

**FY 2017 Comprehensive
Federal Annual Monitoring Evaluation (FAME) Report**

Hawaii Occupational Safety and Health (HIOSH) Division



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I. Executive Summary

The purpose of this report is to assess the Hawaii Occupational Safety and Health (HIOSH) program for Fiscal Year (FY) 2017. The criteria used to measure performance included those mandated by the Occupational Safety and Health Administration (OSHA), progress toward resolving FY 2016 Federal Annual Monitoring Evaluation findings, and achievement of the annual performance plan and five-year strategic goals. As part of this comprehensive evaluation, OSHA conducted an on-site program review including workplace retaliation and enforcement case files.

In April 2017, an Operational Status Agreement (OSA) was signed, completing the transfer of coverage back to the State of Hawaii following the temporary enforcement assistance by OSHA. This transfer of authority was in alignment with the OSA, signed on July 12, 2012, that temporarily suspended enforcement authority in specific industries until HIOSH was able to rebuild its program. The State Plan will operate under 18(b) status until it applies for 18(e) status and receives final approval.

In HIOSH's first full year under a new program administrator, significant improvements were achieved. A total of 799 inspections were conducted, which exceeded their goal of 700 inspections and was an increase of 370 (86.2%) inspections from the previous year. The lapse time from the inspection to the issuance of the inspection reports decreased significantly over the previous year for both safety and health inspections. Additionally, the Compliance Assistant Specialist (CAS) position was filled to manage the Voluntary Protection Program (VPP) and provide outreach to employers.

The hiring and retention of qualified compliance staff continued to be an issue. However, all of the training provided for the staff over the past four years resulted in a strong nucleus of senior compliance officers that helped minimize the impact of vacancies and staff turnover this year.

The whistleblower retaliation policies and procedures were generally followed in conducting investigations. Their case files included detailed and easy-to-follow table of contents and exhibit logs in several case files reviewed. Well-written templates for witness statements were consistently used. A checklist was developed to document whether other agencies (e.g., Equal Employment Opportunity Commission (EEOC)) were contacted to obtain relevant case information. Finally, several cases showed detailed well-written analyses for nexus.

A total of six findings were identified; two were new findings, and four were continued from the previous FAME. Both new findings are related to the workplace retaliation program. The four findings carried over were related to program changes, monitoring inspections, documenting a high hazard targeting process, and one for workplace retaliation. Three findings from last year's FAME were completed and one was changed to an observation. There was one new observation. Two completed findings were related to inspection goals, one was related to the Voluntary Protection Program, and one to the workplace retaliation program. Appendix A describes the new and continued findings and recommendations. Appendix B describes observations subject

to continued monitoring and the related federal monitoring plan. Appendix C describes the status of previous findings with associated completed corrective actions.

II. State Plan Background

A. Background

The Hawaii State Plan is administered by HIOSH under the Department of Labor and Industrial Relations (DLIR). Linda Chu Takayama, Director, was the State Plan Designee for FY 2017, and became the State Tax Director on December 11, 2017. The Deputy Director of DLIR, Leonard Hoshijo, was confirmed as the Director of DLIR and State Plan Designee. Norman Ahu is the HIOSH Program Administrator.

HIOSH is comprised of two major sections: The Occupational Safety and Health (OSH) division administers the Hawaii Occupational Safety and Health Program, and the Boiler and Elevator Safety division administers the Hawaii Boiler and Elevator Safety Laws. The Boiler and Elevator Safety division was not part of the OSHA grant. The OSH division is comprised of the Administration and Technical Support, Occupational Safety, Occupational Health, and Consultation and Training Branches.

The initial base award to fund the program was \$1,464,000 in federal funds. An additional \$50,000 was added to the base award level on March 16, 2017. The state matched the federal funds bringing the total final award to \$3,028,000. The grant provided funding for full-time staff comprised of four managers, nine occupational safety and health compliance officers, nine environmental health specialists, one part-time public sector safety and health consultant, four clerical staff members, and one program specialist.

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 2017 Regional Annual Consultation Evaluation Report (RACER).

B. Major New Issues

HIOSH's designation as a high-risk grantee was successfully removed at the end of FY 2017. Going into FY 2017, OSHA had serious concerns with the overall performance of the program. A low number of inspections were conducted, and responses to federal program changes and adoption of standards were not timely in FY 2016. Cooperative programs were not utilized to provide the regulated community with a balanced approach and state and local government workplaces were not provided with consultation, outreach and education opportunities. To assist in restoring an effective program, mandatory activities and timelines were established for FY 2017. All established mandatory activities were met or exceeded and as a result, the designation as a high-risk grantee was removed.

III. Assessment of State Plan Progress and Performance

A. Data and Methodology

OSHA established a two-year cycle for the FAME process. The FY 2017 report is a comprehensive year report where OSHA conducted an on-site program evaluation and case file review. The case file review was conducted at the HIOSH State Plan office during the timeframe of December 11-15, 2017. A total of 104 safety, health, and whistleblower inspection case files were reviewed. The safety and health inspection files were randomly selected from a total of 780 inspections closed during the evaluation period October 1, 2016, through September 30, 2017. All fatality inspections closed in FY 2017 were reviewed. The selected population included:

- 4 fatalities
- 54 program planned
- 26 unprogramed

A total of 14 whistleblower retaliation investigations were closed and 30 complaints administratively closed. Given this small sample size, all 14 investigations were reviewed. In addition, because the state closed more cases administratively than it investigated, 6 (20%) of the state's total administrative closures were randomly selected for review.

The analyses and conclusions described in this report were based on information obtained from a variety of monitoring sources, including the:

- State Activity Mandated Measures Report (SAMM, dated 11/13/17)
- State Information Report (SIR, dated 11/13/17)
- Mandated Activities Report for Consultation (MARC, dated 1/23/18)
- State OSHA Annual Report (SOAR)
- State Plan Annual Performance Plan
- State Plan Grant Application
- Quarterly monitoring meetings between OSHA and the State Plan
- OSHA Information System (OIS)
- Web Integrated Management Information System (WebIMIS)

Each State Activity Mandated Measures (SAMM) Report has an agreed-upon further review level (FRL) which can be either a single number, or a range of numbers above and below the national average. State Plan SAMM data that fall outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan's FY 2017 State Activity Mandated Measures Report and includes the FRL for each measure.

B. Review of State Plan Performance

This section is an assessment of HIOSH's progress in meeting mandated activities and program elements. The assessment of HIOSH's progress in achieving their annual performance plan goals is addressed in their FY 2017 SOAR (Appendix E).

1. PROGRAM ADMINISTRATION

a) Training

All staff received at least one formal professional development course in FY 2017. The OSHA 2000 Construction Standards, OSHA 1230 Accident Investigation, OSHA Principles of Scaffolding, and OSHA 2260 Permit Required Confined Space Entry courses were held in Hawaii so all available staff could be trained while saving on travel costs. Additionally, in response to the trend of increased limited English speakers in Hawaii's workforce, HIOSH attended Limited English Proficiency training to improve communication skills.

b) OSHA Information System (OIS)

Managers were trained on the variety of OIS reports available. Utilizing the reports enabled them to proactively manage work assignments; resulting in a decrease in the time required to issue inspection reports and respond to complaints.

c) State Internal Evaluation Program (SIEP) Report

A written, three-phase, on-the-job evaluation checklist was used as an internal evaluation tool. The first phase covers entry procedures, opening conference, and 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 for each OSHCO annually to ensure the quality and consistency of the work is maintained. Additionally, senior compliance officers and/or managers also conducted up to three additional on-the-job evaluations of OSHCO trainees. As a result of this program, case files reviewed during the on-site were well documented with all apparent violations cited.

d) Staffing

With unemployment rates running at an all-time low, attracting and retaining a full workforce continued to be a challenge. At the end of the fiscal year, there were three vacant environmental health specialist positions and one vacant occupational safety and health compliance officer position that HIOSH was recruiting for, to reach the required staffing levels.

2. ENFORCEMENT

There were 799 inspections conducted; exceeding the overall goal by 14%. The goal of 400 safety inspections was exceeded by 129 inspections, but health inspections were 30 below the projected goal of 300 inspections (SAMM 7). The program showed

considerable improvement in the number of inspections conducted over the previous year (Table 1). Finding FY 2016-03 is completed.

Table 1
Total Number of Inspections

	FY 2014	FY 2015	FY 2016	FY 2017
Goal	480	640	700	700
Actual	522	660	429	799
% of Goal	109%	103%	61%	114%

a) Complaints

A total of 163 complaint inspections were initiated within an average of 4.5 days, and 136 complaint investigations were initiated on an average of 1.4 days. Both of these measures were well within the negotiated FRLs (SAMM 1A and SAMM 2A). One hundred percent of the imminent danger complaints and referrals were responded to within one workday (SAMM 3).

b) Fatalities

All four reported fatality inspections were opened within one day (SAMM 10). Four fatality inspections that were closed in FY 2017 were reviewed during the on-site review. All case files contained thorough documentation of the investigations and violations. However, in one case file, there was no evidence that the family of the victim was contacted at any stage of the investigation.

c) Targeting and Programmed Inspections

Of the 799 inspections conducted, 67% (535) were programmed inspections. Worker Compensation data was used to select the industries with the highest number of injury and illnesses for programmed inspections. Local and National Emphasis Programs were not used.

HIOSH projected conducting at least 25 inspections with health sampling for toxic dust in the FY 2017 grant. However, air sampling was only conducted in four (4) of 270 health inspections conducted and one (1) asbestos bulk sample was the only other health sampling performed. Additional emphasis needs to be placed on ensuring that adequate resources are devoted to protecting workers from health hazards. The goal was expanded in the FY 2018 grant to protect employees from health hazards beyond toxic dust including monitoring for particulates, mists, vapors, gas, and noise hazards.

