

FY 2003
HAWAII OCCUPATIONAL SAFETY
AND HEALTH PROGRAM



21(d) and 23(g)
Evaluation Report

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Prepared by:
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Executive Summary

This report contains OSHA's evaluation of the State's performance in enforcement, private and public sector consultation and training for the period of October 1, 2002 through September 30, 2003.

During this evaluation a new State Designee, Nelson B. Befitel, was named to the position of Director of the Department of Labor and Industrial Relations. Mr. Befitel has taken an active role in improving the Hawaii Division of Occupational Safety and Health (HIOSH) program. He is committed to improving safety for workers by working with all of Hawaii's stakeholders.

The HIOSH program has struggled for years to meet its commitments. This year under the direction of Mr. Befitel and his staff we have seen improvement in both the total number of inspections and consultation visits. HIOSH has formed alliances with industry and safety and health leaders in Hawaii and a pilot program to use Special Government Employees (SGEs) to enhance the consultation program has been implemented. There are several other changes under development which are designed to be beneficial to the people of Hawaii which will be reported during FY2004's evaluation.

The program's unique feature includes enforcement of a State standard requiring workplace specific safety and health programs. The 100% state funded Training and Assistance Fund that encouraged voluntary compliance with occupational safety and health standards and rules through training and consultation with Hawaii employers and employees was discontinued in June 2003 due to legislative changes.

Consistent with the Government Performance and Results Act (GPRA) and OSHA's requirements for State Plans, HIOSH developed a Five Year Strategic Plan (FY 2002-2006) similar to that of Federal OSHA. The plan commits the DLIR not only to the effective and efficient performance of the agency's occupational safety and health activities, but also to certain levels of reduction in the injury and illness rates of employers and industries targeted. Outcomes will be measured against the Bureau of Labor Statistics (BLS) Annual Survey on Occupational Injuries and Illnesses.

HIOSH has had some difficulty in identifying high hazard jobsites. It is suggested that HIOSH re-examine their targeting efforts and focus on active jobsites where hazards are most likely to exist and allocate resources to conduct enforcement and outreach and training activities to achieve their overall goal of reducing injury and illness. Also HIOSH needs to examine the low rate of identification of hazards in the construction industry to determine if compliance officers need further training.

In fiscal year 2003, OSHA placed restrictions on Hawaii's grant indicating the goals proposed would not have an impact on injuries and illnesses. As a result, the state agreed to change its goals.

During FY03, HIOSH approved the Chevron Hawaii-Refinery for participation in the Hawaii Voluntary Protection Program (VPP) which is similar to OSHA's STAR exemption program. In addition the VPP team conducted an evaluation of Frito Lay and reviewed an application of a major construction company, Dick Pacific.

Hawaii adopted a recognition and exemption program similar to OSHA's Safety and Health Achievement Recognition Program (SHARP). Subsequently they submitted a separate program for non-fixed worksites and a Pre-SHARP program. HIOSH has implemented both programs and is awaiting Federal approval of final documents.

Areas of Effective Performance

Hawaii performed effectively in most program areas.

PRIVATE SECTOR ENFORMCENT

- responding promptly to complaints
- obtaining entry to conduct inspections when entry was denied
- response to imminent complaints or referrals classified as imminent danger
- citation lapse time
- abatement verification
- sustaining violations and penalties in informal conferences and when formally contested

PRIVATE SECTOR CONSULTATION

Hawaii's' private sector consultation program results are considered satisfactory in prioritizing visits to small workplaces in high hazard industries with less than 250 employees.

BUDGET

The State met its matching funding obligation for the 23(g) and 21(d) programs budget. In FY 2003, the State met the required level of Federal matching funds and provided 56% of the 23(g) program's funding (\$3,694,000) and 10% of the 21(d) program's funding (\$505,493).

Areas of Improvement

The State's performance in the following areas showed improvement from the last evaluation. OSHA commends the State for its efforts and encourages it to continue to work toward achieving program objectives.

PLANNED VS. ACTUAL INSPECTIONS

The State is to be commended for their efforts in increasing their number of private sector compliance inspections. They were 1 inspection short of their projected goal of 1000. This is much better than two years ago when inspections had dropped to 485.

DISCRIMINATION

Lapse time in processing discriminations complaints improved. During the last evaluation period, 26% (5/19) of Hawaii's discrimination investigations took more than 90 days to investigate and close. During this evaluation period HIOSH investigated 90% (17/19) of their cases in a timely fashion.

PRIVATE SECTOR CONSULTATION

Historically Hawaii's 21(d) program goals in terms of number of consultation visits have been relatively low compared to those of other consultation programs and OSHA has raised this concern over the last several evaluations. For FY 2003, the State officials are to be commended for their efforts in increasing the level of consultation productivity. HIOSH conducted 253 consultation visits which exceeded its goal of 245.

