

FY 2013 Comprehensive Federal Annual Monitoring and Evaluation (FAME) Report

Hawaii Occupational Safety and Health (HIOSH)



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I. Executive Summary

A. Summary of the Report

The purpose of this report is to assess the Hawaii Occupational Safety and Health's (HIOSH's) activities for Fiscal Year (FY) 2013 and its progress toward resolving outstanding findings and recommendations from previous Federal Annual Monitoring Evaluations (FAMEs). This report also incorporated the findings of the FY 2012 FAME for HIOSH's 23(g) program. The comprehensive evaluation included a review of all program areas, case file reviews, and a special study on the targeting program. The State Plan's achievement of its annual performance plan goals and its progress toward the goals in its Five-Year Strategic Plan, which ended in FY 2013, was also evaluated.

During 2009 and 2010, the HIOSH program suffered from continuous reductions in staffing that resulted in the reduction of the required number of benchmark positions for a State Plan with final approval. Due to a reduction in staff, the number of inspections conducted was severely reduced. In December 2010, under Governor Neil Abercrombie's Administration, HIOSH restored the required positions and started to work with OSHA to update their procedural agreement, and to provide a roadmap towards ensuring OSHA's mission. On September 21, 2012, a Federal Register Notice (FRN) was published announcing the Assistant Secretary's decision to modify the Hawaii State Plan's approval status from final approval to initial approval. OSHA and HIOSH entered into an Operational Status Agreement (OSA) that outlined the State Plan and federal enforcement responsibilities under concurrent jurisdiction with an addendum outlining the milestones for regaining final approval status. FY 2013 was the first year under the OSA that the State Plan retained enforcement authority over construction, transportation (North American Industrial Classification System (NAICS) 48), and warehousing (NAICS 49), state and local government, and employment discrimination complaints under Section 396-8(e) of the Hawaii Revised Statutes. On October 7, 2012, OSHA began conducting inspections in Hawaii under General Industry, excluding warehouse and transportation. OSHA provides support through five staff members rotating in from OSHA offices throughout the country to conduct inspections, on-the-job training to HIOSH compliance safety and health officers (CSHOs) and managers, State Plan program oversight and assistance, technical assistance, and outreach.

HIOSH's performance with respect to mandates by the Occupational Safety and Health Act and its implementing policies and regulations needs improvement. Although improvements have been made under the OSA, there are also several areas identified in this report where immediate corrective actions are necessary to ensure the safety and health protection of workers in the state. A total of 16 findings and four observations are identified which include issues such as: management of program areas, enforcement issues, and deficiencies in the Discrimination Program. Nine findings from the FY 2012 FAME Report were outstanding and carried over to the FY 2013 FAME, one finding was converted to an observation, and the remaining six findings were verified as completed.

B. State Plan Introduction

The Hawaii State Plan is administered by the HIOSH under the State Department of Labor and Industrial Relations (DLIR). Mr. Dwight Y. Takamine is the State Plan Designee and Director of DLIR and Ms. Diantha M. Goo is the HIOSH Administrator.

Organizationally, there are two major sections under HIOSH. The Occupational Safety and Health (OSH) division administered the Hawaii Occupational Safety and Health Law and the Boiler and Elevator Safety division administered the Hawaii Boiler and Elevator Safety Law. The Boiler and Elevator Safety division was not part of the OSHA grant. The OSH division is comprised of the Administration and Technical Support Branch, Occupational Safety Branch, Occupational Health Branch, and Consultation and Training Branch.

The base award to fund the program was \$1,457,000. The grant provided funding for full-time staff comprised of four Managers, nine OSH Compliance Officers, nine Environmental Health Specialists, one Public Sector Safety/Health Consultant, four Clerical Staff Members, and one Program Specialist. The 23(g) grant also included a research statistician who was integral to the OSH section operations, but was not organizationally under HIOSH. The Program Specialist is part of the DLIR's Research and Statistics office and provides various program data in support of the HIOSH mission such as the inspection-scheduling list, activity reports, and workers' compensation data.

Public sector consultation is provided under the 23(g) grant and private sector consultation is provided under the 21(d) cooperative agreement. The private sector consultation performance results are covered in the FY 2013 Regional Annual Consultation Evaluation Report (RACER).

C. Data and Methodology

Information and data referenced in this report were derived from Computerized State Activity Mandated Measures (SAMM) dated November 12, 2013; Mandated Activities Report for Consultation (MARC) dated October 30, 2013; FY 2013 23(g) Grant; Complaints About State Program Administration (CASPA) from the Automated Tracking System (ATS); Integrated Management Information System (IMIS) reports; discussions with State Plan staff; and an on-site enforcement case file review. The on-site review focused on verification of completed actions from the FY 2012 Corrective Action Plan (CAP), a follow-up of outstanding CAP items and case file reviews.

In accordance with the FY 2013 FAME guidance, the case file sample size was derived out of the total number of State Plan inspections closed during FY 2013. This total number was further divided into programmed and un-programmed inspections. A percentage of the total population for each category was calculated, resulting in the number of programmed and un-programmed inspection case files to be reviewed. A random numbers table was generated and inspections were selected from the list of programmed and un-programmed inspections. All fatality inspection case files opened

during FY 2013 were added to the sample for review. A total of 64 enforcement case files were reviewed. In addition, whistleblower cases closed in FY 2013 were chosen based on types of cases and the age of the case with respect to variable lapse times.

D. Findings and Recommendations

A total of 16 findings were identified. Eleven relate to the enforcement program, and five relate to the discrimination program. The majority of the findings relate to the management of program areas such as: inspection targeting methods, VPP, Public Sector Consultation, the grant, and State Plan responsiveness. The remaining findings relate to enforcement issues such as: case file lapse times, verification of abatement, follow-up inspections, and ensuring union involvement. Finally, the discrimination program findings include issues such as: data accuracy, enforcement of merit findings, investigation actions, proper analysis, and report documentation.

Details of the findings and recommendations are provided in Appendix A, observations are provided in Appendix B, and the status of the FY 2012 findings and recommendations are provided in Appendix C of this report.

II. Major New Issues

The hiring and retention of qualified staff continues to be a problem for Hawaii. While action was taken to fill vacancies and some success occurred at the beginning of 2013, the inability to retain staff has hugely impacted the performance of the HIOSH program as it works to regain capacity. There are currently six vacancies, which include two supervisory positions that are critical for the program's success.

While improvements in the HIOSH program were observed in FY 2013, current performance measures are not trending in a positive direction. Training was provided to managers on the use of the IMIS management reports; however, the IMIS reports are not being consistently and routinely used. Also, there continues to be an issue with responsiveness by the State Plan in submitting required reports such as: the Grant application, the State OSHA Annual Report (SOAR), and responding to Standards Adoption and Federal Program changes.

III. Assessment of State Plan Performance

1. ENFORCEMENT

a) Complaints

Complaints of unsafe and unhealthful conditions in the workplace must be responded to before conditions change to serve as a credible deterrent to employers. It is also important that workers who submit these complaints are timely notified of the results. A total of 177 complaint inspections were initiated within an average of 5.2 days and 68

complaint investigations were initiated within an average of 1.4 days. Both of these measures are within the negotiated goals (SAMM report FY 2013 - SAMM #1 and #2) and represent an improvement in performance from previous years. The FY 2012 FAME report findings 12-01 and 12-02 have been corrected and closed.

As reported in SAMM report FY 2013 - SAMM #3, 33 of the 35 complainants or 94.3% were timely notified. Of the two complainants that were not timely notified, one of the complainants was notified five months after the closing conference, and the second complainant was notified three months after the closing conference. The delay in issuing the citations and the subsequent written responses were attributed to the review process by management. The routine review of IMIS Complaint Tracking, Open Inspections, and Cases with Citations Pending Reports would have identified this issue. Although this does not meet the goal of 100% of complainants being notified timely, this will not be a finding. Instead, it will continue to be monitored.

Additionally, an on-site case file review was conducted of 64 inspection case files of which almost 11% (seven) were complaint inspections. The review noted that the case files were complete and all complaint items were addressed and adequately investigated.