Finding FY 2017-01 (FY 2016-01): The health sampling inspection goal was not achieved.

Recommendation FY 2017-01 (FY 2016-01): HIOSH should devote resources to conduct health sampling inspections, as described in the Grant.

The in-compliance rate of safety inspections increased from 13.5% in the previous year to 20% in FY 2017, but is still below (better than) the FRL range of 23.62% to 35.44%.

The in-compliance rate of health inspections increased from 27.4% in the previous year to 31.4% in FY 2017 (SAMM 9), but is still within the acceptable FRL range of 28.62% to 42.94%. The upward trend is concerning, and will be monitored and addressed at quarterly meetings. It could be an indicator that the right establishments were not being targeted.

The average number of serious, willful, repeat, or unclassified violations (SWRU) cited per inspection decreased from 2.5 in FY 2016 to 1.8 in FY 2017 (SAMM 5), but remained within the acceptable FRL range of 1.46 to 2.20. The average number of other-than-serious violations cited per inspection (1.0) has remained fairly consistent, and very close to two-year national average of 0.99. Similar to the in-compliance rate, this downward trend for SWRU violations is concerning and needs to be monitored.

Although the percentage of programmed inspections has increased from the previous two-years, the method for effectively targeting high hazard industries has still not been documented, making it difficult to evaluate the success of the program toward reaching high hazard industries. As noted, the rising in-compliance rate and falling number of SWRU violations cited could be an indicator that high-hazard establishments were not being properly targeted. Worker compensation data is only one type of indicator that can be used, but is not always indicative of hazardousness. It is also important to have a documented program in the event entry is challenged by employers and to ensure resources are prioritized to protect workers in high-risk industries.

Finding FY 2017-02 (FY 2016-09): Policies and procedures for targeting high-hazard industries for inspections were not documented.

Recommendation FY 2017-02 (FY 2016-09): HIOSH should document a high-hazard targeting process.

There were no denials of entry experienced (SAMM 4).

d) Citations and Penalties

Although the increase in maximum penalties was not implemented in FY 2017, the average current penalty per serious violation in private sector was within the acceptable FRL range at \$2,172.09 (SAMM 8). Additionally, all SAMM 8 subcategories were also in the acceptable range.

Case files reviewed during the on-site were well organized, and documentation adequately supported the violations cited. However, the review identified that 12 of 65 (18.5%) case files with violations did not have probability justifications for penalty calculations.

Observation FY 2017-OB-01: Probability justifications for penalty calculations were not documented.

Federal Monitoring Plan FY 2017-OB-01: OSHA will conduct a limited scope case file review to monitor this data trend.

The lapse time from the inspection to the issuance of the inspection reports (SAMM 11) decreased significantly over the previous year, but fluctuated up and down over the past four years. Both the safety and health lapse times are below the two-year national averages for FY 2017 (Tables 2, 3).

Table 2
Average Safety Citation Lapse Time (SAMM 11)

	FY 2014	FY 2015	FY 2016	FY 2017
HIOSH Average	85.7	38.3	51.8	25.0
Two-Year National Average	55.7	42.8	45.2	45.3

Table 3
Average Health Citation Lapse Time (SAMM 11)

	FY 2014	FY 2015	FY 2016	FY 2017
HIOSH Average	91.6	44.6	66.4	35.9
Two-Year National Average	67.4	53.5	57.3	56.0

e) Abatement

Of the 84 case files reviewed, 65 (77%) had citations. Two of the closed files with citations did not contain corrective action documentation to show that the employer corrected the hazards.

Follow-up inspections for abatement comprised 11 of 799 (1%) total inspections conducted and a Failure-to-Abate citation was issued for not correcting a hazard after one of the follow-up inspections.

At the end of the first quarter in FY 2017, HIOSH had 23 inspections with open abatement over 90 days and by the end of the first quarter in FY 2018, the number of inspections with abatement over 90 days was reduced to 6. Managers utilized OIS reports and worked with the compliance staff to proactively follow-up on open abatement.

f) Worker and Union Involvement

The case file review showed that worker interviews were well documented and copies were maintained in the case files for 83 of 84 (99%) files reviewed. The number of workers interviewed during the inspections was appropriate for the complexity of the inspection. A worker interview sheet, included in the majority of case files, listed all the workers contacted during the inspection. This provided management a means of easily identifying workers interviewed and involved in the inspection.

The on-site review identified that 4 of 28 (14%) case files of unionized facilities did not contain any evidence that union or other labor representatives were contacted to participate in the opening and closing conferences or walk around inspection. Copies of the citations were sent to the unions for all inspections with violations, and a notice

was provided to the union when the employer requested an informal conference.

Worker walk around representation or worker interviews (SAMM 13) were not coded in OIS for 2 of 799 (0.2%) inspections conducted. In both instances, a manager was the only person on the site at the time of the inspection and the same OSHCO did not count their interviews as employee interviews. The compliance officer was briefed that managers, foreman, and supervisors are also classified as employees of the company.

3. REVIEW PROCEDURES

a) Informal Conferences

Informal conferences were requested and held for 32 of 65 (49%) case files reviewed with citations. Two of the case files did not document the rationale for deleting violations as part of the settlement agreements, and one case did not have documentation for a penalty reduction. Informal settlement provisions provided employers the right of review, and worker or their representatives the opportunity to participate in the proceedings. The penalty retention rate was 80.2% of the assessed penalties, which is significantly higher than the two-year national average of 67.4% (SAMM 12).

b) Formal Review of Citations

Once a notice of contest is filed, the case is transferred to the State Attorney General's Office. Every attempt to settle the case, such as working with the Program Administrator and the employer, is made before the case is heard by the Hawaii Labor Relations Board. The Board consists of three individuals appointed by the Governor. Of the 84 case files reviewed, 2 were contested inspections and both were formally settled by the State Attorney General's Office. In the first case, the employer provided documentation of financial hardship and the penalty was reduced with a payment plan established. In the second case, the State Attorney General's Office withdrew the citations after the employer provided information that the exposed workers were not employees of the company. There was a language issue while conducting this inspection and staff was reminded of the importance of utilizing the language interpretation service.

4. STANDARDS AND FEDERAL PROGRAM CHANGE (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; and the Department of Business, Economic Development & Tourism. 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 approves the request, the documents are sent to the Lieutenant Governor's office for filing. The standard becomes ten days after filing.

With the passage of the Bipartisan Budget Bill on November 2, 2015, OSHA raised its maximum penalties effective August of 2016. As required by law, OSHA then increased maximum penalties annually, on January 1, 2017 and January 1, 2018, according to the Consumer Price Index (CPI). State Plans are required to adopt both the initial increase and subsequent annual increases.

Prior to the passage of the Bipartisan Budget Bill on November 2, 2015, and subsequent OSHA maximum penalty increase in August of 2016, HIOSH's maximum penalties were 10% above the OSHA amount. On July 10, 2017, Governor David Ige signed into law Act 126 (17). Section 396-10, Hawaii Revised Statutes was amended to raise the maximum penalties for citations effective January 1, 2018. The Act also requires HIOSH to adjust penalties pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, section 701 of P.L. 114-74, by December 15, 2018, and each year thereafter.

On January 9, 2017, OSHA adopted new standards addressing occupational beryllium exposure in general industry, construction, and shipyards. State Plans were required to adopt an "at least as effective (ALAE) as" rule within six months of promulgation, by July 9, 2017. However, on June 27, 2017, OSHA published a notice of proposed rulemaking proposing to revoke the ancillary provisions applicable to the construction and shipyard sectors, but to retain the new permissible exposure limits (PELs). OSHA will not enforce the provisions of the January 9, 2017, construction and shipyard standards that it has proposed to revoke, while the current rulemaking is underway. Given the unusual circumstances of this rulemaking, in which substantive changes have been proposed to a standard within six months following its initial promulgation, several State Plans, including Hawaii, have delayed promulgation pending completion of the second rulemaking.

On March 25, 2016, OSHA published a *Federal Register* notice on the Final Rule for Occupational Exposure to Respirable Crystalline Silica. OSHA's silica standard consists of two separate standards, one for general industry and maritime and one for construction, to tailor the standards to the circumstances in these sectors. The construction standard went into effect on September 23, 2017. The general industry/maritime standard is still expected to have an enforcement date of June 23, 2018. OSHA rolled out the construction standard with a 30-day compliance assistance initiative and then on October 23, 2017, began enforcing fully under the Interim Enforcement Guidance Memo for the Respirable Crystalline Silica in Construction Standard.

State Plans were required to adopt an ALAE as the rule within six months of promulgation, by September 26, 2016. State Plans were also required to have an effective date by the date of state promulgation or the federal effective date, whichever is later.

Industry members filed litigation challenging OSHA's silica standard. Despite the regulatory requirement that State Plans adopt the standard within six months of

promulgation, several State Plans, including Hawaii, delayed their promulgation pending the outcome of the litigation. The U.S. Court of Appeals for the District of Columbia rejected all industry challenges to the standard in a ruling issued December 22, 2017. Hawaii is now working on completing the promulgation of their silica standard.

The promulgation and effective dates continued to lag past the six months allowed for the adoption of standards changes. This resulted in the enforcement of standards that were not ALAE as the federal standard (Table 4). All six outstanding standards were packaged together to go through the Proposed Changes to Hawaii Administrative Rules process. The Department of Business, Economic Development & Tourism, Small Business Regulatory Review Board has approved the standards to move forward with public hearings along with more stakeholder meetings.