Performance has improved in ensuring that abatement evidence is specific and timely for all hazards classified as serious. However, there has been a problem in assuring hazards are corrected. The Consultation Branch must track correction due dates and ensure abatement evidence is specific.

HIOSH consultants must ensure they speak to employees as well as management as part of the consultative process during all visits.

Areas of Concern

It is recommended that HIOSH focus its attention in the following areas:

IDENTIFICATION OF HAZARDS

While the overall compliance program is satisfactory, attention is needed in the areas of programmed inspections with violations. Data indicates that violations are found in less than half of all programmed inspections. Hawaii needs to address this by focusing their resources on high hazard employers where hazards are most likely to exist.

STANDARDS AND RULEMAKING

HIOSH needs to improve lapse time in the adoption of standards in response to Federal program changes. They must meet the six-month statutory period. This has been an issue over the past several years which needs to be solved.

PUBLIC SECTOR CONSULTATION

Hawaii's performance is unsatisfactory for verifying abatement for serious hazards in a timely manner. HIOSH must address the potential for uncorrected hazards and make certain to obtain closure on all open serious hazards. If hazards are not corrected they must be referred to enforcement. This is also a problem with private sector consultation to a much lesser extent.

INTERNAL QUALITY ASSURANCE

Hawaii did not meet its commitment. The program manger should conduct one accompanied visit each year for every consultant.

STAFFING

Although Staffing benchmarks for enforcement and consultation were met, HIOSH needs to fill all vacancies with qualified people as soon as possible. Turnover for staff has been a major factor in the HIOSH program over the past several years.

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Introduction

The State of Hawaii's Occupational Safety and Health Plan was approved on December 28, 1973 under the provisions of Section 18(b) of the Occupational Safety and Health Act. This plan was certified on April 26, 1978 as having completed all specified developmental steps. On April 30, 1984, the State was granted final approval and concurrent federal enforcement authority was relinquished under Section 18(e) of the Act. The State plan covers all private and public sector employment in the State except maritime activities, Federal civilian employees, and land that is exclusive Federal jurisdiction.

The designated agency for the administration of this program is the Department of Labor and Industrial Relations (DLIR). Within the DLIR, the Hawaii Occupational Safety and Health Division (HIOSH) is responsible for both the enforcement and consultation programs. Mr. Nelson Befitel is the Director of the DLIR and the State Plan Designee.



During this evaluation period, the Administrator of HIOSH was Ms. Jennifer Shishido. The State's headquarters office is in Honolulu, the State capital, and district offices located in Maui, Kauai, Hilo and Kona.

The State provides a full range of enforcement, consultation and training programs under an Occupational Safety and Health Plan and Consultation Agreement funded by Federal OSHA under Section 23 (g) and 21(d) of the Occupational Safety and Health Act respectively.

The 23(g) grant covers private and public sector enforcement and public sector consultation. During this evaluation period the program's annual budget was \$3,694,000, of which 56% are State funds (\$2,059,500).

The 21(d) grant covers private sector consultation. This program consists of a program manager, seven consultants and three administrative support personnel. In Fiscal Year 2003 the program's annual budget was \$505,493 consisting of \$468,000 in Federal funds and \$48,614 in State funds.

As a result of legislative action, Hawaii's state initiated Training and Assistance Fund

sunset in June 2003. This 100% state funded program was financed from penalties assessed by HIOSH. It was used mainly for training workers.

Consistent with the Federal Government Performance and Results Act (GPRA), the State of Hawaii developed a Five Year Strategic Plan that commits the DLIR not only to the effective and efficient performance of the agency's occupational safety and health activities, but also to certain levels of reduction in the injury and illness rates of employers and industries targeted. Outcomes will be measured against the Bureau of Labor Statistics (BLS) Annual Survey on Occupational Injuries and Illnesses.

The goals of the FY 2002-2006 Strategic Plan are to be incrementally achieved through implementation of annual performance plan goals. In fiscal year 2003, OSHA placed restrictions on Hawaii's grant indicating the goals proposed would not have an impact on injuries and illnesses. The State has indicated that the goals will be changed for 2004.

This report contains OSHA's evaluation of the State's performance for the period of October 1, 2002 through September 30, 2003 focusing on major accomplishments, new legislative or program initiatives, activities and other program areas. The first part notes HIOSH's progress and activities in implementing their FY 2003 Annual Performance Plan. OSHA's assessment in this part is largely based on the State's input. Part two of this report addresses the State's compliance with program requirements contained in 29 CFR 1902.3 "Criteria for State Plans", 29 CFR 1902.4 State Plan "Indices of Effectiveness", 29 CFR 1908 and OSHA Instruction TED 3.6.