Table 1
Complaints (SAMM 1, 2, 3)

	FY 2011	FY 2012	FY 2013	Goal
Days to Initiate Inspection (SAMM 1)	6.10 days	5.39 days	5.20 days	7
Days to Initiate Investigation (SAMM 2)	2.26 days	3.12 days	1.38 days	2
Complainants Notified Timely (SAMM 3)	88.9%	96.3%	94.3%	100%

b) Fatalities / Imminent Danger

It is imperative that all reports of fatalities and imminent danger conditions be investigated as expeditiously as possible before the scene is disturbed or witnesses' memories fade. It is also crucial to involve the family of the victim's and keep them apprised of the progress of the investigation. A case file review was conducted of all four fatality investigations opened in FY 2013. All four fatality investigations were initiated within one day. The four inspections resulted in 18 serious and five other-than-serious violations issued with \$131,890 in total penalties. Two of the four inspections had press releases after the citations were issued to increase state-wide employer awareness and to serve as a deterrent. However, in one of the case files, there was no evidence that contact had been made with the victim's family either at the start of the inspection, during the inspection, or at the conclusion of the inspection to ensure their involvement in the investigation process.

Observation 13-01: Involvement of the victim's family was not adequately documented.

Federal Monitoring Plan 13-01: Follow-up during the quarterly meetings to ensure adequate documentation of contact with the victim's family is contained in the case file.

Inspections were conducted for 16 complaints/referrals of imminent danger with 15 (93.7%) responded to within one day (SAMM report FY 2013 - SAMM #4). Although this does not rise to the level of a finding, it will be monitored. The current state travel policy requires a minimum of three days to process emergency travel requests. This policy prevents compliance staff from immediately responding to fatalities and imminent danger conditions on the outer islands that do not have compliance staff. DLIR staff is working on possible solutions to correct the issue.

Observation 13-02: The current state travel policy prevents compliance staff from responding to fatalities and imminent danger (on the outer islands) that does not have compliance staff within one day.

Federal Monitoring Plan 13-02: Continue to follow-up with the Program Administrator on the progress of changing the current policy or finding a workable solution.

The case file review of the four fatality investigations revealed that in all four instances the investigations were opened within one day of the incident. However, IMIS data showed that only 25% of fatality inspections were responded to within one work day (SAMM report FY 2013 - SAMM #21). The dates the investigations were opened are not correctly documented in IMIS resulting in this discrepancy. The IMIS and SAMM reports are useful tools in identifying these types of discrepancies, but were not used.

c) Targeting and Programmed Inspections

A special study of the targeting program was conducted and addressed in detail under the Section 7 Special Studies – State Plan Targeting Programs. A total of 477 safety and health inspections were conducted which was nearly 1.6 times the goal of 300 inspections (SAMM report FY 2013 - SAMM #17). Over the previous three years, the total number of inspections was steadily declining, but inspection goals were not met. Under the first full year of the OSA, realistic goals were developed that reflected capacity building efforts, and the inspection goal was exceeded. There was an overall increase in the total number of inspections which exceeded the previous three years totals.

Table 2
Total Number of Inspections

	FY 2010	FY 2011	FY 2012	FY 2013
Goal	475	337	566	300
Actual	301	288	325	477
% of Goal	63.4%	85.5%	57.4%	159%

Programmed inspections are planned inspections designed to target those industries with higher than average injury and illness rates and allows the agency to make the greatest impact on safety and health in the workplace. Out of the total inspections conducted, 52% (248) were programmed planned, which is similar to FY 2012 (53%) and close to the national Federal average of 57%. The IMIS data showed that 81% of programmed safety inspections and 75% of programmed health inspections had serious, willful, or repeat violations. This was a significant increase from 58% for programed safety

inspections and 42% for programmed health inspections in FY 2012 and is reflective of the training provided by management to increase hazard recognition skills of the compliance staff.

Table 3
Percent Programmed Inspections with S/W/R Violations (SAMM 8)

	FY 2011	FY 2012	FY 2013	FY 2013 National Data (3 years)
Safety	56.10%	57.55%	81.16%	57.0%
Health	88.89%	41.51%	75.34%	53.7%

Case load management was addressed in the previous three FAME reports where the inspection activity was not consistent with the industrial activities on all of the islands. This reporting cycle saw improvement in the distribution of the inspection activity with 65% of the inspections conducted on the island of Oahu, 18% on the island of Maui, 11% on the island of Hawaii, and 6% of the inspections on the island of Kauai. Management's focus on the annual goals has resulted in positive improvement and the FY 2012 FAME report Finding 12-03 has been corrected and closed.

Management of the inspection activity was addressed in the previous two FAME reports to ensure the overall goals of the office were provided proper attention. Training was provided to managers for using micro reports to achieve the office goals. However, the reports are not being used to monitor the results of the program. Although inspection activities have improved, other areas of the program were impacted, and are addressed elsewhere in this report. FY 2012 Finding 12-04 is considered completed and closed.

There were no denials of entry experienced during FY 2013 (SAMM report FY 2013 - SAMM #5).

A total of 28 out of 302 safety inspections and 22 out of 110 health inspections were in compliance, resulting in an in compliance rate of 9.27 for safety inspections and 20.0 for health inspections (SAMM 20). This was significantly below the reference standard of 29.1 for safety inspections and 34.1 for health inspections.

d) Citations and Penalties

Citations and penalties are some of the tools OSHA uses as a deterrent to employers. Citations need to be supportable, well documented, and issued in a reasonable amount of time. Penalties need to be sustainable to have any effect on employers' behaviors. Of the 64 case files reviewed, all but one had adequate information to support the violations cited. In that case, the compliance officer did not establish employer knowledge to support the violation, and the citation was deleted after the employer contested the citation. This was not significant enough to merit a finding.

During the case file review, pictures and documentation adequately supported the violations cited, and there was no evidence that hazards had been missed.

The lapse time for inspections significantly increased along with the inspection numbers from the previous fiscal year. The safety lapse time increased from 76 days in FY 2012 to 82.2 days. The health lapse time increased from 77 days in FY 2012 to 85.1 days (SAMM report FY 2013 - SAMM #23). This can be attributed to the large number of newly hired compliance officers that required training to become proficient in case file reviews. Routine use of IMIS management reports such as: Citations Pending, Open Tracker, Case Audits, outstanding Abatements, and Enforcement and Inspection reports would highlight cases that have long lapse times and assist management to manage case loads and the work of staff.

Finding 13-01 (12-05 and 11-12): Lapse times for health and safety case files were significantly higher than the reference standard.

Recommendation 13-01 (12-05 and 11-12): Review the case file management process to identify and eliminate inefficiencies.

Of the 49 case files inspected that had penalties associated with the inspection, only three of the case files contained records documenting the payment of penalties. The other records were stamped with a paid stamp and dated. However, no other accounting information, such as a copy of the IMIS penalty payment form and a copy of the payment check, was included to document that payment was made. This is an administrative correction and does not affect the payment processing. This will not be a finding.

The average number of serious, willful, and repeat violations cited per inspection has remained fairly consistent over the past three years and although it is slightly lower than the previous year, it is above the national three-year average of 2.0 (SAMM report FY 2013 - SAMM #9). This is reflective of the training management provided as the majority of the compliance staff was new.

**Table 4
Average Violations per Inspection with Violations (SAMM 9)**

	FY 2011	FY 2012	FY 2013	FY 2013 National Data (3 years)
S/W/R	2.23	2.37	2.34	2.04
Other	1.17	1.62	1.44	0.88

The average initial penalty assessed (SAMM report FY 2013 - SAMM #10) was \$1,305. This was an increase of 10% from FY 2012 and attributed to a change in the Hawaii statute in FY 2011. This is significantly lower than the reference standard of \$2,245. Although the State Plan retains 78% of the penalty versus the reference standard average of 66% (SAMM report FY 2013 - SAMM #24), the average final penalty (\$1,018) is still lower than that of the reference standard (\$1,482).

e) Abatement

Assurances must be received from employers that hazards were abated. If violations cited are not abated, workers will continue to be exposed to serious hazards with a

potential for injuries, illnesses, or deaths. Of the 64 case files reviewed, 55 had citations, and two violations did not have the required abatement documentation included in the file. There was nothing in the files to indicate that abatement had been requested for these two items. However, the rate of serious, willful, and repeat violations verified as abated as reported in the SAMM report FY 2013 - SAMM #6 for private employers was 82% of the violations, while for public employers it was only 32% of the violations. This marked a decrease from FY 2012 and is significantly less than the goal of verifying 100% of all serious, willful, and repeat violations are being abated. IMIS reports, if used properly, would have identified this issue. In addition, if abatement assurance was not provided or verified, these employers should have become candidates for follow-up inspections.

