

**FY 2021 Comprehensive
Federal Annual Monitoring Evaluation (FAME) Report**

**Hawaii Department of Labor and Industrial Relations
Occupational Safety and Health Division
(HIOSH)**



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I. Executive Summary

The purpose of this report is to assess Hawaii's Occupational Safety and Health (HIOSH) program performance for Fiscal Year (FY) 2021. The criteria used to measure performance included those mandated by the Occupational Safety and Health Administration (OSHA) and progress toward resolving outstanding FY 2020 Follow-Up Federal Annual Monitoring Evaluation (FAME) findings. HIOSH's achievement of the annual performance plan and five-year strategic goals is addressed in its FY 2021 State OSHA Annual Report (SOAR). As part of this comprehensive evaluation, OSHA conducted an on-site program review including workplace retaliation, enforcement, and state and local agency consultation case files.

FY 2021 was the third consecutive year that HIOSH did not meet its projected inspection goal. Only 529 of the projected 700 inspections were conducted and the average number of serious, willful, repeat, and unclassified (SWRU) violations cited per inspection also slightly decreased for the second consecutive year. Although the Coronavirus Disease 2019 (COVID-19) pandemic continued to affect the activities HIOSH conducted in FY 2021, the Governor's hiring freeze and budget restrictions coupled with difficulties in hiring and retaining compliance staff were key factors that prevented filling required vacant positions and limited the number of qualified staff available to conduct inspections. Despite these challenges, HIOSH was successful in obtaining multiple retaliation case file settlements with a merit rate of 42%, well above the federal review level range of 16% to 24%. Also, the average lapse time for health inspections was at 44.44 days and below the lowest range of the federal review level.

A total of six findings and three observations were identified. The six new findings are related to staffing, average number of days to initiate complaint investigations, union or other labor representative participation during inspections, standards adoption, federal program change (FPC) adoption, and documentation that whistleblower protection complainants were advised of the consequences of withdrawing complaints. The State Plan made progress to complete three of the five findings from the FY 2020 Follow-up FAME, two findings were converted to observations, and one observation was closed. Appendix A describes the new and continued findings and recommendations. Appendix B describes observations subject to continued monitoring and the related federal monitoring plans. 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 under the Department of Labor and Industrial Relations (DLIR). Ms. Anne E. Perreira-Eustaquio, Director of DLIR, is the State Plan Designee, and 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 federal base award to fund the 23(g) program was \$1,584,700. Hawaii matched the federal funds, bringing the total award to \$3,169,400. An amendment increased the federal share of the grant by \$28,000; however, the state was not able to match the increase. Due to state budget shortfalls, \$125,000 in federal and \$125,000 in state matched funds were de-obligated, decreasing the total award to \$2,919,400. The total unmatched funds of \$147,200 included a reclamation base award increase from FY 2020 of \$119,200. Additionally, HIOSH lapsed \$20,460.74 in federal funds. Due to the impact of the COVID-19 pandemic, Hawaii encountered challenges in closing the FY 2021 23(g) grant and an extension for the closeout financial report was approved to February 25, 2022.

The grant provided funding for full-time staff comprised of four managers, nine occupational safety and health compliance officers, nine environmental health specialists, one compliance assistance specialist, one part-time state and local government agency safety and health consultant, four clerical staff members, and one program specialist.

State and local government agency consultation is provided under the 23(g) grant and private sector consultation is provided under the 21(d) cooperative agreement. This report only covers services provided to state and local government. The private sector consultation program is evaluated separately in the FY 2021 Regional Annual Consultation Evaluation Report (RACER).

B. New Issues

A sensitive Complaint About State Program Administration (CASPA) raised allegations that HIOSH did not follow its training directive for compliance personnel due to COVID-19 restrictions. The CASPA is explained in greater detail in Section III.B.8.

The difficulties in hiring and retaining qualified compliance staff continued to be an issue. A letter was sent to the State Plan Designee on July 30, 2021, outlining OSHA's increasing concerns with ongoing vacant positions. Required positions remained vacant for extended periods of time with no actions taken to fill the vacancies. OSHA

will continue to monitor and work with HIOSH leadership to address challenges they are experiencing with hiring and retention of staff.

I. Assessment of State Plan Progress and Performance

A. Data and Methodology

OSHA established a two-year cycle for the FAME process. FY 2021 is a comprehensive year and as such, OSHA was required to conduct an on-site evaluation and case file review. A seven-person OSHA team, which included a whistleblower protection investigator, was assembled to conduct a full on-site case file review. The case file review was conducted at the HIOSH office during the timeframe of December 6-10, 2021. A total of 60 safety and health case files were reviewed. The safety and health inspection files were randomly selected from closed inspections conducted during the evaluation period of October 1, 2020 through September 30, 2021. The selected population included:

- Four (4) fatality case files
- Forty-four (44) programmed case files
- Twelve (12) unprogrammed case files