Observation FY 2017-OB-02: (FY 2016-04): Six standards were not adopted in a timely manner.

Federal Monitoring Plan FY 2017-OB-02: (FY 2016-04): OSHA will follow-up at quarterly meetings on the progress of advancing the standards through the legislative process.

**Table 4
Standards Adoption**

Standard	State Response Date	Intent to Adopt	Adopt Identical	State Adoption Date
1903.2560.2575 Final Rule on the Implementation of the 2017 Annual Adjustment to Civil Penalties for Inflation FR Standard Date 1/18/17 Response Due Date 3/18/17 Adoption Due Date 7/18/2017	1/19/17	Yes	Yes	Signed by Governor 7/10/17, Effective 1/1/18 Adoption Not Timely
1910.1915.1926 Final Rule on Occupational Exposure to Beryllium FR Standard Date 1/9/17 Response Due Date 3/9/17 Adoption Due Date 7/9/17 Adoption Required	2/23/17	Yes	Yes	Pending legislative approval Adoption Not Timely
1910 Final Rule on Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Services) FR Standard Date 11/18/16 Response Due Date 1/18/17 Adoption Due Date 5/18/17 Adoption Required	1/18/17	Yes	Yes	Pending legislative approval Adoption Not Timely

1902, 1903 Interim Final Rule on Maximum Penalty Increases FR Standard Date 7/1/16 Response Due Date 9/1/16 Adoption Due Date 1/1/17 Adoption Required	7/10/17	Yes	Yes	Signed by Governor 7/10/17, Effective 1/1/18 Adoption Not Timely
1902, 1904 Final Rule to Improve Tracking of Workplace Injuries and Illnesses FR Standard Date 5/12/16 Response Due Date 7/12/16 Adoption Due Date 11/14/16 Adoption Required	2/7/17 Response Not Timely	Yes	Yes	Signed by Governor 2/7/17 Effective 2/19/17 Adoption Not Timely
1910,1915,1926 Final Rule for Occupational Exposure to Respirable Crystalline Silica Standard Date 3/25/16 Response Due Date 5/25/16 Adoption Due Date 9/26/16 Adoption Required	10/9/17 Response Not Timely	Yes	Yes	Pending legislative approval Adoption Not Timely
1926.1200 Final Rule for Confined Spaces in Construction FR Standard Date 5/4/15 Response Due Date 7/4/15 Adoption Due Date 2/4/16 Adoption Required	10/9/2017 Response Not Timely	Yes	Yes	Pending legislative approval Adoption Not Timely
1904 Occupational Injury and Illness Recording and Reporting Requirements NAICS Update and Reporting Revisions FR Standard Date 9/19/14 Response Due Date 11/19/14 Adoption Due Date 3/19/15 Adoption Required	2/7/17 Response Not Timely	Yes	Yes	Signed by Governor 2/7/17 Effective 2/19/17 Adoption Not Timely
1926 Cranes and Derricks in Construction - Operator Certification Final Rule FR Standard Date 9/26/14 Response Due Date 11/26/14 Adoption Due Date 3/26/15 Adoption Required	10/9/17 Response Not Timely	Yes	Yes	Pending legislative approval Adoption Not Timely
1910 1926 Final Rule for Electric Power Generation, Transmission and Distribution; Electrical Protective Equipment. FR Standard Date 4/11/14 Response Due Date 6/11/14 Adoption Due Date 1/11/15 Adoption Required	12/8/14	Yes	Yes	Pending legislative approval Adoption Not Timely

b) Federal Program Change (FPC) Adoption

The Field Operations Manual is currently in the process of being updated, and should be submitted to OSHA for review by April 30, 2018. The Whistleblower Investigations Manual was adopted on January 1, 2018, but the State Plan Change Supplement for review is still pending. During the program review it was identified that the Mandatory Training Program for OSHA Whistleblower Investigators Directive had an effective date of October 1, 2016, but a State Plan Change Supplement was not submitted. The HIOSH Directive is significantly different and the Plan Change Supplement with the rationale for the differences is needed to verify equivalency.

Finding FY 2017-03 (FY 2016-05): Federal Program Changes were not responded to and/or adopted in a timely manner.

Recommendation FY 2017-03 (FY 2016-05): HIOSH should ensure Federal Program Changes are responded to and/or adopted within the required timeframes.

**Table 5
Federal Program Changes**

FPC Directive/Subject	State Response Date	Intent to Adopt	Adopt Identical	State Adoption Date
CPL 02-01-058 Enforcement Procedures and Scheduling for Occupational Exposure to Workplace Violence Date of Directive 1/10/17 Response Due Date 3/10/17 Adoption Due Date 7/10/17 Adoption Not Required Equivalency Not Required	2/28/2017	Yes	Yes	Adopted identical 3/1/17
CPL 02-00-160 Field Operations Manual Date of Directive 8/2/16 Response Due Date 10/1/16 Adoption Due Date 2/2/17 Adoption Not Required Equivalency Required	9/26/16	Yes	No	Pending adoption Awaiting Plan Change Supplement Adoption Not Timely
CPL 03-00-020 National Emphasis Program on Shipbreaking Date of Directive 3/7/16 Response Due Date 5/6/16 Adoption Due Date 9/7/16 Adoption Required Equivalency Not Required	3/17/2016	Yes	Yes	Adopted identical 3/26/16

CPL 02-03-007 Whistleblower Investigations Manual Date of Directive 1/28/16 Response Due Date 4/27/16 Adoption Due Date 7/28/16 Adoption Not Required Equivalency Required	8/30/16 Response Not Timely	Yes	No	1/1/18 Awaiting Plan Change Supplement Adoption Not Timely
TED 01-00-020 Mandatory Training Program for OSHA Whistleblower Investigators Date of Directive 10/8/15 Response Due Date 12/8/15 Adoption Due Date 4/8/16 Adoption Not Required Equivalency Required	9/26/16 Response Not Timely	Yes	No	Directive 10/1/16, Awaiting Plan Change Supplement Adoption Not Timely
TED 03-01-004 Special Government Employee Program Policies and Procedures for the Occupational Safety and Health Administration Voluntary Protection Programs Directive Date of Directive 7/30/15 Response Due Date 9/30/15 Adoption Due Date 2/1/16 Adoption Not Required Equivalency Not Required	9/26/16 Response Not Timely	Yes	Yes	Adopted identical 10/1/16
TED 04-01-002 OSHA Alliance Program Directive Date of Directive 7/29/15 Response Due Date 9/29/15 Adoption Due Date 1/29/16 Adoption Not Required Equivalency Not Required	9/26/16 Response Not Timely	Yes	Yes	Adopted Identical 10/1/16
CPL 02-02-079 Inspection Procedures for the Hazard Communication Standard Date of Directive 7/9/15 Response Due Date 9/9/15 Adoption Due Date 1/11/16 Adoption Not Required Equivalency Required	9/26/16 Response Not Timely	Yes	Yes	Adopted identical 10/1/16
CPL 02-02-078 Enforcement Procedures and Scheduling for Occupational Exposure to Tuberculosis Date of Directive 6/30/15 Response Due Date 8/30/15 Adoption Due Date 12/31/15 Adoption Not Required Equivalency Required	9/26/16 Response Not Timely	Yes	Yes	Adopted identical 10/1/16

CPL 03-00-019 National Emphasis Program on Amputations Date of Directive 6/30/15 Response Due Date 8/30/15 Adoption Due Date 12/31/15 Adoption Required Equivalency Not Required	6/27/16 Response Not Timely	Yes	Yes	Adopted identical 5/9/16 Adoption Not Timely
CPL 02-01-057 Compliance Directive for Cranes and Derricks in Construction Standard Date of Directive 10/17/14 Response Due Date 12/17/14 Adoption Due Date 4/17/15 Adoption Not Required Equivalency Required	6/27/16 Response Not Timely	Yes	Yes	7/1/16 Adoption Not Timely
CPL 03-00-018 Revision – National Emphasis Program – Primary Metal Industries Date of Directive 10/20/14 Response Due Date 12/20/14 Adoption Due Date 4/20/15 Adoption Required Equivalency Not Required	6/8/17 Response Not Timely	Yes	Yes	6/8/17 Adoption Not Timely
CPL 02-00-158 Inspection Procedures for the Respiratory Protection Standard (9/5/14)	9/5/14	Yes	Yes	Adopted identical 5/1/16 Adoption Not Timely
CPL 02-01-056 Inspection Procedures for Accessing Communication Towers by Hoist (7/17/14)	5/1/16	Yes	Yes	Adopted identical 5/1/16 Adoption Not Timely
TED 01-00-019 Mandatory Training Program for OSHA Compliance Personnel (9/21/14)	7/1/16	Yes	Yes	Adopted identical 7/1/16 Adoption Not Timely
CPL 02-03-003 Whistleblower Investigations Manual	9/22/11	Yes	No	Incorporated into manual adopted on 9/1/16 Adoption Not Timely
CPL 02-00-150 Revisions to Field Operations Manual - April 2011 (4/22/11)	9/20/11	Yes	No	Incorporated into manual adopted on 4/15/16 Adoption Not Timely
CPL 02-00-148 Revisions to FOM November 2009 (11/9/09)	11/30/09	Yes	Yes	Incorporated into manual adopted on 4/15/16 Adoption Not Timely
CPL 02-00-148 Field Operations Manual (3/26/09)	5/21/09	Yes	No	Incorporated into manual adopted on 4/15/16 Adoption Not Timely

5. VARIANCES

There were no permanent and/or temporary variances granted during this evaluation period.