Finding 13-02: Abatement verification of serious, willful, and repeat violations was significantly lower than the reference standard.

Recommendation 13-02: Ensure verification of abatement is completed.

Of the 477 inspections HIOSH conducted in FY 2013, 2.5% (12) were follow-up inspections and two failure-to-abate citations were issued. Supervisors were trained to use the “candidates for follow-up” report to track this. However, according to SAMM report FY 2013 - SAMM #6 data, 685 out of 767 serious, willful, and repeat violations were not verified timely, which suggests that IMIS reports are not being used appropriately to identify this issue. This was a finding in FY 2012 and FY 2011 and remains open.

Finding 13-03 (12-06 and 11-13): Over 80% of serious, willful, and repeat violations were not verified timely.

Recommendation 13-03 (12-06 and 11-13): Utilize IMIS reports to track abatement and, per 29 Code of Federal Regulations (CFR) 1903.19, issue “Failure to Abate” citations to employers when appropriate.

f) Worker and Union Involvement

All of the 64 case files reviewed contained worker interviews with the number of workers interviewed commensurate with the complexity of the inspection. A worker interview sheet, which listed all of the workers contacted, was separate from the information entered into the National Cash Register (NCR). This sheet provided management a means of easily identifying workers who were interviewed and involved in the inspection. All worker interviews that were completed were adequately documented and copies were maintained in the case file. IMIS data also shows that 100% of the inspections had worker or worker representative involvement in the walk around inspection or were interviewed during the inspection (SAMM report FY 2013 - SAMM #25).

Field staff identified union establishments as part of the opening conference and documented the information in the case files. Of the 17 cases reviewed that involved

union facilities, none of the records had any evidence that citations were provided to the unions and only two of the seven case files with informal settlement conferences had documentation/information that the union was contacted to participate in the informal settlement conference. This was a finding in the FY 2012 FAME (Finding 12-07 and 11-14) and tracking information was reportedly added to the diary sheets. However, there continues to be cases that lack documentation of union involvement in activities after the inspection.

Finding 13-04 (12-07 and 11-14): Union involvement in inspection activity was not consistent or was not adequately documented.

Recommendation 13-04 (12-07 and 11-14): Ensure that unions are provided copies of citations and participation, or declination of participation is done and clearly indicated in the case file.

As part of the on-site case file review, 18 health files were reviewed and all of the inspections had sampling conducted where necessary and appropriate. As part of the OSA, federal compliance safety and health officers (CSHOs) assisted in identifying sampling opportunities and this FY 2012 FAME Report Finding 12-08 is considered completed and closed.

2. REVIEW PROCEDURES

a) Informal Conferences

In 13 of the 64 case files with informal conferences, all except one case had documented a reason for the reduction/change in penalty. The informal conference process allows hazards to be expeditiously corrected by avoiding delays caused by litigation of citations. The rate of retention of citation classification and penalties during informal conferences was commendable. Only 0.7% (10/1460) of violations under dispute was vacated, which is significantly less than the 7.1% of violations vacated by OSHA. The penalty retention rate was 78.4% (\$741,578/\$945,564) of the assessed penalties, which is also higher than the national rate of 66%.

b) Formal Review of Citations

Of the 64 case files reviewed, four were contested by the employer. Two of the files were fatality cases with the proceedings still with the State Plan's attorneys for review and the other two were settled in a timely manner. Once a notice of contest is filed, the case is handled by the State Attorney General's Office. Every attempt to settle the case, such as working with the HIOSH Administrator and the employer, is made before the cases are heard in front of the Hawaii Labor Relations Board. The Board consists of three individuals appointed by the Governor. The IMIS data showed that the program's average lapse time from the date of contest to a first level decision was 142 days as compared to the national average of 211 days.

3. STANDARDS AND FEDERAL PROGRAM CHANGES (FPC) ADOPTION

a) Standards Adoption

Prior to holding a public hearing, standards are reviewed and edited by HIOSH management, the Designee, the Attorney General’s Office, the Department of Business, Economic Development and Tourism, and the Budget and Finance office. 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. The standard becomes final 10 days after filing.

When a new federal standard is promulgated, State Plans are required, by 29 CFR 1953.5, to adopt the standard or a more stringent standard within six months. In FY 2013, OSHA published two Federal Registers that required State Plans to adopt an equivalent standard. The adoption date for the Direct Final Rule on Cranes and Derricks in Construction was November 23, 2013. To date, the response, which was due on June 24, 2013, has not been received and actions to adopt the standard have not been completed. Subsequently, adoption of the standard is late, resulting in the enforcement of a standard that is not at least as effective as the Federal standard. This is a repeat finding from the FY 2012 and FY 2011 FAME.

Table 5

Standard:	State Plan Response Date:	Intent to Adopt:	Adopt Identical:	Adoption Due Date:	State Plan Adoption Date:
Updating OSHA Standards based on National Consensus Standards; Head Protection (11/16/2012)	01/14/2013	Yes	Yes	07/16/2013	11/02/2012
29 CFR Part 1926 Direct Final Rule – Cranes and Derricks in Construction: Underground Construction and Demolition (04/25/2013)	Pending (Response was due 6/24/2013)	Pending	Pending	11/23/2013	Pending

b) OSHA/State Initiated Changes

The promulgation and effective dates continued to lag past the six months allowed for adoption of Federal Program Changes. The Field Operations Manual that was due for adoption September 26, 2009, along with the subsequent revisions and the Whistleblower Manual that was due for adoption on March 22, 2012, has yet to be adopted. These two manuals contain critical information that is the basis of how compliance officers and whistleblower investigators perform their work. No response has been received on their

intent for CPL 03-00-017 National Emphasis Program Occupational Exposure to Isocyanates, which was due on August 20, 2013, nor for CPL 02-01-055 Maritime Cargo Gear Standards and 29 CFR Part 1919 Certification, which was due on December 30, 2013. Since OSHA has jurisdiction over maritime in Hawaii, this response should have been completed well within the due date. It is imperative that immediate corrective actions are taken to ensure responses are provided and directives are adopted timely. This is a repeat finding from FY 2012 and FY 2011 FAME Reports and will remain open.

Finding 13-05 (12-09, 11-18, and 11-19): Standards and Federal Program Changes have not been adopted in a timely manner.

Recommendation 13-05 (12-09, 11-18, and 11-19): Ensure standards and Federal Program Changes are responded to and adopted within the required timeframes.

Table 6

FPC Directive/Subject:	State Plan Response Date:	Intent to Adopt:	Adopt Identical:	Adoption Due Date:	State Plan Adoption Date:
CPL 02-00-148 Field Operations Manual (03/26/2009)	05/21/2009	Yes	No	09/26/2009	Pending - draft in progress
CPL 02-00-148 Revisions to FOM November 2009 (11/09/2009)	11/30/2009	Yes	Yes	05/09/2009	Pending - draft in progress
CPL 02-00-150 Revisions to Field Operations Manual - April 2011 (04/22/2011)	09/20/2011	Yes	Yes	10/22/2011	Pending - draft in progress
CPL 02-03-003 Whistleblower Investigations Manual	09/22/2011	Yes	No	03/22/2012	Pending - draft in progress
CPL 02-01-054 Inspection and Citation Guidance for Roadway and Highway Construction Work Zones (10/16/2012)	11/11/2012	Yes	Pending	04/16/2013	Pending
CPL 02-13-01 Site-Specific Targeting 2012 (SST-12) (01/04/2013)	01/14/2013	No	N/A	N/A	N/A
CPL 03-00-017 National Emphasis Program Occupational Exposure to Isocyanates	Pending (Response was due 8/20/2013)	Pending	Pending	Pending	Pending - no action taken at this time

(06/20/2013)					
CPL 02-00-155 Federal Program Change Memo for OSHA Instruction CPL 02-00-155 (09/06/2013)	12/11/2013	No	N/A	N/A	N/A
CPL 02-01-055 Maritime Cargo Gear Standards and 29 CFR Part 1919 Certification (09/30/2013)	Pending (Response was due 12/30/2013)	Pending	Pending	Pending	Pending - no action taken at this time

No State-initiated changes were initiated during this period.

4. VARIANCES

There were no requests for variances received or processed during FY 2013.

5. PUBLIC WORKER PROGRAM

In the 23(g) grant application, HIOSH projected to perform 30 public sector inspections and they exceeded this target, conducting 46 of their 477 inspections in the public sector establishments or 9.6%. This is a significant improvement over previous years and exceeds the negotiated goal of 6%. The FY 2012 FAME Report Finding 12-10 is corrected and closed.