A total of 63 retaliation investigations were completed and 51 complaints were administratively closed in FY 2021. A random selection of a statistically significant number of completed and administratively closed investigation files were chosen for review. The percentage that each category comprised of the total completed cases was determined and applied to the sample size. A total of 37 case files were selected as follows:

- Two (2) withdrawn
- Five (5) dismissed
- Four (4) settled
- One (1) settled other
- Twenty-five (25) administratively closed

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

- State Activity Mandated Measures Report (SAMM, Appendix D dated 11/08/2021)
- State Information Report (SIR, dated 11/08/2021)
- Mandated Activities Report for Consultation (MARC, dated 12/06/2021)
- State OSHA Annual Report (SOAR)
- State Plan Annual Performance Plan
- FY 2021 State Plan 23(g) Grant Application
- Quarterly monitoring meetings between OSHA and the State Plan
- Web Integrated Management Information System (WebIMIS)

- Full case file review
- OSHA Information System (OIS)
- Complaint About State Program Administration (CASPA) investigation
- State Plan Application (SPA) Portal

Each SAMM has an agreed-upon Further Review Level (FRL), which can be a single number or a range of numbers above and below the national average. State Plan SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan's FY 2021 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 performance in meeting mandated activities and program elements. HIOSH's progress in achieving the five-year strategic and annual performance plan goals is addressed in its FY 2021 SOAR.

1. Program Administration

a) Training

Due to the COVID-19 pandemic, all in-person training for FY 2021 was cancelled, postponed, or transitioned to a virtual platform. Staff continued to view provided webinars through OSHA's eLearning system. However, attendance of mandatory training courses through the OSHA Training Institute (OTI) was limited to one person attending the 1001 – Initial Compliance course, two people attending the 1051 – Introduction to Safety Standards for Safety Officers course, and five people attending the 1311 – Investigative Interviewing Techniques course.

b) OSHA Information System

There was no significant data errors or trends identified in the enforcement and whistleblower protection reports reviewed during the on-site evaluation. 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 citations as detailed in SAMM 11.

c) State Internal Evaluation Program 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 and senior compliance officers conducted up to three on-the-job evaluations for occupational safety and health compliance officer (OSHCO) trainees. The Administration and Technical Support branch also selected random case files for each OSHCO, documented deficiencies with references, and provided findings to the managers. As a result of this program, the on-site review revealed that case files were well documented with all apparent violations cited.

d) Staffing

The difficulties in hiring and retaining qualified compliance staff continued to be an issue. HIOSH was not able to fill vacancies for most of the year due to the Governor's initiated COVID-19 pandemic hiring freeze and budget restrictions. At the end of FY 2021, HIOSH had vacant positions for one compliance assistance specialist (CAS), one office assistant, four health compliance inspectors, and four safety compliance inspectors. A letter was sent to the State Plan Designee on July 30, 2021, outlining OSHA's increasing concerns with ongoing vacant positions as staffing affects many aspects of the program.

Finding FY 2021-01: Required positions remained vacant for extended periods of time with no actions taken to fill the vacancies.

Recommendation FY 2021-01: HIOSH should work with state hiring officials to fill required vacant positions.

On a positive note, the vacant Safety Branch Manager and Health Branch Manager positions were filled with internal candidates. The CAS position was reclassified to a higher grade level to attract better qualified candidates to apply for the position.

2. Enforcement

A total of 529 of the projected 700 inspections were conducted: 328 safety and 201 health (SAMM 7). The acceptable FRL range was 332.5 to 367.5 for safety inspections and 332.5 to 367.5 for health inspections. The lower-than-planned inspections were most likely due to two contributing factors. The first and probably most significant factor was the Governor's initiated COVID-19 pandemic hiring freeze that prevented filling required vacant positions and limiting the number of qualified staff available to conduct inspections. The second factor was due to the COVID-19 pandemic; many establishments were closed or had limited operations. Due to these circumstances, this result does not rise to the level of an observation but will continue to be discussed at quarterly meetings.

a) Complaints

HIOSH made a significant improvement in the complaint inspection response time. The FRL for the average number of workdays to initiate complaint inspections was seven days. HIOSH initiated complaint inspections within an average of 3.03 days (SAMM 1A), down from 9.06 days in FY 2020, which is substantially lower than the FRL of seven days and is not a cause for concern.

The FRL for the average number of workdays to initiate complaint investigations was two days. HIOSH's average number of workdays to initiate complaint investigations increased from an average of 1.17 days in FY 2020 to 4.06 days in FY 2021 (SAMM 2A) which exceeds the FRL of 2 days and warrants a closer look at the situation.

Finding FY 2021-02: The average number of days to initiate complaint investigations (SAMM 2A) was above the negotiated FRL of two days.

Recommendation FY 2021-02: HIOSH should develop a system to ensure complaint investigations are initiated timely.