Information and data referenced in this report are derived from Computerized State Activity Mandated Measures (SAMMs), State Indicator Report (SIR), Private and Public Sector Mandated Activities Reports for Consultation (MARC), Hawaii's FY 2003 State OSHA Annual Report (SOAR) and Consultation Annual Project Report (CAPR), FY03 23(g) and 21(d) Grants, other Integrated Management Information System (IMIS) reports, State policies and procedures, and discussions with State staff.

Unique State Programs

Hawaii promotes safe and healthful workplaces through unique State programs and standards that go beyond the basic Federal requirements for State programs.

- Written Safety and Health Programs

In 1982, the State promulgated regulations requiring all employers to establish and carry out a safety and health program. Since then this requirement has been amended. The 1996 revision required employers with 25 or more employees to have a written safety and health program.

In addition, the State passed legislation in 1995 on certifying private safety and health professionals to conduct workplace audits and evaluate safety and health programs in accordance with regulations. Companies with effective programs qualify employers to receive a five percent reduction in their worker's compensation premiums.

- Training and Assistance Fund

In June 2003, Hawaii's training and assistance fund was discontinued due to legislative changes. This 100% state-funded outreach program was established in 1996 and was funded with up to \$500,000 of penalties assessed by HIOSH. The program encouraged voluntary compliance with occupational safety and health standards and rules through training and consultation with Hawaii employers and employees.

Outreach efforts have been focused on HIOSH's new website www.hiosh.hawaii.gov, inter-island one-day conferences to promote safety and health in the workplace, community awareness through partnerships, dissemination of the Consultation and Training Branch's brochures and handbook for small businesses, standard specific training and workshops, quarterly newsletters, and selected print advertisements in local newspapers, business and trade journals.

Legislation

During the time period of this report there were no legislative changes made in the state of Hawaii in safety and health.

Current Significant Issues

OSHA Region IX is working closely with the Director of the Department of Labor and Industrial Relations Nelson Befitel and special assistants to facilitate a balanced safety and health program between enforcement and consultation. Previous evaluations raised concerns of the effectiveness and viability of the enforcement and consultation program due to its overall limited level of activity.

Although there was an increase in the number of inspections and consultation visits conducted during this fiscal year, HIOSH has had problems and staff vacancies which continue to impact their inspection and consultation goals.

Consistent with the goal to augment the consultation section's personnel shortfall and improve consultation programs, HIOSH is drafting a Safe Workplace Assistance Program (SWAP). This program will utilize professional occupational safety and health consultants who volunteer their time and expertise to provide companies with the consultation services needed to qualify them for the Safety and Health Achievement Recognition Program (SHARP) and Voluntary Protection Program (VPP). This program is currently awaiting OSHA's review and approval.

Hawaii has implemented a pilot program that is similar to Nevada's use of its "Notice of Violation" (NOV) for other than serious violations that do not carry a penalty. These are issued on-site when the employer agrees to abate and not contest the citation. This new policy is expected to help Hawaii reduce inspection time, increase number of inspections and assure prompt abatement of violations without litigation.

HIOSH is in the process of finalizing administrative rules that would allow companies that qualify for recognition programs to also qualify for the 5% reduction in workers' compensation premiums.

Noteworthy Enforcement Cases

In FY 03, Hawaii had several significant cases.

Si-Nor Inc. was issued a willful violation with a penalty amount of \$49,500 for failure to abate workplace violence under the general duty clause. Sin-Nor Inc. is a refuse/disposal company under a military contract in Hawaii and has had prior citations

for subjecting workers to the continuing threat of violence. As a result of an incident wherein a management official struck an employee, a criminal investigation was opened and seven discrimination cases were filed with HIOSH.

The Board of Water Supply was issued five serious excavation related citations. The inspection prompted the employer to look at trenching procedures and provide training county-wide.

Wiss, Janney, Elstner Associates, Inc., a national engineering company, was cited for violations of the scaffolding standard. As a part of the settlement agreement, the employer will provide refresher training nationwide.

Part I – Progress in Implementation of FY03 Annual Performance Plan Goals

A. Strategic Goal 1: Improve workplace safety and health for all workers, as evidenced by fewer hazards, reduced exposures, and fewer injuries, illnesses, and fatalities.

FY03 Performance Goal 1.1: Reduce back injuries by 6% and overall injury and illness rates by 4% in four industries where such injuries are significant: Trucking and Warehousing (SIC codes 42), Wholesale Trades–Nondurable goods (SIC codes 51), Retail Trades–Building Materials and Garden Supplies (SIC codes 52), and Retail Trades–General Merchandise Stores (SIC codes 53).