Table 7
Percent Total Inspections in Public Sector (SAMM 11)

	FY 2011	FY 2012	FY 2013	FY 2013 State Plan Average (3 years)
	6.94%	6.10%	9.64%	7.8%

6. DISCRIMINATION PROGRAM

Claims of whistleblower retaliation for reporting occupational safety and health issues are investigated under Chapter 396-8(e)(4). There was one supervisor and one investigator investigating 396-8(e)(4) cases. The supervisor and the investigator spent an average of 30-40% of their time investigating 396-8(e)(4) cases; the rest of the time they work on enforcement inspection activities. Both investigators attended OSHA's Basic Whistleblower Investigations course #1420 and also received additional training from the regional office which included accompanying Federal whistleblower investigators and mentoring from the Regional Supervisory Investigator (RSI).

Based on the types of cases HIOSH closed in FY 2013, the Region requested five Dismissal/Non-Merit, one Litigation/Merit, two Settled, and two Settled-Other cases. Only one Litigation/Merit case was closed and there were no withdrawn cases; hence, these categories reverted to Dismissed/Non-Merit cases. However, due to incorrect IMIS coding,

the Region actually received six Dismissed/Non-Merit, one Litigation/Merit, two Settled Other, and one withdrawn cases.

HIOSH issued an updated Discrimination Investigation Manual (DIM) in November 2011, to coincide with OSHA's updated Whistleblower Investigation Manual (WIM), issued in September 2011.

IMIS Issues

In eight cases reviewed, information in IMIS was inaccurate including the filing date, the adverse action date, the docketing date, the determination, and the number of cases closed. In one case reviewed, the wrong filing date was entered and in two cases the wrong adverse action date was entered. In four cases reviewed, the cases were docketed in IMIS *after* they had closed, suggesting that HIOSH waited to enter the cases into IMIS. The DIM Chapters II and V require the timely and accurate entry of information in IMIS, including the date the complaint was filed. These sections also require that cases are docketed into IMIS prior to sending out opening letters notifying parties of the investigation. In four cases reviewed, incorrect determinations of cases were coded in IMIS. One case was coded as "Settled-Other" when there was no settlement reached, two cases were coded as "Settled" when they should have been "Settled-Other," and another case was coded as "Settled-Other" when it should have been "Withdrawn." OSHA's IMIS User Guide requires that this information be correct. All four of these cases were closed after OSHA conducted in person training to HIOSH staff in FY 2013. This was a finding in the FY 2012 FAME Report (12-12 and 11-22) and remains open.

Finding 13-06 (12-12 and 11-22): Whistleblower data was neither accurately nor timely entered into web-IMIS, as required in DIM Chapters II and V.

Recommendation 13-06 (12-12 and 11-22): HIOSH should follow its own procedures to ensure that whistleblower information is accurately and timely entered into web-IMIS.

Note, HIOSH'S internal data indicated that 19 cases were closed in FY 2013 while information in IMIS indicated 18 cases were closed in FY 2013. Similarly, internal data indicated 23 cases opened in FY 2013 while IMIS indicated 19 cases opened.

Investigation

Three cases reviewed indicated the investigation was incomplete. Two cases showed the nexus was not properly investigated. In one case, the investigator did not determine when the termination decision was made and who made or participated in the decision to terminate the complainant. In addition, the investigator did not test the company's allegation that it terminated the worker for having three termination warnings on his record. In that case, the investigator did not question company witnesses about when the decision to terminate the complainant had been made and did not explore whether other workers who engaged in similar misconduct had not been terminated as the complainant alleged.

In another case, the investigator did not conduct interviews with the management officials to determine whether the company's alleged legitimate business reason for terminating the complainant was really a pretext for retaliation. There was evidence that the company did not follow its own progressive discipline policy and there were no documents written prior to the termination to support all of the complainant's alleged performance problems. The investigator accepted the company's allegations that the decision to terminate the complainant occurred prior to the complainant's protected activity when the evidence suggested the opposite.

Although not reflecting a failure to investigate nexus, the investigator in a third case deferred to a grievance outcome with no investigation into whether the remedy the complainant received under the grievance, (e.g., reinstatement) made the complainant whole.

The DIM Chapter 3(V)(A-J) requires complete investigations, including proper evaluations of nexus. Two of the three cases were closed after OSHA conducted in-person training to HIOSH staff in FY 2013. This was a finding in the 2012 FAME Report (12-11 and 11-21) and remains open.

Finding 13-07 (12-11 and 11-21): Nexus was not properly investigated, as required in the DIM Chapter 3(V)(A-J), resulting in discrimination Final Investigation Reports that were incomplete and contained inconclusive analysis.

Recommendation 13-07 (12-11 and 11-21): HIOSH should follow its own procedures by investigating 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 Final Investigation Report as they relate to the four elements of a violation.

Before issuing a merit determination, HIOSH consults with the Attorney General's office, but ultimately makes the final determination to issue. The employer either complies with the order or may appeal to the Hawaii Labor Relations Board (HLRB). The Attorney General does not litigate the case nor enforce the order. In one case reviewed, the Attorney General's office concluded that there was no coverage under 396-8(e)(4), but HIOSH proceeded forward with a merit determination. As explained in WIM Chapter 4(IV)(6) and 4(VII), if OSHA recommends a merit determination under Section 11(c), the claim is forwarded to the U.S. Department of Labor Office of the Solicitors, who either litigates the claim in U.S. District Court, returns the case for additional investigation, or recommends dismissal for lack of evidence. Under the DIM Chapter 4(IV)(B)(6) and 4(VI) procedures, if a meritorious determination is issued, but the employer appeals to the HLRB, HIOSH has no enforcement authority. Instead, HIOSH prepares a letter and order to the company with a copy to the Complainant, which can be appealed by the company to the HLRB. For cases deemed to be meritorious, HIOSH does not file any action in state court, unlike OSHA. Therefore, an employer has little incentive to comply with the order and workers are not afforded the same protections provided by OSHA.

Finding 13-08: HIOSH's process of issuing merit determinations without the state litigating the matter does not support enforcement as required in WIM Chapter 4(IV)(6) and 4(VII).

Recommendation 13-08: HIOSH has no procedures to support cases deemed meritorious and should develop such a process which could include litigating the claim in state court or representing the agency in front of the HLRB.

Closing letters to complainants in the three Dismissed/Non-Merit closing letters were unclear as to the reason(s) for dismissing the claims. According to the DIM Chapter 4(IV)(B)(2), closing letters should indicate to complainants why their cases were dismissed. Two of these cases were closed after OSHA conducted in-person training to HIOSH staff in FY 2013.

Also, two Dismissed/Non-Merit cases reviewed did not contain evidence that appeal rights were mentioned during the closing conference with the complainant. The WIM Chapters 3(III), 3(VI)(K)(3), 3(VI)(L)(1), and 5(IV)(C) and DIM Chapter 3(V)(K) require that appeal rights be explained to complainants during closing conferences for Dismissed/Non-Merit claims. Both cases were closed prior to OSHA conducting in-person training to HIOSH staff in FY 2013.

Lastly, in two cases reviewed, dual filing rights were not provided to complainants in their opening letters. Although this is not a finding, the DIM Chapter 7 requires that dual filing rights are provided to complainants in their opening letters. Both cases were closed prior to OSHA conducting in-person training to HIOSH staff in FY 2013.

Since the integrity of the investigations was not affected, no finding will be issued. However, OSHA will be monitoring this to ensure it does not grow to be a problem.

Report Writing

In three cases reviewed, protected activity was not properly analyzed in the final report. In one case, the investigator accepted that the complainant engaged in protected activity without exploring whether the complainant had a reasonable belief in raising his/her occupational safety concerns. In addition, the protected activity and nexus analysis was mixed up in the report. In the two other cases, protected activity was not analyzed at all in the report. The DIM Chapter 5(IV)(D)(11) requires that protected activity be correctly analyzed in the final report. Two of the three cases were closed after OSHA conducted in person training to HIOSH staff in FY 2013.

In the same three cases discussed above, there was an analysis of employer knowledge. In one case, the investigator determined that employer knowledge had been shown without discussing why. Similarly, in the other two cases, no analysis of employer knowledge was done. The DIM Chapter 5(IV)(D)(11) requires that employer knowledge be correctly analyzed in the final report.

