938244	584035
	61.0	81.9	61.6	82.4	62.8	82.6	62.8	84.4
	31918969	116650	65001782	210100	123124542	365850	214845679	691875

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2011

INTERIM STATE INDICATOR REPORT

STATE = HAWAII

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		----- 12 MONTHS-----		----- 24 MONTHS-----	
	PRIVATE	PUBLIC	PRIVATE	PUBLIC	PRIVATE	PUBLIC	PRIVATE	PUBLIC
D. ENFORCEMENT (PUBLIC SECTOR)								
1. PROGRAMMED INSPECTIONS %								
	25	1	57	2	81	5	116	11
A. SAFETY	52.1	33.3	46.3	28.6	38.4	33.3	26.7	45.8
	48	3	123	7	211	15	434	24
	3	2	5	2	9	2	51	2
B. HEALTH	27.3	100.0	20.8	40.0	16.7	40.0	37.2	16.7
	11	2	24	5	54	5	137	12
2. SERIOUS VIOLATIONS (%)								
	99	8	200	11	358	16	651	19
A. SAFETY	65.6	47.1	61.9	47.8	60.8	38.1	58.4	40.4
	151	17	323	23	589	42	1114	47
	14	16	47	16	87	16	167	25
B. HEALTH	60.9	84.2	75.8	84.2	76.3	84.2	64.2	67.6
	23	19	62	19	114	19	260	37

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2011

COMPUTERIZED STATE PLAN ACTIVITY MEASURES

STATE = HAWAII

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		----- 12 MONTHS-----		----- 24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
E. REVIEW PROCEDURES								
1. VIOLATIONS VACATED %	579 22.8 2542	1 10.0 10	1131 23.4 4834	10 21.7 46	2220 23.5 9442	27 20.8 130	4270 23.0 18586	46 15.7 293
2. VIOLATIONS RECLASSIFIED %	328 12.9 2542	1 10.0 10	620 12.8 4834	5 10.9 46	1259 13.3 9442	12 9.2 130	2360 12.7 18586	14 4.8 293
3. PENALTY RETENTION %	3616720 56.1 6443756	16800 26.7 62950	9500018 62.4 15212620	42150 24.5 172075	16062961 62.3 25766759	62985 31.3 201450	28079915 60.6 46371522	154454 48.6 318050

APPENDIX F

FY 2011 State OSHA Annual Report (SOAR)

(Available Separately)

APPENDIX G – FY 2011 23(g) Consultation Data

	HI Public Sector	Total State Plan Public Sector
Requests	6	1,328
<i>Safety</i>	5	576
<i>Health</i>	-	560
<i>Both</i>	1	192
Backlog	2	123
<i>Safety</i>	2	51
<i>Health</i>	-	58
<i>Both</i>	-	14
Visits	3	1,632
<i>Initial</i>	3	1,336
<i>Training and Assistance</i>	-	175
<i>Follow-up</i>	-	121
<i>Percent of Program Assistance</i>	100%	67%
<i>Percent of Initial Visits with Employee Participation</i>	100%	96%
Employees Trained	8	5,030
<i>Initial</i>	8	2,144
<i>Training and Assistance</i>	-	2,886
Hazards	9	6,063
<i>Imminent Danger</i>	-	3
<i>Serious</i>	8	4,804
<i>Other than Serious</i>	-	1,171
<i>Regulatory</i>	1	85
<i>Referrals to Enforcement</i>	-	6
Workers Removed from Risk	509	171,075
<i>Imminent Danger</i>	-	55
<i>Serious</i>	464	136,884
<i>Other than Serious</i>	-	26,046
<i>Regulatory</i>	45	8,090