There were no denials of entry experienced (SAMM 4). HIOSH responded to all imminent danger complaints and referrals within one workday (SAMM 3).

b) Fatalities

All six reported fatality inspections were opened within one day (SAMM 10). The four fatality inspections that were closed in FY 2021 were reviewed during the on-site evaluation. The case files contained thorough documentation of the investigations and violations with the exception of communication with the family of the victims. While there was evidence of initial communication with the family of the victims, there was no follow-up on the status of the investigation. This was an improvement compared to the FY 2019 on-site review when there was no documented communication. Three of four (75%) closure letters were sent a month or more after the cases were closed. Finding FY 2020-01 was converted to an observation.

Observation FY 2021-OB-01 (FY 2020-01): There was no evidence in the four closed fatality investigation files reviewed that the family of victims were contacted during the investigation, and three of four (75%) closure letters were not sent within the timeline established in the HIOSH Field Operations Manual (FOM).

Federal Monitoring Plan FY 2021-OB-01 (FY 2020-01): During next year's FAME, a limited scope review of selected case files will be conducted, and OSHA will monitor whether HIOSH is following its established timeline in the FOM.

c) Targeting and Programmed Inspection

Percent of enforcement presence (SAMM 17) describes the number of safety and health inspections conducted compared to the number of employer establishments in the state. The State Plan had a percent enforcement presence of 1.99%, which was higher than the FRL range of 0.74% to 1.24%. The high enforcement presence indicates that the State Plan is reaching more employers with enforcement activity than the national average.

Of the 529 inspections conducted, 366 (69%) were programmed inspections. Workers' compensation data was used to select the industries with the highest number of injury and illnesses for programmed inspections. National Emphasis Programs were not used.

Documentation on the methodology for effectively targeting high hazard industries was not completed, making it difficult to evaluate the success of the program toward reaching high hazard industries. Workers' compensation data is only one type of indicator that can be used but is not always indicative of hazardousness. Targeting should include identifying high hazard industries (such as machine shops, warehousing, or healthcare facilities), high hazard occupations (such as roofers, landscapers, or

electricians), or hazardous exposures (such as silica, lead, or hexavalent chromium) and developing emphasis programs. It is also important to have a documented program in the event employers challenged entry and to ensure resources are prioritized to protect workers in high-risk industries. HIOSH has completed a draft policy for effectively targeting high hazard industries and is working through the review process. *Finding FY 2020-02* was converted to an observation.

Observation FY 2021-OB-02 (FY 2020-02): Policies and procedures for targeting high hazard industries for inspections were not documented.

Federal Monitoring Plan FY 2021-OB-02 (FY 2020-02): OSHA will monitor progress quarterly to ensure the policy and procedures for targeting high hazard industries is completed.

d) Citations and Penalties

Case files reviewed during the on-site evaluation were well organized and the documentation adequately supported the violations cited.

The in-compliance rate of health inspections was 36.92% (SAMM 9) and is within the FRL. The FRL is 32.51% to 48.77% for health inspections based on the three-year national average of 40.64%. The in-compliance rate of safety inspections was 29.94% (SAMM 9) and is within the FRL of 25.32% to 37.98% based on the three-year national average of 31.65%.

The average number of serious, willful, repeat, and unclassified (SWRU) violations cited per inspection decreased from 1.39 in FY 2020 to 1.34 in FY 2021 (SAMM 5) and is below the FRL. The FRL for the average number of SWRU violations is +/- 20% of a three-year national average of 1.78 violations, which equaled a range of 1.42 to 2.14. The average number of other-than-serious violations increased from 0.94 to 1.07 (SAMM 5) and was within the acceptable range of 0.73 to 1.09. The lower-than-average SWRU violations per inspection was most likely due to two contributing factors. The first and probably most significant factor was the hiring and retention of staff. The second factor was establishments open for inspection were operating at a reduced capacity due to the COVID-19 pandemic. Due to these circumstances, this result does not rise to the level of an observation but will continue to be discussed at quarterly meetings.

The average current penalty per serious violation in private sector (1 to greater than 250 workers) was \$2,966.22 (SAMM 8), and within the FRL range of \$2,325.28 to \$3,875.46. Table 1 shows the average current penalty per serious violation in the private sector based on the number of workers controlled by an establishment. HIOSH's average current penalty of \$8,672.81 in the private sector for 250+ workers was above the FRL. This is a positive indication that HIOSH is developing inspection files that support penalty retention.

Table 1
Average Current Serious Penalty in Private Sector (SAMM 8)

Number of Workers	HIOSH FY 2021	3-Year National Average	FRL
1-250+	\$2,966.22	\$3,100.37	\$2,325.28 to \$3,875.46
1-25	\$2,000.00	\$2,030.66	\$1,523.00 to \$2,538.33
26-100	\$4,187.61	\$3,632.26	\$2,724.20 to \$4,540.33
101-250	\$4,746.38	\$5,320.16	\$3,990.12 to \$6,650.20
250+	\$8,672.81	\$6,575.70	\$4,931.78 to \$8,219.63

The application of good faith for penalty reductions significantly improved from the FY 2019 case file review. Of the 32 case files reviewed that were eligible for good faith penalty reductions, 30 (93.7%) were applied correctly and adequately justified. *Finding FY 2020-03* was completed.