Also in these same three cases, adverse action was also not properly analyzed. In one case, the investigator determined that adverse action had been shown without discussing. Similarly, in the other two cases, no analysis of adverse action was done. The DIM Chapter 5(IV)(D)(11) requires that adverse action be analyzed in the final report.

In six of the cases reviewed, the Region found that nexus was not properly analyzed in the report. Many times the report concluded that nexus was not found without explaining why or simply omitted a nexus discussion altogether. In one case, the investigator only wrote, “No connection could be made between the protected activity and the adverse action (refer to causal analysis).” Upon reviewing another document entitled “causal analysis,” which purported to discuss nexus, the investigator briefly discussed dual motive and disparate treatment, but each subject was not properly addressed. In another case, the investigator mixed up the protected activity and nexus analysis and did not test the company’s defenses, instead taking them at face value. In a third case, the final report did not analyze disparate treatment correctly. The DIM Chapter 5(IV)(D)(11) requires that nexus be correctly analyzed in the final report. Three of the six cases were closed after OSHA conducted in-person training to HIOSH staff in FY 2013.

Finding 13-09 (12-11 and 11-21): All four elements for investigating a discrimination complaint - protected activity, employer knowledge, adverse action, and nexus - were not properly analyzed, as required by DIM Chapter 5(IV)(D)(11).

Recommendation 13-09 (12-11 and 11-21): HIOSH should follow its own procedures to ensure that protected activity, employer knowledge, adverse action, and nexus are properly analyzed. In four of the cases reviewed, the final report listed one or both party’s allegations, but did not discuss whether evidence supported or refuted the allegations. This was found for both the complainant’s and the company’s allegations. The DIM Chapter 5(IV)(D)(11) requires that facts should be evaluated and questions on reliability of evidence resolved in the final report. Three of the four cases were closed after OSHA conducted in-person training to HIOSH staff in FY 2013.

In four different cases reviewed, the Region found that the ultimate conclusion reached by the investigator was not supported by the evidence in the case file. For three of the cases, this was the result of the investigator conducting incomplete investigations, not properly analyzing protected activity, employer knowledge, adverse action, or nexus, and/or relying on allegations without discussing whether evidence supported or refuted them as discussed above. For the fourth case, which HIOSH recommended a Merit/Litigation determination, it appeared that the Attorney General wrongly determined that Chapter 396-8(e)(4) did not cover the complainant, a residential property manager, who made internal complaints to management, and the owner of the property about concerns for his safety in dealing with a hostile and aggressive tenant who had been arrested by the police. The DIM Chapter 5(IV)(C and D) requires that the recommended determination be supported by evidence within the file. Three of the four cases were closed after OSHA conducted in-person training to HIOSH staff in FY 2013.

Finding 13-10: A discussion of the evidence as it relates to the allegations and conclusions was not in the final reports, as required by DIM Chapter 5(IV)(C and D).

Recommendation 13-10: HIOSH should follow its own procedures to ensure that the final reports discuss whether evidence supports the allegations and conclusions.

In four of the cases reviewed, the final report did not clearly cite exhibits. If the final report had cited exhibits, the investigator may have been able to provide better support for the final recommendations. The DIM Chapter 5(IV)(C) requires that final reports cite exhibits. Three of the four cases were closed after OSHA conducted in-person training to HIOSH staff in FY 2013.

In three of the cases reviewed, the final reports were confusing and difficult to follow. One report was not precise on the dates of events or whether there were witnesses to events. In another report, the pages were missing from the Region's review. For the third report, the investigator included a "coverage" section that was not relevant to coverage under Chapter 396-8(e)(4). One of the three cases was closed after OSHA conducted in-person training to HIOSH staff in FY 2013.

Both of these recommendations would improve the final reports but did not affect the integrity of the investigations.

Case File Management

Organization in five of the 10 cases reviewed was not in line with the requirements of the DIM 5(III). Many of these cases had no organization and were not assembled in a logical fashion, making supervisory review difficult. Three of the five cases were closed after OSHA conducted in-person training to HIOSH staff in FY 2013. This recommendation will improve the case file and did not affect the integrity of the investigations.

Timeliness

Although five of the 10 cases reviewed exceeded the statutory time period to conclude the investigation, 29 CFR 1977.16, the implementing regulation for Section 11(c) of the Occupational Safety and Health Act allows for situations where this time period can be extended.

Mandated Activities

In FY 2013, 28% of 396-8(e)(4) investigations were completed within 90 days. Of the 18 cases closed in FY 2013, 28% were meritorious cases. The average number of calendar days for investigators to complete 396-8(e)(4) investigations was 226 days in FY 2013.

Table 8 (SAMM 13, 14, 15)

Percent of 396-8(e)(4) Investigations Completed within 90 days	FY 2011	FY 2012	FY 2013	National Average of State Plan Plans (FY2011 – FY 2013)
Completed within 90 days	33%	0%	28%	55%
Merit Cases	33%	40%	28%	20%

7. SPECIAL STUDY – STATE PLAN TARGETING PROGRAMS

Development of Targeting Programs

The policies and procedures for conducting unannounced enforcement inspections that target both construction and general industry have been in effect since the late 1990s. Based on the jurisdiction retained by HIOSH under the OSA, targeting lists were developed for construction, transportation, and warehousing. However, it does not appear that these lists had set criteria used in developing them nor clear guidance on conducting evaluations for effectiveness.

In the development of targeting programs, Hawaii Workers’ compensation data, safety and health inspection data, fatality data, building permit records, and Bureau of Labor Statistics data were used. Targeted inspections are typically updated on an annual basis with the Program Administrator and managers working together to identify industries by the NAICS to target industries that will help achieve the strategic and annual performance goals. There was no documentation on criteria used to determine which NAICS were selected. For FY 2013, the State Plan retained jurisdiction for only construction, transportation, and warehousing. However, as more industries are returned to the State Plan, a system with consistent and defensible criteria used to identify high hazard NAICS for targeting needs to be developed.

Once the NAICS codes were selected, the program specialist utilized the statistical data to develop the targeting lists. There was no documentation on criteria used in which establishments would be included, such as a specific injury/illness rate. Based on the projected number of planned inspections, the program specialist developed randomized inspection lists and the managers assigned the inspections to the compliance staff.

OSHA’s procedure for the approval of Local Emphasis Programs (LEP) was adopted; however, no LEP have been developed. The OSHA Honolulu Area Office worked with the environmental health specialist (EHS) manager and the safety supervisor to provide training on developing local emphasis programs in accordance with the OSA. The development of LEPs enhances the targeting program by providing a neutral and defensible mechanism in selecting sites for inspection.

Finding 13-11: Methods used for targeting high hazard industries for inspections were not documented and did not demonstrate that it met legal requirements and specific neutral criteria.

Recommendation 13-11: Develop and document defensible targeting methods and programs that meet the legal requirement that demonstrate sites are selected according to an administrative plan containing specific neutral criteria such as selection, scheduling cycles, criteria for deletion or addition of sites, and frequency of selection.

8. COMPLAINTS ABOUT STATE PROGRAM ADMINISTRATION (CASPA_s)

One new CASPA (2012-HI-28) was filed in FY 2013 regarding an 11(c) whistleblower complaint that was never opened for investigation. An analysis of timely adverse actions was not made and the complaint was not accepted. The State Plan response was received in 49 days rather than the requested 30 days. This was a finding in the FY 2012 FAME Report and remains open.

Finding 13-12 (12-16): CASPA_s are not responded to in a timely manner.

Recommendation 13-12 (12-16): Ensure that CASPA_s are formally responded to by the due date.

9. VOLUNTARY COMPLIANCE PROGRAM

The Voluntary Protection Program (VPP) was managed out of the 23(g) branch. There were four active sites in Hawaii and the grant goal was to add one new employer to the program, but there were no employers working towards VPP. The State Plan has not taken an active role in identifying potential VPP candidates nor working with any establishment to develop them. Work in VPP is limited to discussing the program at presentations. This lack of activity is in sharp contrast to the State Plan sending several compliance staff (six) to the Voluntary Protection Programs Participants' Association (VPPPA) conference which does not provide training, skills, or qualifications needed to conduct VPP evaluations. A more prudent use of the funds would have been to send staff to training, such as Special Government Employee (SGE) or on-the-job training that would provide them the knowledge and skills on the VPP process.

Observation 13-03: VPP is not an active, viable program and has minimal activity.