6. STATE AND LOCAL GOVERNMENT WORKER PROGRAM

Approximately 14% of Hawaii employees work in the public sector according to Bureau of Labor Statistics. HIOSH projected in the grant to conduct 30 public sector inspections this fiscal year accounting for about 4.3% of their inspection projection. According to the end of year SAMM data, they exceeded this target conducting 42 of their 799 inspections in public sector establishments or 5.3% (SAMM 6). Twenty-one of the inspections were programmed. Serious violations were discovered in 76.2% of the public sector inspections conducted and a total of 37 serious and 29 other-than-serious violations were identified and corrected with total initial penalties totaling \$169,840. Finding FY 2016-02 that HIOSH's state and local government inspections were below the FRL for SAMM 6 and the number projected in their grant was completed.

7. WHISTLEBLOWER PROGRAM

The whistleblower program was staffed by one supervisor and two investigators, all located in Honolulu, Hawaii. The supervisor and investigators conduct whistleblower and enforcement investigations. Based on the case file review, HIOSH appeared to have generally followed their policies and procedures in conducting whistleblower retaliation investigations. During the on-site review several best practices were observed. A detailed and easy to follow table of contents and exhibit logs were noted in several case files. Well-formatted templates for witness statements were consistently used. A checklist was developed to document whether other agencies, such as EEOC, were contacted to obtain relevant case information. Finally, detailed and well written nexus analyses were noted in several dismissed cases. Finding FY2016-06 is completed; the on-site review determined that the use of a checklist eliminated the issue.

WebIMIS entries which were not accurate were found in 11 of 20 (55%) retaliation investigation cases reviewed. In four cases, the filing date was either unknown or incorrect, two cases had an adverse action date incorrectly cited and five cases had dates where the Report of Investigation (ROI) submitted to and/or approved by the supervisor were either unknown or incorrect. These mistakes can negatively impact management of the program, affect the decision to close a case, or affect complainants' rights. This is a re-occurring Finding and remains open.

Finding FY 2017-04 (FY 2016-07): Information was not accurately entered into WebIMIS for whistleblower retaliation investigations, including the filing date, adverse action date, the date the ROI was submitted to the supervisor, and the date the supervisor approved the ROI.

Recommendation FY 2017-04 (FY 2016-07): HIOSH should follow to ensure whistleblower retaliation investigation information is accurately entered into IMIS.

There was no evidence that a copy of the Respondent's position statement was provided to the Complainant in 10 of 11 (91%) dismissed cases reviewed. This may have affected the ability to conduct complete investigations given Complainants were not aware of what evidence they needed to provide to rebut Respondents' assertions.

Finding FY 2017-05: In 10 of 11 (91%) retaliation investigation cases which were dismissed on the merits, there was no evidence found that a copy of the Respondent's position statement was provided to the Complainant for review.

Recommendation FY 2017-05: HIOSH should ensure that the Complainant is provided a copy of the Respondent's position statement.

In 4 of 6 (67%) cases administratively closed, there was no evidence that a supervisor reviewed and approved the decision to administratively close the complaint, as required by Discrimination Investigation Manual (DIM). Not having a supervisor review the decision to administratively close a complaint could result in a complaint being erroneously closed.

Finding FY 2017-06: In 4 of 6 (67%) retaliation complaints administratively closed, there was no evidence that a supervisor reviewed and approved the administrative closure.

Recommendation FY 2017-06: HIOSH should ensure that a supervisor review and approve the decision to administratively close a complaint.

Although not a finding, OSHA found no evidence of a telephone/activity log in 5 of 14 (36%) cases closed, as required by DIM. Moreover, in 10 of 14 (71%) cases closed, OSHA found no evidence that the Complainant and/or Respondent received HIOSH's closing letter, such as a certified mail receipt or UPS tracking number, as required by DIM.

8. COMPLAINT ABOUT STATE PROGRAM ADMINISTRATION (CASPA)

There were no CASPAs during the evaluation period.

9. VOLUNTARY COMPLIANCE PROGRAM

The CAS position was filled to manage the Voluntary Protection Program (VPP). OSHA worked with HIOSH to provide training for the CAS and an alternate to become team leaders to perform VPP audits. HIOSH now has one qualified VPP team leader and is marketing the program to employers to increase awareness of the program

benefits. The CAS also conducted outreach to employers providing updates on the penalty increase that went into effect January 1, 2018, and the other new standards that HIOSH is planning to adopt during FY 2018. Finding FY 2016-08 that the VPP program is not an active, viable program was completed.

10. STATE AND LOCAL GOVERNMENT 23(g) ON-SITE CONSULTATION PROGRAM

A marketing strategy to target public sector employers was developed, and letters highlighting the benefits of requesting consultation was sent out to all state and local government agencies. A total of eight public sector on-site consultation visits were projected in the grant and ten public sector on-site consultation visits were conducted under the 23(g) grant. All 51 hazards identified during the public sector on-site consultation visits were corrected timely. Public sector consultation visits were not conducted by consultants that were 100% funded by the 21(d) Cooperative Agreement, and therefore Observation FY 2016-OB-01 is closed.

Appendix A – New and Continued Findings and Recommendations

FY 2017 Hawaii Comprehensive FAME Report

FY 2017-#	Finding	Recommendation	FY 2016-#
FY 2017-01	The health sampling inspection goal was not achieved.	HIOSH should devote resources to conduct health sampling inspections.	FY 2016-01
FY 2017-02	Policies and procedures for targeting high-hazard industries for inspections were not documented.	HIOSH should document a high-hazard targeting process, as described in the Grant.	FY 2016-09
FY 2017-03	Federal Program Changes were not responded to and/or adopted in a timely manner.	HIOSH should ensure Federal Program Changes are responded to and/or adopted within the required timeframes.	FY 2016-05
FY 2017-04	Information was not accurately entered in IMIS for whistleblower retaliation investigations, including the filing date, adverse action date, the date the ROI was submitted to the supervisor, and the date the supervisor approved the ROI.	HIOSH should follow procedures to ensure whistleblower retaliation investigation information is accurately entered into WebIMIS.	FY 2016-07
FY 2017-05	In 10 of 11 (91%) retaliation investigation cases which were dismissed on the merits, there was no evidence found that a copy of the Respondent's position statement was provided to the Complainant for review.	HIOSH should ensure the Complainant is provided a copy of the Respondent's position statement.	
FY 2017-06	In 4 of 6 (67%) retaliation complaints administratively closed, there was no evidence that a supervisor reviewed and approved the administrative closure.	HIOSH should ensure that a supervisor review and approve the decision to administratively close a complaint.	

Appendix B – Observations Subject to New and Continued Monitoring

FY 2017 Hawaii Comprehensive FAME Report

Observation # FY 2017-OB-#	Observation# FY 20XX-OB-# or FY 20XX-#	Observation	Federal Monitoring Plan	Current Status
FY 2017-OB-01	FY 2014-OB-01	Probability justifications for penalty calculations were not documented.	OSHA will conduct a limited scope case file review to monitor this data trend.	New
FY 2017-OB-02	FY 2016-04	Six standards were not adopted in a timely manner.	OSHA will follow-up at quarterly meetings on the progress of advancing the standards through the legislative process.	Converted from a Finding
	FY 2016-OB-01	Public sector consultation visits were conducted by consultants that were 100% funded by the 21(d) Cooperative Agreement.	OSHA will monitor the Program to ensure that the appropriate grant fund is charged for public sector on-site consultation visits.	Closed

Appendix C - Status of FY 2016 Findings and Recommendations

FY 2017 Hawaii Comprehensive FAME Report

FY 2016-#	Finding	Recommendation	State Plan Corrective Action	Completion Date	Current Status
FY 2016-01	HIOSH did not focus their resources to address their performance goals. No toxic dust monitoring inspections were conducted.	HIOSH must provide effective management of resources to achieve the performance goal of completing toxic dust monitoring inspections.	HIOSH revised their performance plan goals for FY 2018 to broaden monitoring inspections to different types of health hazards and not just toxic dust.	Not Completed	Open 9/30/17
FY 2016-02	HIOSH's state and local government inspections were 3.5% of their total inspections which is below the further review level of 5.7% for SAMM 6 and the numbers projected in their grant.	HIOSH must develop and implement a program to increase the number of inspections in the state and local government and meet the inspections proposed in the grant.	HIOSH developed a targeting plan for state and local government agencies to meet the inspection goal in the grant by the end of FY 2017.	9/30/17	Completed
FY 2016-03	HIOSH conducted 61% of the inspections planned in the FY 2016 grant.	HIOSH must ensure that the number of inspections conducted meets the goals established in the grant.	HIOSH met the FY 2017 planned inspection goal of 700 inspections through continuous monitoring of objectives, and staff coaching for superior performance at all levels.	8/17/17	Completed
FY 2016-04	There are six standards that have not been responded to and adopted in a timely manner in both FY 2015 and FY 2016.	HIOSH must ensure standards are responded to and adopted within the required timeframes.	OSHA will follow-up at quarterly meetings on the progress of advancing the standards through the legislative process.		Converted to an Observation
FY 2016-05	There are two Federal Program Changes that have not been responded to and adopted in a timely manner in FY 2016.	HIOSH must ensure that Federal Program Changes are responded to and/or adopted within the required timeframes.	The Federal Program Changes have been adopted.	12/1/16	Completed