The average lapse time from the inspection to the issuance of citations for safety inspections was 43.60 days (SAMM 11), which was inside the FRL range of 41.94 to 62.9 days. The average lapse time of 44.44 days for health inspections was below the FRL range of 52.88 to 79.32 days and is a positive indicator.

e) Abatement

HIOSH established a goal to ensure 100% abatement of serious violations and OSHCOs verify 90% of them within 20 days of the abatement date. According to OIS data, of the 545 issued serious violations, 97.1% were abated within 20 days of the abatement due date and 88.9% were verified within 20 days of the abatement due date. Of the 60 inspection case files reviewed, 37 (62%) had citations. All 37 files contained corrective action documentation to show that the employer corrected the hazards.

f) Worker and Union Involvement

The percent of initial inspections with worker walk around representation or worker interviews was 100% (SAMM 13). Based on the case file review, the number of workers interviewed during the inspections was appropriate based on the complexity of the inspections. 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. Worker interviews were well documented, and copies were maintained in 59 of 60 (98%) inspection files reviewed. The one inspection without documented interviews had vague notes that could be from interviews and was an in-compliance programmed-related inspection.

Of the 16 case files of unionized facilities reviewed, four of 16 (25%) did not contain evidence that union or other labor representatives were contacted to participate in the opening and closing conferences or walk around inspections. 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.

Observation FY 2021-OB-03: In four of 16 (25%) case files, there was no evidence that union or other labor representatives were contacted to participate in the opening and closing conferences or walk around inspections.

Federal Monitoring Plan FY 2021-OB-03: HIOSH should ensure that union or other labor representatives are invited to participate during inspections and the contact documented in the file.

3. Review Procedures

a) Informal Conferences

Informal settlement provisions provided employers the right of review, and workers or their representatives the opportunity to participate in the proceedings. The penalty retention rate was 69.26% (SAMM 12) of the assessed penalties, which is within the FRL range of 58.72% to 79.44%. Informal conferences were requested and held for 24 of 37 (65%) case files reviewed with citations. Of the 24 case files reviewed with informal conferences, only one (4%) was not documented to provide the rationale for modifications made to the citations. *Finding FY 2020-04* was completed.

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 by the Attorney General, 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.

For FY 2021, 8.05% (SIR 5B) of violations were vacated after a contest was filed, below the national average of 14.48%, and 3.75% (SIR 6B) of violations were reclassified after the contest, below the national average of 12.17%. The penalty retention rate following a contest was 82.56% (SIR 7B) for HIOSH, versus the national average of 63.3%. These are positive indicators that citations were upheld at the formal review level.

4. Standards and Federal Program Change (FPC) Adoption

a) Standards Adoption

Prior to holding a public hearing, HIOSH management reviewed and edited standards in conjunction with the Designee, the Attorney General's Office, and the Department of Business, Economic Development and 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 final 10 days after filing.

Although significant improvement has been made in the standards adoption process, the promulgation and effective dates continued to lag past the six months allowed for adoption of standards (Table 2). HIOSH has written the five outstanding standards and

have started the procedure to go through the Proposed Changes to Hawaii Administrative Rules process for adoption.

Table 2
Status of FY 2021 Federal Standards Adoption Required
(May include any delinquent standards from earlier fiscal years)

Standard	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
Final Rule on Crane Operator Certification Requirements 29 CFR Part 1926 (11/9/2018)	1/9/2019	7/15/2019	Yes	Yes	5/9/2019	Not yet adopted
Final Rule on the Standards Improvement Project – Phase IV 1904, 1910, 1915, 1926 (5/14/2019)	7/13/2019	7/15/2019	Yes	Yes	11/14/2019	Not yet adopted
29 CFR Part 1903 Final Rule on the Implementation of the 2020 Annual Adjustment to Civil Penalties for Inflation (1/10/2020)	3/15/2020	7/10/2017	Yes	Yes	7/15/2020	1/15/2020
29 CFR 1910 Final Rule on the Beryllium Standard for General Industry (7/14/2020)	9/14/2020	4/5/2021	Yes	Yes	1/14/2021	Not yet adopted
29 CFR 1915, 1926 Final Rule on the Beryllium Standard for Construction and Shipyards (8/31/2020)	10/30/2020	4/5/2021	Yes	Yes	2/27/2021	Not yet adopted
29 CFR Part 1926 Final Rule on Cranes and Derricks in Construction: Railroad Roadway Work (9/15/2020)	11/14/2020	4/5/2021	Yes	Yes	3/14/2021	Not yet adopted
29 CFR Part 1903 Final Rule on the Implementation of the 2021 Annual Adjustment to Civil Penalties for Inflation (1/15/2021)	3/16/2021	1/27/2021	Yes	Yes	7/14/2021	1/15/2021

Standard	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
29 CFR 1910 Occupational Exposure to COVID-19; Emergency Temporary Standard (6/21/2021)	7/6/2021	7/6/2021	Yes	No	7/21/2021	7/25/2021

Finding FY 2021-03: Five of eight OSHA standards were not adopted by the adoption due date.