Federal Monitoring Plan 13-03: OSHA will work with the State Plan to develop their VPP participants by monitoring and providing guidance and resource documents as needed.

10. PUBLIC SECTOR ON-SITE CONSULTATION PROGRAM

Although consultation services were encouraged during informal conferences, there were no pro-active efforts to promote the consultation program to the public sector. A goal of 10 public sector consultation visits was established but was not met. This is a repeat finding from the FY 2012 FAME Report (12-10). According to the MARC report, only five public sector consultation visits were conducted, and these were conducted by consultants who were 100% funded under the 21(d) Cooperative Agreement. The five visits identified a total of 41 serious hazards of which 28 were corrected within the original timeframe and

the remaining 13 were corrected within the extension given. The Consultation Program Manager position that is 20% funded under the 23(g) grant, has remained vacant for nearly two years.

Finding 13-13 (12-10 and 11-25): The Consultation Program was not pro-actively promoted to public sector employers.

Recommendation 13-13 (12-10 and 11-25): Develop Consultation Program promotional strategies that target public sector employers.

Finding 13-14: Public sector consultation visits were conducted by consultants that were 100% funded by the 21(d) Cooperative Agreement.

Recommendation 13-14: Ensure the appropriate grant fund is charged for public sector on-site consultation visits.

11. STATE PLAN ADMINISTRATION

Training

Of the 18 compliance officers, 13 had less than one year of experience at the start of FY 2013 and training of the compliance staff was a priority. HIOSH staff was given priority in registering for OSHA Training Institute (OTI) training. OSHA compliance officers provided hands on training to the compliance staff. OSHA staff also worked with the managers on ways to effectively improve processes and management oversight of the program. Two whistleblower investigators worked with Region IX's RSI and investigators after attending the initial investigation course for hands on training. These combined efforts, along with the compliance staff eagerness to learn, paid huge dividends in overall improved staff knowledge.

Additionally, two OTI courses, OSHA #1230 Accident Investigation and OSHA #3110 Fall Arrest Systems, were held in Hawaii. Holding the courses in Hawaii allowed a larger number of participants at a significant cost savings.

Funding

HIOSH FY 2013 PROGRAM RESOURCES 23(g) Enforcement Grant

Funding Sources	Initial/Final Base Award October 2012/June 2013	State Requested De-obligation September 2013	Year-end Funding September 2013
Federal	\$1,457,000	(\$ 132,580)	\$1,324,420
State – Match	\$1,457,000	(\$ 132,580)	\$1,324,420
Total	\$2,914,000	(\$ 265,160)	\$2,648,840

Funding for 23(g) Enforcement Grant was at the FY 2012 federal base award amount of \$1,457,000. The total Federal and state funds were \$2,914,000. In September 2013 \$132,580 in federal and matching funds was de-obligated. They did not lapse any additional funds and the total Federal and state funds expended was \$2,648,840.

The FY 2012 FAME report identified problems with timely certification of the quarterly FFRs and the final closeout. The State Plan worked closely with their Accounting Services Office (ASO) and has made improvements to properly manage this process; therefore the finding (12-13) is considered corrected and closed.

A Program Specialist with an accounting background was hired to work on an accounting system to monitor grant fund expenditures to ensure proper spending and to prevent the lapse of funds at the end of the year. Funds spent are now being tracked, however budget reports from ASO are not timely. Finding 12-14 will be downgraded to an observation and will continue to be monitored through quarterly meetings.

Observation 13-04 (12-14 and 11-29): HIOSH does not have a method to track the current status of their budget.

Federal Monitoring Plan 13-04 (12-14 and 11-29): Continue to follow-up with the State Plan during quarterly meetings to ensure funds are properly managed.

The State Plan did not submit the grant application document to the Region by the due date and the grant documents were submitted without a regional review. As a result, the grant application was submitted with errors and had to be corrected and resubmitted. The lack of responsiveness led to inefficiency and errors in the process and is a major issue. This is a repeat finding from the FY 2011 and FY 2012 FAME Reports.

Finding 13-15 (12-15 and 11-33): Grant documents were not submitted on time and were not submitted to the Regional Office for review.

Recommendation 13-15 (12-15 and 11-33): Adhere to the provided timeframes for grant submittal so that problems and issues with the grants can be addressed before they are entered into the system.

Staffing

Recruitment and retention of staff continued to be an issue. At the start of the fiscal year, all nine safety and health positions were filled. The consultation program manager position that was partially funded by the 23(g) grant and the Safety Supervisor position was not filled. Through attrition, HIOSH currently has one safety vacancy and four health compliance staff vacancies. Attracting and retaining a full workforce has been difficult due to the fact that HIOSH's compliance positions are paid less than similar positions in the private sector. Hawaii needs to develop strategies to recruit and retain staff.

Information Management

As part of the new OSA, OSHA provided NCR and IMIS system training to the managers and continued to offer support throughout the review period. After the penalty increase in FY 2011, the penalty amounts were never increased in the NCR, the additional 10% was manually calculated, and every citation was physically changed to reflect the new amount. This issue will be addressed with the implementation of the OIS.

State Plan Internal Evaluation Program

The program administrator has initiated several changes, checklists, and training opportunities for management, administration, and compliance staff based upon the findings of the previous FAME reports. A written on-the-job evaluation checklist was developed that is broken down into three phases. The first phase covers the entry procedures, opening conference, and the review of documentation. Phase two covers worker interviews, note taking, hazard identification, photo evidence, and use of test/measuring equipment. Phase three covers the closing conference and recommendations to the employer. Managers conduct at least one documented on-the-job evaluation on each compliance officer annually to ensure the quality and consistency of the work is maintained. The managers documented the areas for improvement and any positive areas identified, reviewed the results with the compliance officer, and maintained a copy of the evaluation.

IV. Assessment of State Plan Progress in Achieving Annual Performance Goals

A new five-year strategic plan for FY 2011 through FY 2015 was established and implemented. These goals included short and long-range objectives aimed at improving safety and health for Hawaii's workers. Each year the annual performance plan is developed and submitted as part of its application for federal funds.

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

Performance Goal 1.1: Reduce the number of struck-by injuries in the Specialty Trade Construction industry by 4%, e.g., by 12 cases from 2008 baseline.

Results: The number of inspections conducted with NAICS 238 was 212 an inspection, the number of struck by violations cited was 89, the number of violations abated was 75, and the number of workers removed from risk of exposure was 829. The number of struck-by cases reported in FY 2012 was 193.

Outcome: The number of inspections conducted (212) significantly exceeded the goal of 75 as well as number of struck-by violations cited (89) as compared to the goal of 25 and

the number of violations abated (75 vs 25 projected). The number of workers actually removed from the risk of exposure, 859, was significantly lower than the goal of 1500. The number of struck-by injuries have decreased 38% from the baseline year of 2008 (312 cases) to 193 cases reported in 2012. Data is not yet available for FY 2013.

Performance Goal 1.2: Reduce the number of struck-by and caught-in /between injuries in the transportation and warehousing industries by 4%, e.g., by 15 cases from 2010 baseline.

Results: The number of inspections conducted in NAICS 48 – 49 was 27, the number of struck-by violations cited was 21, the number of violations abated was 18 and the number of workers removed from risk of exposure was 176. The number of struck-by cases reported for NAICS 48-49 in 2012 was 92. The State Plan did not report numbers for caught in or between hazards.

Outcome: The reported results fell short of the projected activity goal of 120 inspections, 30 struck-by and caught-in or between violations cited, 30 violations abated and 500 workers removed from exposures. The number of struck-by cases decreased by 22% from the baseline year of 2010 (118 cases) to 92 cases reported in 2013. Data is not available for 2012. The baseline for struck-by cases was 198, and for caught-in/between were 46. No data was reported for these two measures.

Performance Goal 1.3: Reduce the number of “bodily reaction” injuries within local government by 4%, and the number of “fall on same level” injuries in state government by 4%, e.g. by 13 and 12 cases, respectively.

Results: In state government workplaces, a total of 22 inspections were conducted with six falls on same level violations cited, five violations abated, and 311 workers removed from exposure. A total of 24 inspections were conducted in local government workplaces, with no bodily reaction hazards cited or abated, and 500 workers removed from risk of exposure. The number of cases reported for falls on same level (state government workplaces) was 372 while 260 cases involving bodily reaction hazards (local government workplaces) were reported.