Appendix C - Status of FY 2016 Findings and Recommendations

FY 2017 Hawaii Comprehensive FAME Report

FY 2016-#	Finding	Recommendation	State Plan Corrective Action	Completion Date	Current Status
FY 2016-06	There was no evidence HIOSH coordinated with other agencies during the investigation in two cases reviewed and dismissed on their merits, as required by 2015 Discrimination Investigation Manual (DIM) Chapter 3(IV)(B)(1)(h), 3(IV)(E)(4), and 3(IV)(F).	HIOSH must follow procedures to ensure that if information received during the investigation indicates the complainant has filed a concurrent retaliation complaint, safety and health complaint, or any other complaint with another government agency, the investigator must attempt to determine the nature of status, or results of that complaint.	In July 2016, HIOSH staff were trained that if they received information that indicated the complainant had filed a concurrent retaliation complaint, safety and health complaint, or any other complaint with another government agency, the investigator would attempt to determine the nature, status, or results of that complaint and document either the information and/or attempts made to obtain the information.	3/1/18	Completed
FY 2016-07	Information was incorrectly entered in IMIS for whistleblower retaliation investigations, including the filing date, adverse action date, the date the Report of Investigation (ROI) was submitted to the supervisor, and the date the supervisor approved the ROI, as required by 2011 DIM Chapter 5(V) and DIM Chapter 5(VII)(A).	HIOSH must follow its own procedures to ensure whistleblower retaliation investigation information is accurately entered into IMIS.	A whistleblower matrix was developed to assist staff with documenting IMIS information. The supervisor reviews the matrix and the case file to ensure that accurate information is entered into IMIS.	Not Completed	Open 3/1/18

Appendix C - Status of FY 2016 Findings and Recommendations

FY 2017 Hawaii Comprehensive FAME Report

FY 2016-#	Finding	Recommendation	State Plan Corrective Action	Completion Date	Current Status
FY 2016-08	The Voluntary Protection Program (VPP) is not an active, viable program.	HIOSH must establish an active VPP program in accordance with the Hawaii Voluntary Protection Program Policies and Procedures Manual.	HIOSH hired a Compliance Assistance Specialist on August 1, 2017, and this person will be responsible for managing HIOSH's VPP. In-depth VPP training and shadowing trips are already scheduled for FY 2017. Training is in progress and will be completed by September 30, 2017.	9/30/17	Completed
FY 2016-09	Policies and procedures for targeting high-hazard industries for inspection were not documented.	HIOSH must document a high-hazard targeting process.	HIOSH identified the industries where inspections will be conducted based on previous fatalities and incidence rates in the FY 2018 grant. HIOSH is working on a directive.	Not Completed	Open 9/30/17

Appendix D - FY 2017 State Activity Mandated Measures (SAMM) Report

FY 2017 Hawaii Comprehensive FAME Report

U.S. Department of Labor				
Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)				
State Plan: Hawaii – HIOSH			FY 2017	
SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
1a	Average number of work days to initiate complaint inspections (state formula)	4.53	7	The further review level is negotiated by OSHA and the State Plan.
1b	Average number of work days to initiate complaint inspections (federal formula)	3.78	N/A	This measure is for informational purposes only and is not a mandated measure.
2a	Average number of work days to initiate complaint investigations (state formula)	1.40	2	The further review level is negotiated by OSHA and the State Plan.
2b	Average number of work days to initiate complaint investigations (federal formula)	0.29	N/A	This measure is for informational purposes only and is not a mandated measure.
3	Percent of complaints and referrals responded to within one workday (imminent danger)	100%	100%	The further review level is fixed for all State Plans.
4	Number of denials where entry not obtained	0	0	The further review level is fixed for all State Plans.
5	Average number of violations per inspection with violations by violation type	SWRU: 1.76	+/- 20% of SWRU: 1.83	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from 1.46 to 2.20 for SWRU and from 0.79 to 1.19 for OTS.
		Other: 0.97	+/- 20% of Other: 0.99	
6	Percent of total inspections in state and local government workplaces	5.26%	+/- 5% of 4.29%	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 4.07% to 4.50%.

Appendix D - FY 2017 State Activity Mandated Measures (SAMM) Report

FY 2017 Hawaii Comprehensive FAME Report

7	Planned v. actual inspections – safety/health	S: 529	+/- 5% of S: 400	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 380 to 420 for safety and from 285 to 315 for health.
		H: 270	+/- 5% of H: 300	
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$2,172.09	+/- 25% of \$2,516.80	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from \$1,887.60 to \$3,146.00.
	a. Average current serious penalty in private sector (1-25 workers)	\$1,695.42	+/- 25% of \$1,706.10	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from \$1,279.58 to \$2,132.63.
	b. Average current serious penalty in private sector (26-100 workers)	\$2,631.73	+/- 25% of \$2,867.94	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from \$2,150.96 to \$3,584.93.
	c. Average current serious penalty in private sector (101-250 workers)	\$4,044.33	+/- 25% of \$3,952.26	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from \$2,964.20 to \$4,940.33.
	d. Average current serious penalty in private sector (greater than 250 workers)	\$3,856.30	+/- 25% of \$5,063.48	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from \$3,797.61 to \$6,329.35.
9	Percent in compliance	S: 20.00%	+/- 20% of S: 29.53%	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from 23.62% to 35.44% for safety and from 28.62% to 42.94% for health.
		H: 31.37%	+/- 20% of H: 35.78%	
10	Percent of work-related fatalities responded to in one workday	100%	100%	The further review level is fixed for all State Plans.

Appendix D - FY 2017 State Activity Mandated Measures (SAMM) Report

FY 2017 Hawaii Comprehensive FAME Report

11	Average lapse time	S: 24.96	+/- 20% of S: 45.29	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from 36.23 to 54.35 for safety and from 44.82 to 67.24 for health.
		H: 35.91	+/- 20% of H: 56.03	
12	Percent penalty retained	80.24%	+/- 15% of 67.44%	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from 57.32% to 77.56%.
13	Percent of initial inspections with worker walk around representation or worker interview	99.75%	100%	The further review level is fixed for all State Plans.
14	Percent of 11(c) investigations completed within 90 days	14%	100%	The further review level is fixed for all State Plans.
15	Percent of 11(c) complaints that are meritorious	2%	+/- 20% of 25%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 20% to 30%.
16	Average number of calendar days to complete an 11(c) investigation	463	90	The further review level is fixed for all State Plans.
17	Percent of enforcement presence	3.09%	+/- 25% of 1.26%	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from 0.95% to 1.58%.

NOTE: Fiscal Year 2017 is the second year since the transition from the NCR (OSHA's legacy data system) began that all State Plan enforcement data has been captured in OSHA's Information System (OIS). As such, the further review levels for SAMMs typically referencing a three-year rolling average will instead rely on a two-year average this year. Unless otherwise noted, the data contained in this Appendix D is pulled from the State Activity Mandated Measures (SAMM) Report in OIS and the State Plan WebIMIS report run on November 13, 2017, as part of OSHA's official end-of-year data runs.

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FY 2017

HAWAII OCCUPATIONAL SAFETY AND HEALTH PROGRAM

Linda Takayama
DLIR Director

Leonard Hoshijo
DLIR Deputy Director

Norman Ahu
HIOSH Administrator



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FY 2017 Executive Summary

Hawaii's State Plan Program is administered through the Hawaii Occupational Safety and Health Division (HIOSH), a division of the State's Department of Labor and Industrial Relations (DLIR). HIOSH has jurisdiction over a substantial percent of employment in the State in both the public and private sectors. Exceptions to State jurisdiction is private sector maritime, long-shoring, ship building activities, federal agencies, military, and all employment contained within the national parks and secured military bases (as of October 11, 2011). Activities mandated under the OSH Act are considered core elements of HIOSH and provide an essential safety net for workers exposed to hazards with the potential to cause death or serious physical harm.

HIOSH's mission as stated by the Hawaii Occupational Safety and Health Law, Chapter 396, Hawaii Revised Statutes, is to "Assure so far as possible, every working man and woman in the State safe and healthful working conditions." HIOSH's goal is to work in partnership with Hawaii's businesses to save lives and prevent injuries in the workplace.

HIOSH's role is to promote voluntary compliance first and foremost through a mix of incentives — HIOSH recognition and achievement programs such as the Hana Po'okela (Hawaii Voluntary Protection Program), HI-SHARP (SHARP), other partnership programs (Alliances), and on-site consultation and training assistance. HIOSH works in partnership with businesses that share the same principles and goals, and uses enforcement as a tool for compliance for those companies that choose to disregard their obligations under the law.

HIOSH's Five-Year Strategic Plan which covers Fiscal Year (FY) 2016-2020, is based on the following two strategic goals. These two, main strategic goals are supported by the Annual Performance Goals FY 2017 listed as performance indicators and baselines.

1. Improve workplace safety and health for all workers, as evidence by fewer hazards, reduced exposures, and fewer injuries, illnesses and fatalities.

Goal 1.1 Workplace Safety & Health Hazards

- Reduce the injury and illness rate by approximately 5% from the present average of 4.5 to 4.3 in the construction industry. (Based on 2013 data, the most recent available. At the end of 2020, the latest BLS data will be for 2018).

Indicators:

- Conduct 2,115 inspections in the construction industry with at least 3, 175 violations identified in the five-year period.
- HIOSH will conduct 25 inspections where monitoring is conducted for toxic dust.
- Reduce employee exposure to toxic dust.

Indicators:

- Conduct at least 25 inspections where there is monitoring conducted for toxic dust.

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Goal 1.2 Fatalities

- Reduce the fatality rate by approximately 5% averaged over a rolling five-year period through scheduled inspections and visits at workplaces in targeted industries.

Indicators:

- Construction NAICS 23: Conduct 2,115 Inspections.
- Transportation & Warehousing NAICS 42-, 48-49-: Conduct 250 Inspections
- Landscaping and other building services NAICS 56-: Conduct 100 Inspections

Goal 1.3 Cooperative Agreements

- Increase the number of new participants in SHARP by 5.