Recommendation FY 2021-03: HIOSH should ensure the standards are adopted by the due date.

Table 3
Status of FY 2021 Standards Adoption Encouraged
(May include any delinquent standards from earlier fiscal years)

Standard	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
29 CFR Part 1913 Final Rule on the Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records (7/30/2020)	9/28/2020	4/5/2021	No	Not Applicable	Not Applicable	Not Applicable

b) Federal Program Change (FPC) Adoption

Due to staffing shortfalls, the program specialist tasked with drafting the responses to federal changes was assigned to other duties for much of the year. The plan change supplements (PCSs) are in progress for the three outstanding FPCs where equivalency is required (Table 5) and for two FPCs where adoption is encouraged (Table 6).

Table 4
Status of FY 2021 Federal Program Change (FPC) Adoption Required
(May include any delinquent FPCs from earlier fiscal years)

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
CPL 03-00-022 Amputations in Manufacturing Industries NEP (12/10/2019)	2/10/2020	3/3/2020	Yes	Yes	6/10/2020	3/15/2021

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
CPL 03-00-023 Respirable Crystalline Silica NEP (2/4/2020)	4/4/2020	3/3/2020	Yes	Yes	8/4/2020	3/15/2021

Table 5
Status of FY 2021 Federal Program Change (FPC) Equivalency Required
(May include delinquent FPCs from earlier fiscal years)

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
CPL 02-00-164 Field Operations Manual (4/14/2020)	6/13/2020	4/5/2021	Yes	No	10/11/2020	Not yet adopted. Awaiting plan change supplement
CPL 02-02-080 Inspection Procedures for the Respirable Crystalline Silica Standards (6/25/2020)	8/24/2020	3/15/2021	Yes	Yes	12/22/2020	3/22/2021
CPL 02-01-062 Site-Specific Targeting (SST) (12/14/2020)	2/12/2021	8/16/2021	Yes	No	6/12/2021	10/1/2021 Awaiting plan change supplement
CSP 02-00-004 Consultation Policies and Procedures Manual (3/19/2021)	5/19/2021	4/5/2021	Yes	No	9/19/2021	Not yet adopted. Awaiting plan change supplement
DIR 2021-02 (CPL 02) Inspection Procedures for the COVID-19 Emergency Temporary Standard (6/28/2021)	7/13/2021	7/12/2021	Yes	Yes	7/28/2021	7/25/2021
CPL 02-00-165 Compliance Directive for the Excavation Standard, 29 CFR 1926, Subpart P (7/1/2021)	8/30/2021	8/16/2021	Yes	Yes	12/28/2021	1/1/2022
DIR 2021-03 (CPL 03) Revised National Emphasis Program – Coronavirus Disease 2019 (COVID-19) (7/7/2021)	7/22/2021	7/12/2021	Yes	Yes	8/7/2021	10/1/2021

Finding FY 2021-04: Requirements for adopting federal program changes were not completed within six months of the effective date of the directive or official issuance of the federal register notice.

Recommendation FY 2021-04: HIOSH should ensure they meet the requirements for response and adoption of OSHA’s federal program changes.

Table 6
Status of FY 2021 Federal Program Change (FPC) Adoption Encouraged
 (May include delinquent FPCs from earlier fiscal years)

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	State Plan Adoption Date
CSP 03-01-005 Voluntary Protection Programs Policies and Procedures Manual (1/30/2020)	3/30/2020	3/3/2020	Yes	Yes	Not yet adopted.
CPL 02-03-009 Electronic Case File System Procedures for the Whistleblower Protection Program (6/18/2020)	8/18/2020	8/24/2020	No	Not Applicable	Not Applicable
DIR 2021-01 (CPL-03) National Emphasis Program – Coronavirus Disease 2019 (COVID-19) (3/12/2021)	5/12/2021	5/7/2021	No	Not Applicable	Not Applicable
CPL 02-00-166 Communicating OSHA Fatality Inspection Procedures to a Victim’s Family (7/7/2021)	9/7/2021	8/16/2021	Yes	Yes	Not yet adopted.

5. Variances

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

6. State and Local Government Worker Program

Approximately 14% of Hawaii employees work in state and local government agencies, according to Bureau of Labor Statistics (BLS). HIOSH projected in the 23(g) grant to conduct 45 state and local government agency inspections, accounting for 6.43% of its projected inspections. According to the end of year SAMM 6 data, 55 of 529 inspections were conducted in state and local government agency establishments or 10.4% of the overall inspections conducted, exceeding the goal.

Of the 55 state and local government agency inspections, 35 were programmed and 20 were unprogrammed inspections. A total of 42 serious and 48 other-than-serious violations were identified and corrected with initial penalties totaling \$261,819.