Outcome: The goal for the total number of inspections in state (10) and local (20) government was met and exceeded. The goals of citing bodily reaction hazards (six) and abated (six), and removing workers from risk (600 each for local and state government) were not met. The number of falls on the same level violations cited (six) and abated (six) was essentially met. The number of cases reported for falls to the same level (state government) based on 2012 data was an increase of 5% from the 2008 baseline of 335 cases. The number of cases reported for bodily reaction exposures decreased 15% from the 2008 baseline of 305 cases. Data was yet not available for 2013.

Strategic Goal 2: Reduce the number of fatalities associated with the leading causes of workplace death in construction and transportation and warehousing by 50%.

Performance Goal 2: Reduce the number of fatalities associated with the leading causes of workplace death in construction and trucking and warehousing by 10%.

Results: A total of 100 inspections were conducted with 159 violations cited, 159 violations abated, and 500 workers removed from hazards in construction and general industry. There were two fatalities involving falls from heights and one involving electricity.

Outcome: The goal for the number of inspections was met. However, the number of violations cited and abated fell short of the goal of 200 each and the number of workers removed from risk was significantly below the projected goal of 8,000. The number of fatalities is lower than the 2008 to 2009 baseline years for fatalities of three falls from heights, one electricity, two caught-between, and three struck-by heavy equipment/objects.

A complete assessment of the State Plan's progress towards meeting the Annual Performance Goal was hampered by the late submittal of the SOAR and the lack of complete reporting of activities. As required by the State Plan Policies and Procedures Manual (SPPPM), the SOAR must be submitted to the OSHA Regional Administrator by December 1st of each year. The draft copy of the SOAR is required to be submitted to the Regional Office two weeks prior to this date so feedback and identified deficiencies may be provided. In FY 2013, due to the government shutdown this date was extended to December 15th for the draft and December 31st for the final. The SOAR was submitted on March 7, 2014, but had to be returned for corrections.

Based on what was reported, it appears that the performance goal needs to be re-evaluated to establish realistic goals that will achieve the long range objectives. For example, the activity measure for Annual Performance Goal 1.1 to conduct 75 inspections in the Specialty Trade Construction Industry is low considering the number of employers in Specialty Trades (2,094) as compared to Construction (3,476). The outcome measure of citing 25 violations and removing 1500 workers indicates that each violation cited would have to cover at least 60 workers, which is not realistic.

Finding 13-16: SOAR was not completed and submitted in a timely manner and in accordance with the SPPPM.

Recommendation 13-16: Adhere to the provided timeframes for report submission.

V. Other Special Measures of Effectiveness and Areas of Note

None

Appendix A – New and Continued Findings and Recommendations
FY 2013 Hawaii State Plan Comprehensive FAME Report

FY- Rec #	Finding	Recommendation	FY 2012
13-01	Lapse times for health and safety case files were significantly higher than the reference standard.	Review the case file management process to identify and eliminate bottlenecks or other inefficiencies.	12-05
13-02	Abatement verification of serious, willful and repeat (S/W/R) violations was significantly lower than the reference standard.	Ensure verification of abatement is completed.	NA
13-03	Over 80% of S/W/R violations were not verified timely.	Utilize IMIS reports to track abatement and, per 29 Code of Federal Regulations (CFR) 1903.19, issue “Failure to Abate” citations to employers when appropriate.	12-06
13-04	Union involvement in inspection activity either was not happening consistently or was not adequately documented.	Ensure that unions are provided copies of citations and participation or declination of participation is done and clearly indicated in the case file.	12-07
13-05	Standards and Federal Program Changes have not been adopted in a timely manner.	Ensure standards and Federal Program Changes are responded to and adopted within the required timeframes.	12-09
13-06	Whistleblower data was neither accurately nor timely entered into web-IMIS, as required in DIM Chapters 2(III) and 5(V).	HIOSH should follow its own procedures to ensure that whistleblower information is accurately and timely entered into web-IMIS.	12-12

Appendix A – New and Continued Findings and Recommendations
FY 2013 Hawaii State Plan Comprehensive FAME Report

13-07	Nexus was not properly investigated, as required in the DIM Chapter 3(V)(A-J), resulting in discrimination Final Investigation Reports that were incomplete and contained inconclusive analysis.	HIOSH should follow its own procedures by investigating 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 Final Investigation Report as they relate to the four elements of a violation.	12-11
13-08	HIOSH's process of issuing merit determinations without the state litigating the matter does not support enforcement as required in WIM Chapter 4(IV)(6) and 4(VII).	HIOSH has no procedures to support cases deemed meritorious and should develop such a process which could include litigating the claim in state court or representing the agency in front of the HLRB.	NA
13-09	All four elements for investigating a discrimination complaint – protected activity, employer knowledge, adverse action, and nexus – were not properly analyzed, as required by DIM Chapter 5(IV)(D)(11).	HIOSH should follow its own procedures to ensure that protected activity, employer knowledge, adverse action, and nexus are properly analyzed.	NA
13-10	A discussion of the evidence as it relates to the allegations and conclusions was not in the Final Reports, as required by DIM Chapter 5(IV)(C and D).	HIOSH should follow its own procedures to ensure that the Final Reports discuss whether evidence supports the allegations and conclusions.	NA
13-11	Methods used for targeting high hazard industries for inspections were not documented and did not demonstrate that it met legal requirements and specific neutral criteria.	Develop and document defensible targeting methods and programs that meet the legal requirement that demonstrate sites are selected according to an administrative plan containing specific neutral criteria such as selection, scheduling cycles, criteria for deletion or addition of sites, and frequency of selection.	NA
13-12	CASPAs are not responded to in a timely manner.	Ensure that CASPAs are formally responded to by the due date.	12-16
13-13	The Consultation Program was not pro-actively promoted to public sector employers.	Develop Consultation Program promotional strategies that target public sector employers.	12-10

Appendix A – New and Continued Findings and Recommendations
FY 2013 Hawaii State Plan Comprehensive FAME Report

13-14	Public sector consultation visits were conducted by consultants that were 100% funded by the 21(d) Cooperative Agreement.	Ensure the appropriate grant fund is charged for public sector on-site consultation visits.	12-10
13-15	Grant documents were not submitted on time and were not submitted to the Regional Office for review.	Adhere to the provided timeframes for grant submittal so that problems and issues with the grants can be addressed before they are entered into the system.	12-15
13-16	SOAR was not completed and submitted in a timely manner and in accordance with the State Plan Policies and Procedures Manual.	Adhere to the provided timeframes for report submission.	NA

Appendix B – Observations Subject to Continued Monitoring
FY 2013 Hawaii State Plan Comprehensive FAME Report

FY-OB #	Observation	Federal Monitoring Plan	FY 2012
13-01	Involvement of the victim’s family was not adequately documented.	Follow up during quarterly meetings to ensure adequate documentation of contact with the victim’s family is in the case file.	NA
13-02	The current state travel policy prevents compliance staff from responding to fatalities and imminent danger on the islands without compliance staff within one day.	Continue to follow-up with the Program Administrator on the progress of changing the current policy or finding a workable solution.	NA
13-03	VPP is not an active, viable program and has minimal activity.	OSHA will work with the State Plan to develop their VPP participants by monitoring and providing guidance and resource documents as needed.	NA
13-04	HIOSH does not have a method to track the current status of their budget.	Continue to follow-up with the State Plan during quarterly meetings to ensure funds are properly managed.	12-14

Appendix C - Status of FY 2012 Findings and Recommendations
FY 2013 Hawaii State Plan Comprehensive FAME Report

FY 12-Rec #	Finding	Recommendation	State Plan Response/Corrective Active	Completion Date	Current Status
12-01 (11-02)	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.	As of FY 2013 Quarter 2, the average response time was 1.26 days. HIOSH will continue to monitor this measure and remind the staff of response timeliness.	9/30/13	Completed – the goal was re-negotiated to 2 work days in November 2013.
12-02 (11-03)	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.	As of FY 2013 Quarter 2, the average response time was 5.25 days. HIOSH will continue to monitor this measure and remind the staff of response timeliness.	9/30/13	Completed – the goal was re-negotiated to 7 work days in November 2013.
12-03 (11-08)	The case load for compliance staff is not being appropriately managed to maximize the efficient use of resources and ensure adequate coverage state-wide.	Focus on the annual goals set for the office and assign inspections to maximize resources.	HIOSH will match its inspection scheduling to its annual goals starting in FY 2014	10/1/13	Completed
12-04 (11-09)	Strategic Goals are not being properly managed.	Improve management of inspection activity to focus on overall goals of the office.	HIOSH will use all available tools to meet the inspection goal assigned by OSHA in FY 2013. HIOSH will provide further training and guidance for its managers to use the micro reports and the grant documents to achieve its strategic goals.	9/30/13	Completed