Indicators:

- Number of new SHARP Participants
- Develop outreach material promoting the SHARP program and benefits for businesses to participate

2. Strengthen public confidence through continued excellence.

Goal 2.1 Response to Fatalities and Catastrophes

- Initiate 95% percent of fatalities and catastrophes inspections within one working day of notification.

Indicators:

- Percentage of fatal case investigations initiated within one working day of notification.

Goal 2.2 Response to Referrals Alleging Serious Hazards

- Conduct inspections of formal complaints alleging serious hazards within 7 working days 95% of the time.

Indicators:

- Average number of days to initiate complaint inspections.

Goal 2.3 Staff Development

- Eighty percent of safety and health staff will receive professional development through a variety of methods.

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Indicators:

- Percent of compliance safety and health staff receiving professional development.
- Percent of consultation safety and health staff receiving professional development.

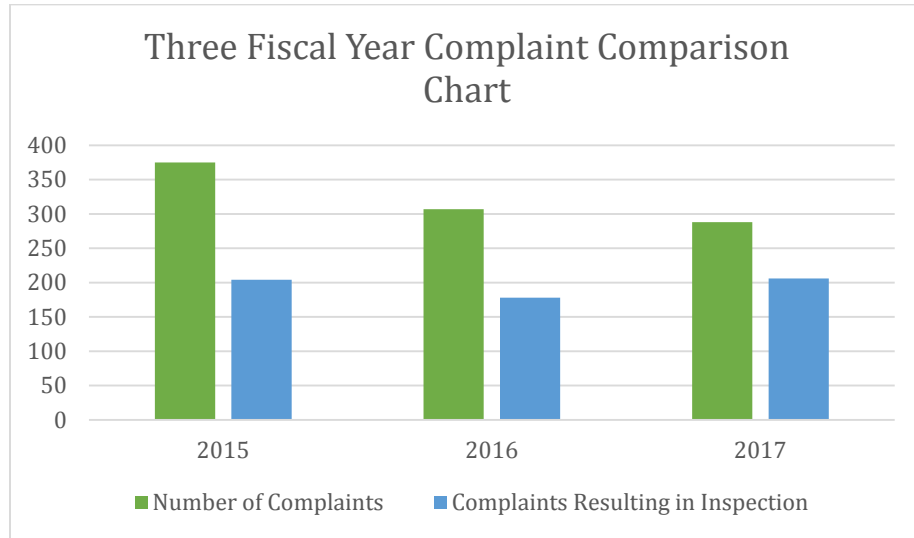
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Annual Performance Results & Response

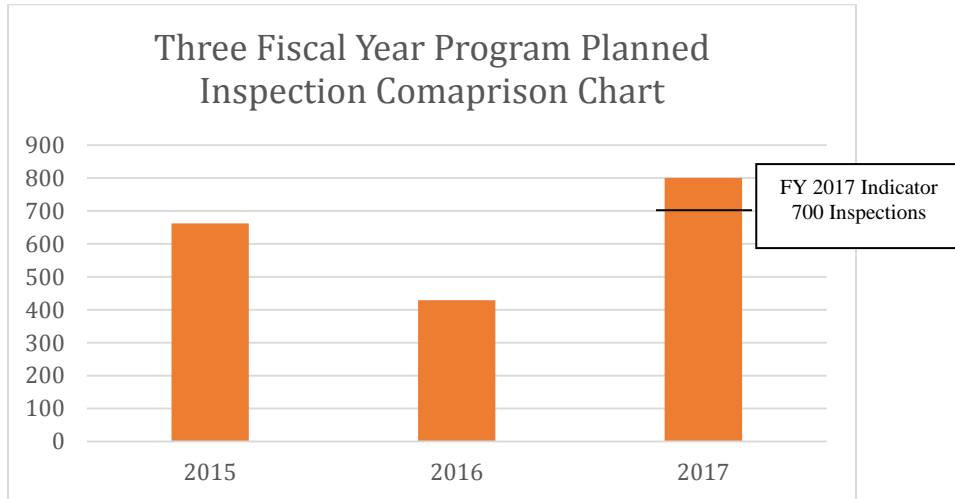
COMPLAINTS

For FY 2017, HIOSH responded to a total of 288 occupational safety and health complaints. Out of the total 288, 206 resulted in a completed safety and health inspection.



TOTAL INSPECTIONS

For FY 2017, HIOSH conducted a total of 800 occupational safety and health inspections. HIOSH achieved their goal of conducting 700 inspections.

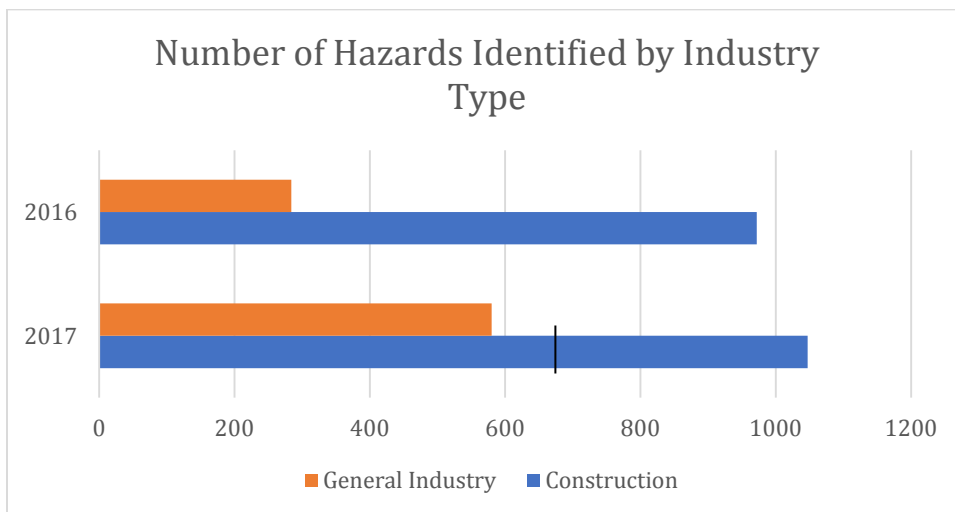
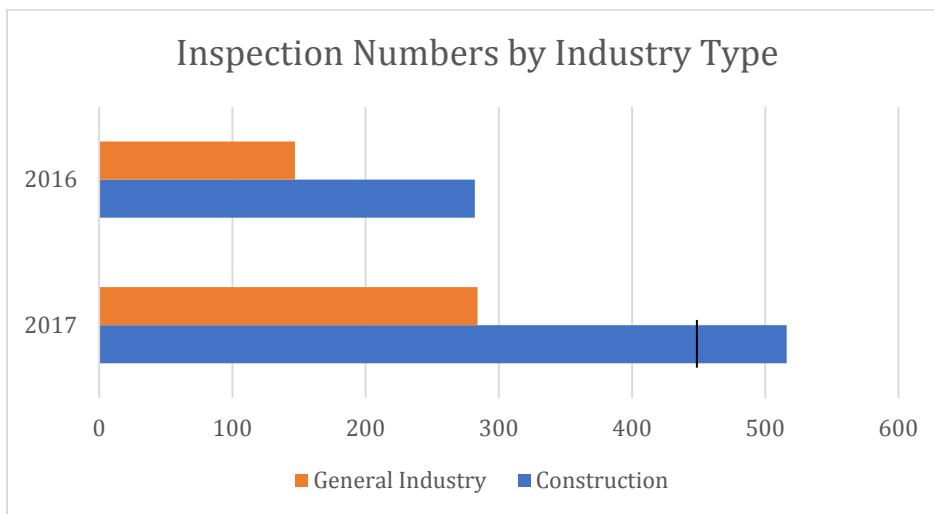


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1.1 INDICATORS

- Reduce the injury and illness rate by approximately 1% from the present average of 4.5 to 4.45 in the construction industry.
 - For FY17, the State of Hawaii Incidence Rate for NAICS 23- (Construction) was 3.4. HIOSH achieved their goal as this was a decrease of more than 1% from the previous 4.5 to 4.45 rate. (Based on 2016 BLS data <https://www.bls.gov/iif/oshstate.htm#HI>)
- Conduct 450 inspections in the construction industry with at least 680 violations identified. HIOSH achieved their goal with a total of 516 construction industry inspections and a correlating 1,047 identified hazards.



- Conduct at least 25 inspections where there is monitoring conducted for toxic dust.
 - For FY17, HIOSH conducted 4 inspections where monitoring was conducted for toxic dust. HIOSH did not achieve this annual goal, but after reevaluating

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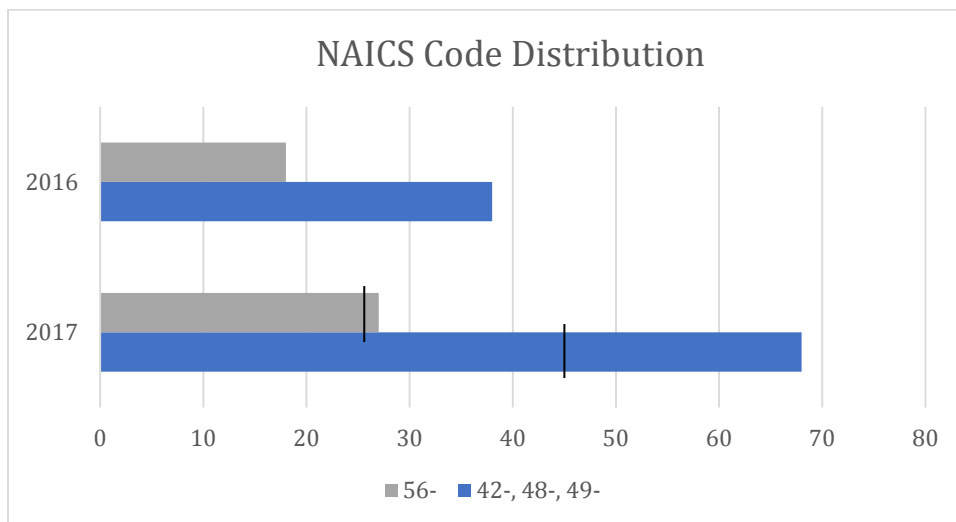
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monitoring trends, HIOSH has expanded their goal to protect employees from health hazards beyond toxic dust including monitoring for particulates, mists, vapors, gas and noise hazards. This includes personnel monitoring, direct readings, bulk and wipe sampling.