7. Whistleblower Protection Program

Claims of workplace retaliation for reporting occupational safety and health issues are investigated by HIOSH. During FY 2021, the whistleblower protection program was staffed by one supervisor and one investigator who performs 50% compliance and 50% retaliation duties.

A total of 63 retaliation investigations were completed and 25 complaints were administratively closed in FY 2021. HIOSH completed 8% (SAMM 14) of its retaliation investigations within 90 days, which is an increase from 0% in FY 2020. The FRL is fixed at 100%, and the national average for retaliation investigations completed within 90 days was 27%. HIOSH's average number of calendar days to complete a retaliation investigation was 338 days (SAMM 16), a significant increase from 222 in FY 2020, but close to the national average to complete a retaliation investigation, which was 325 days.

Based on a case file review, HIOSH generally followed its policies and procedures in the Discrimination Investigation Manual (DIM) when conducting retaliation investigations. HIOSH was successful in obtaining multiple settlements, and HIOSH's merit rate was 42% (SAMM 15), which is well above the FRL range of 16% to 24%.

The on-site review of case files determined that there was documentation of complainants concurring with the administrative closing of their retaliation complaints in 24 of 25 (96%) cases and; therefore, *Finding FY 2020-05* was completed. There was also documentation that administrative closure letters were sent to complainants in 23 of 25 (92%) cases. Consequently, *Observation FY 2020-OB-01* was closed.

When a complainant voluntarily withdraws a complaint, the complainant shall be advised that they forfeit all rights to appeal or to object, and the case will not be reopened. There was no evidence in the cases reviewed of this advisement.

Finding FY 2021-05: In 100% (2 of 2) of retaliation cases withdrawn by the complainant, there was no documentation that HIOSH advised the complainant of the consequences of the withdrawal.

Recommendation FY 2021-05: HIOSH should ensure the case file has documentation when complainants are advised that by entering a withdrawal, they will be forfeiting all rights to appeal or to object, and the case will not be reopened.

Proper documentation in retaliation case files is important to ensure the totality of the case is recorded and understood by all parties conducting any type of review after the case has been completed. In a majority of case files reviewed, proper documentation was lacking. Examples include interview summaries, activity logs, evidence of review by a supervisor, or other documents required to be in the retaliation case file. It was noted that HIOSH plans to transition from physical case files to electronic case files, which will help to further improve successfully satisfying documentation requirements.

Observation FY 2021-OB-04: Retaliation case files lacked the required documentation such as interview summaries, activity logs, evidence of review by a supervisor, or other documents required to be in the retaliation case file.

Federal Monitoring Plan FY 2021-OB-04: OSHA will monitor HIOSH's procedures/steps to ensure all required documentation is included in retaliation case files during quarterly meetings with HIOSH.

8. Complaint About State Program Administration (CASPA)

There was one CASPA filed and reviewed in FY 2021. The sensitive CASPA HI 2021-01 alleged that HIOSH did not follow its directive TED 01-00-019 Mandatory Training Program for HIOSH Compliance Personnel in that compliance officers were not scheduled for mandatory courses timely. The OSHA investigation revealed that the HIOSH Administrator extended the time to complete mandatory courses because of the change from in-person to remote training due to the COVID-19 pandemic. Due to the time difference, HIOSH had concerns with security and the effectiveness of learning when classes started at 3:30 a.m. local time.

In addition, the HIOSH Administrator was authorized to extend the time to complete mandatory courses when circumstances warrant the extension. There were no findings for this CASPA, but concerns were raised with HIOSH delaying training for compliance staff until the OSHA Training Institute (OTI) resumes in-person training. Since the date for in-person training was postponed, HIOSH started to schedule compliance staff for the online OTI courses for FY 2022.

9. Voluntary Compliance Program

In FY 2021, there were no new applications for the HIOSH Voluntary Protection Program (VPP). There were three facilities that achieved VPP status, but one was listed as inactive in FY 2021 following two accidents and is pending follow up incident investigations to determine their continued status. A re-evaluation was conducted at one of the other two facilities and the site was approved to continue in the HIOSH VPP program.

Due to travel restrictions from the COVID-19 pandemic, HIOSH did not send participants to the Voluntary Protection Program Participant Association (VPPPA) Region IX Conference. HIOSH attended the VPPPA Safety National Symposium for 2021 remotely.

10. State and Local Government 23(g) On-site Consultation Program

Consultation services are provided to state and local government employers through the Consultation, Education, and Training Section. Consultation for the private sector is funded under Section 21(d) of the Occupational Safety and Health (OSH) Act and is evaluated separately. This section covers consultation services provided solely to state or local government agencies that are funded under Section 23(g) of the OSH Act.

Five of the projected six (83.3%) initial consultation visits were conducted in state and local government workplaces. All five (100%) were in high hazard industries, exceeding the goal of 90% (MARC 1). All five (100%) visits were to establishments with 250 or less employees (MARC 2A) and two (40%) were to establishments with less than 500 (MARC 2B). The consultant conferred with employees 100% of the time (MARC 3).