Appendix C - Status of FY 2012 Findings and Recommendations
FY 2013 Hawaii State Plan Comprehensive FAME Report

12-05 (11-12)	Lapse times for health and safety case files were significantly higher than the reference standard.	Properly manage case file processes in order to issue citations in a timely manner.	HIOSH has begun to use the “Citations Pending” report to help manage compliance staff members’ workload and ensure that citations are issued in a timely manner.	NA	Open
12-06 (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.	HIOSH is using the “candidates for follow-up” report and tracking the percentage of follow-ups on a regular basis.	NA	Open
12-07 (11-14)	Union Involvement in inspection activity either was not happening consistently or was not adequately documented.	Ensure that union participation or declination of union participation is done and is clearly indicated in the case file.	HIOSH added Union Contact and tracking information to the diary sheet to ensure that Unions are contacted for citation issuance and informal conferences.	NA	Open
12-08 (11-15)	HIOSH health inspectors conducted sampling in only 5 of 12 health inspections conducted in 2009.	HIOSH must ensure that health inspectors are conducting appropriate sampling during inspections and properly entering the information into IMIS.	HIOSH has sent all Environmental Health Specialists (EHSs) to OSHA Training Institute (OTI) Industrial Hygienist (IH) classes, which should help them to recognize monitoring opportunities.	9/30/13	Completed
12-09 (11-18, 11-19)	HIOSH had not responded and adopted Standards and Federal Program Changes in a timely manner.	Ensure Standards and Federal Program Changes are responded to and adopted within the required timeframes.	HIOSH hired an Administrative and Technical Support Manager and a Program Specialist who are responsible for tracking and responding to ATS events such as Standards and both State and Federal Program Changes.	NA	Open

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12-10 (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 the goals.	HIOSH will do its best to ensure that it meets its goals for Public Sector Consultation by promoting consultation during informal conferences and at any meetings it has with the public sector.	NA	Open
12-11 (11-21)	Nexus was not properly investigated, resulting in discrimination Final Investigation Reports that were incomplete and contained inconclusive 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 Final Investigation Reports as they relate to the four elements of a violation.	All EHSs expected to conduct discrimination investigations were sent to the OTI whistleblower training. The Health Branch Manager and the Senior EHS were sent to Region IX's Regional Office to be trained by Federal Whistleblower staff.	NA	Open
12-12 (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.	All EHSs expected to conduct discrimination investigations were sent to the OTI whistleblower training. The RIS and the Senior EHS were sent to Region IX's Regional Office to be trained by Federal Whistleblower staff	NA	Open
12-13 (11-28)	The June 30 and October 30, 2011 Federal Financial Reports (FFRs) and the close out report were not certified in a timely manner.	Ensure FFRs and the closeout reports are certified in a timely manner.	HIOSH will remind ASO of the requirements for timely certification of the FFR.	9/30/13	Completed

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12-14 (11-29)	HIOSH does not have a method to track the current status of their budget.	The 23(g) grant fund must be properly managed to support the goals of the program.	HIOSH has hired a program specialist with an accounting background who is working on a real-time accounting system.	9/30/13	Observation
12-15 (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.	HIOSH has used the experience drafting the FY 2014 grant documents to help prepare for the submission of the FY 2015 grants. HIOSH will submit grant documents for Regional review by the State Plan deadlines.	NA	Open
12-16	CASPAs are not responded to in a timely manner.	Ensure that CASPAs are formally responded to by the due date.	HIOSH will respond to CASPAs in accordance with the requirements in the SPPM. A tracking system will be developed to ensure timely responses.	NA	Open

Appendix D – FY 2013 State Activity Mandated Measures (SAMM) Report
FY 2013 HIOSH Comprehensive FAME Report

OSHA is in the process of moving operations from a legacy data system (IMIS) to a modern data system (OIS). During FY 2013, OSHA case files were captured on OIS, while State Plan case files continue to be processed through IMIS. The SAMM, which is native to IMIS, is not able to access data in OIS, which impacts OSHA's ability to process SAMM standards pinned to National Averages (the collective experience of State Plans and OSHA). As a result, OSHA has not been able to provide an accurate reference standard for SAMM 18, which has experienced fluctuation in recent years due to changes in OSHA's penalty calculation formula. Additionally, OSHA is including FY 2011 national averages (Collective experiences of State Plans and OSHA from FY 2009-2011) as reference data for SAMM 20, 23 and 24. OSHA believes these metrics are relatively stable year-over-year, and while not exact calculations of FY 2013 national averages, they should provide an approximate reference standard acceptable for the FY 2013 evaluation. Finally, while SAMM 22 was an agreed upon metric for FY 2013, OSHA was unable to implement the metric in the IMIS system. OSHA expects to be able to implement SAMM 22 upon the State Plan's migration into OIS.

U.S. Department of Labor				
Occupational Safety and Health Administration State Activity Mandated Measures (SAMMs)				
State: HIOSH			FY 2013	
SAMM Number	SAMM Name	State Data	Reference/Standard	Notes
1	Average number of work days to initiate complaint inspections	5.2	Negotiated number 7 days	State data taken directly from SAMM report generated through IMIS.
2	Average number of work days to initiate complaint investigations	1.38	Negotiated number 2 days	State data taken directly from SAMM report generated through IMIS.
4	Percent of complaints and referrals responded to within 1 work day (imminent danger)	93.75%	100%	State data taken directly from SAMM report generated through IMIS.
5	Number of denials where entry not obtained	0	0	State data taken directly from SAMM report generated through IMIS.

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9a	Average number of violations per inspection with violations by violation type	2.34	SWR: 2.04	State data taken directly from SAMM report generated through IMIS; national data was manually calculated from data pulled from both IMIS and OIS for Fiscal Years (FY) 2011-2013.
9b	Average number of violations per inspection with violations by violation type	1.44	Other: .88	
11	Percent of total inspections in the public sector	9.64	(Negotiated fixed number for each State Plan) – 6%	State data taken directly from SAMM report generated through IMIS.
13	Percent of 11c Investigations completed within 90 calendar days	27.78	100%	State data taken directly from SAMM report generated through IMIS.
14	Percent of 11c complaints that are meritorious	27.78	24.8% meritorious	State data taken directly from SAMM report generated through IMIS; National data was pulled from web-IMIS for FY 2011-2013.
16	Average number of calendar days to complete an 11c investigation	53.88	90 Days	State data taken directly from SAMM report generated through IMIS.
17	Planned vs. actual inspections - safety/health	347/130	(Negotiated fixed number for each State Plan) - 160/140	State data taken directly from SAMM report generated through IMIS; the reference standard number is taken from the FY 2013 grant application.
18a	Average current serious penalty - 1 -25 Workers	a. 806.26		State data taken directly from SAMM report generated through IMIS; national data is not available.
18b	Average current serious penalty - 26-100 Workers	b. 1121.24		
18c	Average current serious penalty - 101-250 Workers	c. 2237.93		
18d	Average current serious penalty - 251+ Workers	d. 1284.80		

Appendix D – FY 2013 State Activity Mandated Measures (SAMM) Report
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18e	Average current serious penalty - Total 1 - 250+ Workers	e. 1002.48		
19	Percent of enforcement presence	1.44%	National Average 1.5%	Data is pulled and manually calculated based on FY 2013 data currently available in IMIS and County Business Pattern data pulled from the US Census Bureau.
20a	20a) Percent In Compliance – Safety	Safety - 9.27	Safety - 29.1	State data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and OSHA for FY 2009-2011.
20b	20b) Percent In Compliance – Health	Health - 20.00	Health - 34.1	
21	Percent of fatalities responded to in 1 work day	25%	100%	State data is manually pulled directly from IMIS for FY 2013
22	Open, Non-Contested Cases with Abatement Incomplete > 60 Days			Data not available
23a	Average Lapse Time - Safety	82.18	43.4	State data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and OSHA for FY 2009-2011.
23b	Average Lapse Time - Health	85.11	57.05	
24	Percent penalty retained	78.43	66	State data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and OSHA for FY 2009-2011.

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25	Percent of initial inspections with employee walk around representation or employee interview	100%	100%	State data taken directly from SAMM report generated through IMIS.
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