1.2 INDICATORS

Reduce the fatality rate by approximately 1% through scheduled inspections and visits at workplaces in targets industries. 2.6 2015 2.4 2016

- For FY16, the fatality rate for the state of Hawaii was 2.6. A decrease of 1% would be at least 2.57 or less. HIOSH achieved their goal with a FY17 fatality rate of 2.4, an approximate 7.7% decrease. (BLS Data <https://www.bls.gov/iif/oshstate.htm#HI>)
- Conduct 450 Construction inspections.
 - See indicator graph under 1.1: HIOSH Conducted 505 Construction NAICS inspections in FY17. HIOSH achieved this goal with a total of 516 construction industry inspections for FY17.
- Transportation & Warehousing NAICS 42-, 48-49-: Conduct 45 Inspections.
 - HIOSH achieved this goal and conducted a total of 68 inspections of NAICS code 42-, 48- & 49- industries. (See NAICS Code Distribution Graph)
- Landscaping and other building services NAICS 56-: Conduct 25 Inspections.
 - SH achieved this goal and conducted a total of 27 inspections of NAICS code 56- industries. (See NAICS Code Distribution Graph)



1.3 INDICATORS

- Increase the number of new participants in SHARP by 1.
 - Increase the number of SHARP participants.

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- For FY17, HIOSH did not obtain any new SHARP participants. After reevaluating the SHARP program, HIOSH determined SHARP goals were better suited under the Consultation and Training Branch. This goal and its indicator were removed.
- Develop outreach material promoting the SHARP program and benefits for businesses to participate.
 - This goal and its indicator were removed and placed into the responsibility of the Consultation and Training Branch of HIOSH. Consultation and Training have since prioritized understanding and the training of employees to better serve the SHARP program, obtain new applicants and create outreach material for potential SHARP applicants.

2.1 INDICATORS

- Initiate 98% percent of fatalities and catastrophes inspections within one working day of notification.
 - For FY17, HIOSH accomplished this goal and had a 100% response rate within one working day to four fatality inspections.

2.2 INDICATORS

- Conduct inspections of formal complaints alleging serious hazards within 7 working days 95% of the time.
 - For FY17, HIOSH took an average of 3.78 days to initiate complaint inspections. HIOSH achieved this goal and conducted 100% of the inspections from formal complaints alleging serious hazards within 7 working days.

2.3 INDICATORS

- Eighty percent of safety and health staff will receive professional development through a variety of methods.
 - Throughout FY17, 100% of HIOSH staff received professional development both through the State of Hawaii and the Occupational Safety and Health Administration. Four courses occurred at HIOSH throughout FY17, with a 95-100% attendance rate. HIOSH employees also partook in state provided training, including LEP training. HIOSH will continue to bring courses here and send enforcement and consultation employees to professional development throughout FY18.

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FY 2017 Hawaii Fatalities & Significant Cases

HAWAII FATALITIES

- **Sell It Hawaii Inc dba Wash It Hawaii (Lahaina), Inspection #1198584**

- On October 10, 2016, an employee was towel-drying the front driver side of a car as it completed its automated car wash cycle through a 110 foot long car washing tunnel, when the car came off the automatic conveyor track system. The employee opened the driver's door to shift the car from neutral to park, but shifted to reverse instead. The employee then tried to get into the car. He was found on the ground in front of the car between two car wash mitter curtains near the tunnel entrance where he suffered fatal injuries.

Clyde R Watanabe, Inspection #1196576

- On December 11, 2016, an employee was standing on a temporary elevated work platform to inspect an air intake ductwork. The employee fell 10 feet 8 inches onto the concrete lower level, suffering fatal injuries.

Owner's Designer Builder, Inspection #1208911

- On February 2, 2017, an employee was working on the roof of a residence using an electric SKILSAW and cutting a 23 foot wide by 41 foot long wooden roof eave. The employee completed cutting the roof section and fell 9 feet onto the concrete pavement, hitting his head on the ground and suffering fatal injuries.

Covanta Honolulu Resource Recovery Venture LLC, Inspection #1224061

- On April 6, 2017, an employee was operating a bulldozer while crushing and moving garbage. The employee fell out of operator's cabin of the bulldozer as it was moving sharply downhill and suffered fatal injuries by heavy equipment, either by tracks of his dozer, or wheels of loader working nearby.

HAWAII SIGNIFICANT CASES

- **Yi Sun Chiu #1178647**

- Initial Penalties \$51,420

Jems Enterprises LLC dba Hawaiian Ice #1228047

- Initial Penalties \$107,800 (In Contest)

City & County of Honolulu Board of Water Supply #1246543

- Initial Penalties \$58,300

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Continuing Initiatives

PROFESSIONAL TRAINING & CERTIFICATION

For FY 2017, HIOSH Enforcement and Consultation continued their collaboration efforts for specified training in subjects such as Construction Standards (1926), Accident Investigation Training, Scaffolding and Permit Required Confined Space Training. Enforcement staff and supervisors continued their ongoing training requirements by Federal OSHA.



LIMITED ENGLISH PROFICIENCY (LEP)

HIOSH employees participated in LEP training through the State of Hawaii, Department of Industrial Relations. In response to trends of limited English speakers in Hawaii's workforce, HIOSH translated more employer and employee forms into common languages found in the Hawaii. HIOSH also increased its access to translators, to ensure workplaces were being thoroughly inspected and that both employer and employee rights were communicated.

COMPLIANCE ASSISTANT SPECIALIST

In FY 2017, HIOSH hired a Compliance Assistant Specialist (CAS). This position will be increasing outreach to employer's under HIOSH's jurisdictional coverage. Currently, outreach has included speaking engagements that have covered subjects including penalty increases and new standards that HIOSH is planning to adopt during the FY 2018 year.

The CAS position will also be managing HIOSH's Hawaii Voluntary Protection Program (Hawaii VPP). This will include managing the three current participants, increasing the program's participation and processing new applicants. Hawaii VPP participants currently include:

- Monsanto Kihei
- Monsanto Molokai
- Covanta (Oahu)



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2017 Regulations & Legislation

HAWAII ADMINISTRATIVE RULES

In FY 2017, HIOSH updated the Hawaii Administrative Rules Title 12, Subtitle 8, Part 1, Chapter 52.1, titled Recording and Reporting Occupational Injuries and Illnesses. The new changes incorporate Title 29, Part 1904 of the Code of Federal Regulations, 2016 Edition published as of July 1, 2016 with some amendments.

These amendments include the following:

29 C.F.R. §1904.1(a)(1) is amended to read as follows:

(a) Basic requirement.

(1) If your company had ten (10) or fewer employees at all times during the last calendar year, you do not need to keep OSHA injury and illness records unless HIOSH, OSHA, or the Bureau of Labor and Statistics (BLS) informs you in writing that you must keep records under §1904.37, §1904.41, or §1904.42. However, as required by §1904.39 all employers covered by chapter 396, HRS, Hawaii Occupational Safety and Health Law, must report to HIOSH any workplace incident that results in an employee fatality or the inpatient hospitalization of an employee, employee's amputation, employee's loss of an eye, or property damage in excess of \$25,000.

29 C.F.R. §1904.2(a)(1) is amended to read as follows:

(a) Basic requirement.

(1) If your business establishment is classified in a specific low hazard retail, service, finance, insurance, or real estate industry listed in Appendix A, titled "Non-Mandatory Appendix A to Subpart B - Partially Exempt Industries", dated March 17, 2017, which is made part of this chapter and located at the end of this chapter, you do not need to keep OSHA injury and illness records unless the government asks you to keep records under §1904.37, §1904.41, or §1904.42. However, all employers must report to HIOSH any workplace incident that results in an employee fatality or the inpatient hospitalization of an employee, employee's amputation, employee's loss of an eye, or property damage in excess of \$25,000 (see §1904.39(a)).

29 C.F.R. §1904.29(b)(2) is amended to read as follows:

(2) What do I need to do to complete an OSHA 301 Incident Report? You must complete an OSHA 301 Incident Report form, or an equivalent form that contains the same information required on the OSHA 301 Incident Report form, for each recordable injury or illness that is required to be entered on the OSHA 300 Log.

29 C.F.R. §1904.37(c) is added to read as follows:

(c) If you receive an OSHA occupational injury and illness data collection form or any other type of injury and illness survey authorized by HIOSH, you must respond to the survey or request, and return it to the designated recipient within the specified time limit.

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29 C.F.R. §1904.39(a) is amended to read as follows:

- (a) Basic requirement. Within eight (8) hours after the death of any employee from a work-related incident, and within twenty-four (24) hours of the inpatient hospitalization of an employee, employee's amputation, employee's loss of an eye as a result of a work-related incident, or property damage in excess of \$25,000 as a result of a work-related incident, you must orally report the fatality, inpatient hospitalization, amputation, loss of an eye, or property damage by telephone, (808) 586-9102, or in person at the HIOSH office in Honolulu.