During this evaluation period, 20 serious hazards were identified, and all (100%) corrected timely. Six were corrected on-site, 13 within the original timeframe, and one within 14 days of the latest correction due date (MARC 4A and 4B). No serious hazards were referred to enforcement (MARC 4C). A total of 19 (95%) serious hazards were corrected in the original timeframe or onsite, exceeding the goal of 65% (MARC 4D). There were no uncorrected serious hazards with correction dates 90 days past due (MARC 5).

An off-site review was conducted of the state and local government consultation program on December 15-21, 2020. The purpose of the visit was to assess the quality of the program's services and its internal quality assurance program in accordance with Consultation Policies and Procedures Manual (CSP 02-00-003) and 29 Code of Federal Regulations (CFR) Part 1908 – Consultation Agreements.

Overall, program requirements were met. Of the four public sector cases files reviewed, two visits had union representation at the site and did not contain evidence that the list of hazards were sent to the union. Details are available in the FY 2021 RACER.

Appendix A – New and Continued Findings and Recommendations

FY 2021 Hawaii Occupational Safety and Health Comprehensive FAME Report

FY 2021-#	Finding	Recommendation	FY 2020-# or FY 2020-OB-#
FY 2021-01	Required positions remained vacant for extended periods of time with no actions taken to fill the vacancies.	HIOSH should work with state hiring officials to fill required vacant positions.	Not Applicable
FY 2021-02	The average number of days to initiate complaint investigations (SMM 2A) was above the negotiated FRL of two days.	HIOSH should develop a system to ensure complaint investigations are initiated timely.	Not Applicable
FY 2021-03	Five of eight OSHA standards were not adopted by the adoption due date.	HIOSH should ensure the standards are adopted by the due date.	Not Applicable
FY 2021-04	Requirements for adopting federal program changes were not completed within six months of the effective date of the directive or official issuance of the federal register notice.	HIOSH should ensure they meet the requirements for response and adoption of OSHA's federal program changes.	Not Applicable
FY 2021-05	In 100% (2 of 2) of retaliation cases withdrawn by the complainant, there was no documentation that HIOSH advised the complainant of the consequences of the withdrawal.	HIOSH should ensure the case file has documentation when complainants are advised that by entering a withdrawal, they will be forfeiting all rights to appeal or to object, and the case will not be reopened.	Not Applicable

Appendix B – Observations Subject to New and Continued Monitoring

FY 2021 Hawaii Occupational Safety and Health Comprehensive FAME Report

Observation # FY 2021-OB-#	Observation# FY 2020-OB-# or FY 2020-#	Observation	Federal Monitoring Plan	Current Status
FY 2021-OB-01	FY 2020-01	There was no evidence in the four closed fatality investigation files reviewed that the family of victims were contacted during the investigation, and three of four (75%) closure letters were not sent within the timeline established in the HIOSH Field Operations Manual (FOM).	During next year’s FAME, a limited scope review of selected case files will be conducted, and OSHA will monitor whether HIOSH is following its established timeline in the FOM.	New
FY 2021-OB-02	FY 2020-02	Policies and procedures for targeting high hazard industries for inspections were not documented.	OSHA will monitor progress quarterly to ensure the policy and procedures for targeting high hazard industries is completed.	New
FY 2021-OB-03	Not Applicable	Retaliation case files lacked the required documentation such as interview summaries, activity logs, evidence of review by a supervisor, or other documents required to be in the retaliation case file.	OSHA will monitor HIOSH’s procedures/steps to ensure all required documentation is included in retaliation case files during quarterly meetings with HIOSH.	New
FY 2021-OB-04	Not Applicable	In four of 16 (25%) case files, there was no evidence that union or other labor representatives were contacted to participate in the opening and closing conferences or walk around inspections.	HIOSH should ensure that union or other labor representatives are invited to participate during inspections and the contact documented in the file.	New
Not Applicable	FY 2020-OB-01	In FY 2019, in 17% (six of 36) of administratively closed retaliation cases reviewed, there was no	This observation will be a focus of next year’s on-site case file review	Closed

		evidence that administrative closure letters were sent to complainants.	during the FY 2021 comprehensive FAME.	
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Appendix C – Status of FY 2020 Findings and Recommendations