29 C.F.R. §1904.39(b)(1) is amended to read as follows:

(b) Implementation.

- (1) If the HIOSH office is closed, may I report the incident by leaving a message on HIOSH's answering machine, faxing the area office, or sending an e-mail? When the HIOSH office is closed, the (808) 586-9102 telephone number will allow you to leave a phone message. In order for the message to be considered officially reported, all of the information in 1904.39(b)(2) must be provided on the answering machine message.

29 C.F.R. §1904.39(b)(11) is amended to read as follows:

- (11) How does HIOSH define "amputation"? An amputation is the traumatic loss of a limb or other external body part. Amputations include a part, such as a limb or appendage, which has been severed, cut off, amputated (either completely or partially); fingertip amputations with or without bone loss; medical amputations resulting from irreparable damage; and amputations of body parts that have since been reattached.

29 C.F.R. §1904 Non-Mandatory Appendix A to Subpart B - Partially Exempt Industries is amended for the duration of the HIOSH Strategic Plan. The industries with NAICS codes 4812, 4879, and 4885 have been included in the HIOSH Strategic Plan and will continue to be required to maintain the injury and illness log for the duration of HIOSH's Strategic Plan unless the establishment has less than eleven (11) employees. 29 C.F.R. §1904 Non-Mandatory Appendix A to Subpart B - Partially Exempt Industries is amended to read as follows: Employers are not required to keep OSHA injury and illness records for any establishment classified in the following North American Industry Classification System (NAICS) codes, unless they are asked in writing to do so by OSHA, the Bureau of Labor Statistics (BLS), or a state agency operating under the authority of OSHA or the BLS. All employers, including those partially exempted by reason of company size or industry classification, must report to OSHA any workplace incident that results in a fatality, the inpatient hospitalization, amputation, or loss of an eye of an employee (see §1904.39).

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Non-Mandatory Appendix A to Subpart B-

Partially Exempt Industries

March 17, 2017

NAICS CODE	INDUSTRY DESCRIPTION	NAICS CODE	INDUSTRY DESCRIPTION
4431..	Electronics and Appliance Stores	5259..	Other Investment Pools and Funds
4461..	Health and Personal Care Stores	5331..	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works).
4471..	Gasoline Stations	5411..	Legal Services
4481..	Clothing Stores	5412..	Accounting, Tax Preparation, Bookkeeping, and Payroll Services
4482..	Shoe Stores	5413..	Architectural, Engineering, and Related Services
4483..	Jewelry, Luggage, and Leather Goods Stores	5414..	Specialized Design Services
4511..	Sporting Goods, Hobby, and Musical Instrument Stores	5415..	Computer Systems Design and Related Services
4512..	Book, Periodical, and Music Stores	5416..	Management, Scientific, and Technical Consulting Services
4531..	Florists	5417..	Scientific Research and Development Services
4532..	Office Supplies, Stationary, and Gift Stores	5418..	Advertising and Related Services
5121..	Motion Picture and Video Industries	5511..	Management of Companies and Enterprises
5122..	Sound Recording Industries	5615..	Travel Arrangement and Reservation Services
5151..	Radio and Television Broadcasting	5616..	Investigation and Security Services
5172..	Wireless Telecommunications Carriers (except Satellite).	6111..	Elementary and Secondary Schools
5179..	Other Telecommunications	6112..	Junior College
5182..	Data Processing, Hosting, and Related Services	6113..	Colleges, Universities, and Professional Schools
5191..	Other Information Services	6114..	Business Schools and Computer and Management Training
5221..	Depository Credit Intermediation	6115..	Technical and Trade Schools
5222..	Nondepository Credit Intermediation	6116..	Other Schools and Instruction
5223..	Activities Related to Credit Intermediation	6117..	Educational Support Services
5231..	Securities and Commodity Contracts Intermediation and Brokerage	6211..	Offices of Physicians
5232..	Securities and Commodity Exchange	6212..	Offices of Dentists
5239..	Other Financial Investment Activities	6213	Offices of Other Health Practitioners
5241..	Insurance Carriers	6214..	Outpatient Care Centers
5242..	Agencies, Brokerages, and Other Insurance Related Activities	6215..	Medical and Diagnostic Laboratories
5251..	Insurance and Employee Benefit Funds		

[Eff 12/29/01; am 4/29/02; am and comp 2/19/17] (Auth: HRS §396-4)
(Imp: HRS §396-4)

HAWAII LEGISLATION

On July 10, 2017, Governor David Ige signed into law Act 126 (17). Section 396-10, Hawaii Revised Statutes was amended to update the current penalty amounts of HIOSH issued citations. It now reads as follows:

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- a) Any employer who violates this chapter, or any occupational safety and health standard promulgated hereunder or any rule issued under the authority of this chapter, or who violates or fails to comply with any citation, notice, or order made under or by virtue of this chapter or under or by virtue of any rule of the department, or who defaces, displaces, destroys, damages, or removes without the authority of the department any safety device, safeguards, notice, or warning required by this chapter or any rule of the department may be assessed a civil penalty as specified in this chapter.
- b) Any employer who has received an order or citation for a serious violation of any standard or rule adopted pursuant to this chapter shall be assessed a civil penalty of not more than \$12,675 for each violation.
- c) Any employer who has received an order or citation for a violation of any standard or rule adopted pursuant to this chapter, and the violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of up to \$12,675 for each violation.
- d) Each day a violation continues shall constitute a separate violation except that during an abatement period only, no additional penalty shall be levied against the employer.
- e) Any employer who violates any of the posting requirements prescribed under this chapter shall be assessed a civil penalty of up to \$12,675 for each violation.
- f) Any employer who wilfully or repeatedly violates this chapter, or any standard, rule, citation or order issued under the authority of this chapter, shall be assessed a civil penalty of not more than \$126,749 for each violation, but not less than \$9,054 for each wilful violation.
- g) Any employer convicted of wilful or repeated violations of any standard, rule, citation, or order issued under the authority of this chapter resulting in the death of an employee shall be punished by a fine of not more than \$126,749 or by imprisonment for not more than six months, or both, except that if the conviction is for a violation committed after a first conviction, punishment shall be by a fine of not more than \$126,749 or by imprisonment for not more than one year, or both. Failure to correct a violation for which an order or citation of arrest has been issued shall be evidence of wilful conduct.
- h) Any employer who has received an order for violation under section 396-8(e) may be assessed a civil penalty of not more than \$9,054 for each violation.
- i) Any person who gives advance notice of any inspection to be conducted under this chapter, without authority from the director or the director's designee shall, upon conviction, be punished by a fine of not more than \$9,054 or by imprisonment for not more than six months, or by both.
- j) The director shall have authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the size of

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the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations.

- k) Civil penalties imposed under this chapter shall be paid to the department and may be recovered by civil action in the name of the department and the State brought in the district or circuit court for the circuit where the violation is alleged to have occurred or where the employer has its principal office.
- l) When an alleged violation of any provision of this chapter or any standard, rule, or order made pursuant to this chapter has occurred, the department shall promptly issue a written citation, order, or notice thereof to the employer who shall be required to post the citation, order, or notice. The citation, order or notice thereof shall include the abatement requirements and within a reasonable time the employer shall be advised of the proposed sanction, including proposed penalties. Whenever reference is made to posting of any citation, order, notice, petition, decision, or any other type of document issued by the director under this chapter and rules adopted pursuant to this chapter, the employer shall post copies of the document at the work site involved or affected and at the place or places where notices to the employees involved are normally posted. Where posting starts the time for notice of action to or for appeal by employees under this chapter and rules adopted under this chapter, the document shall be posted by the employer upon receipt or on the next business day following receipt.
- m) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter shall, upon conviction, be punished by a fine of not more than \$11,000, or by imprisonment for not more than size months, or by both.
- n) Criminal offenses committed against any employee of the State acting within the scope of the employee's office, employment, or authority under this chapter shall be subject to the penalties set forth in the Hawaii Penal Code; provided that:
 - 1. Ten years shall be added to the maximum term of imprisonment (unless life imprisonment is imposed) and \$55,000 shall be added to the maximum fine imposed for conviction of a class A felony;
 - 2. Five years shall be added to the maximum term of imprisonment and \$27,500 shall be added to the maximum fine imposed for conviction for a class B felony;
 - 3. Three years shall be added to the maximum term of imprisonment and \$11,000 shall be added to the maximum fine for conviction of a class C felony;
 - 4. One year shall be added to the maximum term of imprisonment and \$2,200 shall be added to the maximum fine for conviction of a misdemeanor; and
 - 5. The maximum term of imprisonment and maximum fines prescribed for misdemeanors under the Hawaii Penal Code shall apply to convictions of a petty misdemeanor.

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- o) The director shall adjust penalties pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, section 701 of P.L. 114-74, by December 15, 2018, and each year thereafter. The director shall adjust penalty levels using the guidance of the Office of Management and Budget and issue the new penalties by December 15 of each year. The new penalties shall take effect the following January 15 of each year. The director shall submit a report to the legislature no later than twenty days prior to the convening of each regular session on the penalty adjustments.

SECTION 2; This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3; Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4; This Act shall take effect on January 1, 2018.

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Contact Information

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(f) (808) 586-9104

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<http://labor.hawaii.gov/hiosh/>

Email

DLIR.HIOSH@hawaii.gov

HIOSH Complaint Information

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HIOSH Consultation & Training

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