FY 2021 Hawaii Occupational Safety and Health Comprehensive FAME Report

FY 2020-#	Finding	Recommendation	State Plan Corrective Action	Completion Date (if Applicable)	Current Status (and Date if Item is Not Completed)
FY 2020-01	In FY 2019, there was no evidence in the two fatality investigation files reviewed that the family of victims were contacted at any stage of the fatality investigation.	HIOSH should ensure established procedures are followed and that contact with families of victims are documented in case files.	All involved staff was retrained on the contact requirements for fatality initial, citation and closing letters. Case correspondence log includes an initial and date reminder for all fatality/catastrophe letters and a comment section for cases to explain why no letter is sent.	Not Applicable	Converted to observation
FY 2020-02	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.	An enforcement directive was created and is in the final review stages with DLIR attorneys and HIOSH managers before release.	Not Applicable	Converted to observation
FY 2020-03	In FY 2019, good faith penalty reductions were not applied and adequately justified in 46% (13 of the 28) of case files reviewed eligible for good faith penalty reductions.	HIOSH should ensure established procedures are followed and justifications are accurately documented in case files.	Managers and inspectors were reminded of the need to consistently comply with the procedure. Staff was retrained on the requirements of good faith reductions. A penalty worksheet was reformatted in January 2020 to highlight/facilitate good faith reduction.	July 13, 2020	Completed

FY 2020-#	Finding	Recommendation	State Plan Corrective Action	Completion Date (if Applicable)	Current Status (and Date if Item is Not Completed)
FY 2020-04	In FY 2019, in eight of 21(38%) of case files reviewed with citations, the rationale for modifications made to citations during informal conferences was not adequately documented.	HIOSH should ensure established procedures are followed and rationales are accurately documented in case files.	To ensure consistent completion of justification on future cases, a section for modification justification was added on the back of the informal conference sign in sheet to facilitate and ensure inclusion and accessibility in the case files.	July 1, 2020	Completed
FY 2020-05	In FY 2019, in 56% (20 of 36) of administratively closed retaliation cases reviewed, there was no documentation from complainants concurring with the administrative closing of their retaliation complaint nor documentation indicating complainants were aware of their appeal rights.	HIOSH should ensure there is documentation indicating complainants accepted the administrative closure and issue a Determination Notice and Order (DNO) with appeal rights if complainants do not accept administrative closure.	HIOSH added specific language to address complainants' acceptance of the administrative closure. For non-acceptance, HIOSH is complying with issuance of DNO with first DNO letter mailed out on June 4, 2020.	April 1, 2020	Completed

Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report

FY 2021 Hawaii Occupational Safety and Health Comprehensive FAME Report

U.S. Department of Labor

Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
1a	Average number of work days to initiate complaint inspections (state formula)	3.03	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)	1.23	Not Applicable	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)	4.06	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)	2.53	Not Applicable	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.

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
5a	Average number of violations per inspection with violations by violation type (SWRU)	1.34	+/- 20% of 1.78	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.42 to 2.14 for SWRU.
5b	Average number of violations per inspection with violations by violation type (other)	1.07	+/- 20% of 0.91	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.73 to 1.09 for OTS.
6	Percent of total inspections in state and local government workplaces	10.40%	+/- 5% of 6.43%	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 6.11% to 6.75%.
7a	Planned v. actual inspections (safety)	328	+/- 5% of 350	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 332.50 to 367.50 for safety.

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
7b	Planned v. actual inspections (health)	201	+/- 5% of 350	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 332.50 to 367.50 for health.
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$2,966.22	+/- 25% of \$3,100.37	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,325.28 to \$3,875.46.
8a	Average current serious penalty in private sector (1-25 workers)	\$2,000.00	+/- 25% of \$2,030.66	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$1,523.00 to \$2,538.33.
8b	Average current serious penalty in private sector (26-100 workers)	\$4,187.61	+/- 25% of \$3,632.26	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,724.20 to \$4,540.33.

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
8c	Average current serious penalty in private sector (101-250 workers)	\$4,746.38	+/- 25% of \$5,320.16	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$3,990.12 to \$6,650.20.
8d	Average current serious penalty in private sector (greater than 250 workers)	\$8,672.81	+/- 25% of \$6,575.70	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$4,931.78 to \$8,219.63.
9a	Percent in compliance (safety)	29.94%	+/- 20% of 31.65%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.32% to 37.98% for safety.
9b	Percent in compliance (health)	36.92%	+/- 20% of 40.64%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 32.51% to 48.77% for health.
10	Percent of work-related fatalities responded to in one workday	100%	100%	The further review level is fixed for all State Plans.

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
11a	Average lapse time (safety)	43.60	+/- 20% of 52.42	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 41.94 to 62.90 for safety.
11b	Average lapse time (health)	44.44	+/- 20% of 66.10	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 52.88 to 79.32 for health.
12	Percent penalty retained	69.26%	+/- 15% of 69.08%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 58.72% to 79.44%.
13	Percent of initial inspections with worker walk-around representation or worker interview	100%	100%	The further review level is fixed for all State Plans.
14	Percent of 11(c) investigations completed within 90 days	8%	100%	The further review level is fixed for all State Plans.

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
15	Percent of 11(c) complaints that are meritorious	42%	+/- 20% of 20%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 16% to 24%.
16	Average number of calendar days to complete an 11(c) investigation	338	90	The further review level is fixed for all State Plans.
17	Percent of enforcement presence	1.99%	+/- 25% of 0.99%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.74% to 1.24%.