Activities:

In FY 2003, HIOSH based this performance plan goal on BLS data to identify hazardous industries.

Of the 999 inspections conducted by HIOSH, 40 were in trucking and warehousing, 110 were in wholesale trades-nondurable goods, 18 were in retail trades-building materials and garden supplies and 28 were in retail trades-general merchandise stores. The State exceeded their planned activity goal of 145 compliance inspections of the four selected industries by 35% (51).

HIOSH promoted program assistance and onsite consultation of the targeted industries through their quarterly newsletter and website. Of the consultation visits conducted, only 20 were in their targeted areas: 3 in trucking and warehousing, 11 in wholesale trades - nondurable goods, 5 in retail trades-building materials and garden supplies, and 1 in retail trades-general merchandise stores. Of these, 11 (55%) of the establishments received recommendation letters for the identification of back injury hazards. HIOSH fell short of meeting its planned activity goal of 23 visits by 13% (3).

Outcome:

The primary outcome measurement for the four selected industries of this goal are the reduction in total cases injury and illness rates using the 1999 Bureau of Labor Statistics (BLS) Survey and the reduction in workers' compensation back injury claims using the

2000 Workers' Compensation Data for the State of Hawaii.

Based on the table below, the 2002 BLS total cases injury and illness rates for the State of Hawaii (the most recent data available) noted reductions of 26% in trucking and warehousing, 26% in wholesale trades-nondurable goods, while an increase of 18% in retail trade-general merchandise stores, and 14% in retail trade-building materials and garden supplies when compared to 1999.

Workers' compensation data shows a reduction in back injury claims of 14% in wholesale trades-nondurable goods, 6% in retail trade-building materials and garden supplies, 7% in retail trade-general merchandise stores, while an increase of 7% in trucking and warehousing when compared to 2000.

Mixed results were obtained for the overall outcome. It is suggested that HIOSH re-examine their targeting efforts.

Performance Goal 1.1 (1)				
<i>Table A</i>	1999 BLS Total Injury and Illness Rate	2002 BLS Total Injury and Illness Rate	2000 HI WC Claims for Back Injuries	2002 HI WC Claims for Back Injuries
Trucking and Warehousing (SIC 42)	14.1	10.5	543	580
Wholesale Trades - Nondurable Goods (SIC 51)	7.7	5.7	922	789
Retail Trades				
Building Materials and Garden Supplies (SIC 52)	8.0	9.4	245	231
General Merchandise Stores (SIC 53)	8.5	9.7	860	781

Footnote 1: Data gathered, compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics and Hawaii Workers' Compensation Data

FY03 Performance Goal 1.2: Reduce both total cases and lost workday injury and illness incidence rates by 4% in the selected construction sectors: Heavy Construction (SIC codes 16), Plumbing, heating, air-Conditioning (SIC codes 1711), and Electrical work (SIC codes 1731).

Activities:

Construction inspections are scheduled based on permit data from all the counties within the state. Information is obtained from the Building Industry Association

Magazine for state highway jobs, Kauai Business Report for county permits, Pacific Business News for building permits issued for the week, and the Maui and Hawaii County website.

OSHA uses the University of Tennessee system of identifying construction sites which are based on Dodge reports. We believe the university system offers better identification of construction sites and recommend HIOSH consider using the same system.

In FY03, HIOSH conducted 56 inspections in the heavy construction industry; only 10 resulted in identification of hazards.

HIOSH also conducted 30 inspections in plumbing, heating, and air conditioning. Of these 30, only 7 or 23% identified hazards. HIOSH also conducted 53 electrical type inspections. Of these, only 10 or 19% identified hazards. This suggests their system of targeting needs to be revisited as the sites they are visiting are not experiencing high hazards.

Hawaii fell short of 11 compliance inspections of their FY 2003 planned activity goal (150) within the three selected construction industry sectors. Overall, HIOSH experienced difficulty in locating active job sites that were engaged in hazardous activities.

The consultation program continued to promote outreach efforts through advertisements printed in selected business and trade journals of the targeted industries. During FY03, HIOSH conducted 28 consultation visits in heavy construction, 13 in plumbing, heating and air-conditioning, and 14 in electrical work industries. HIOSH exceeded their planned activity goal of 40 by conducting 55 visits in these targeted areas. Of these visits, however, 23 resulted in the only identification and correction of hazards.

Outcome:

The baseline to measure the reduction of injury and illness in the selected construction industries is the 1999 Bureau of Labor Statistics (BLS) total cases and lost workday injury and illness survey for the State of Hawaii.

Based on the table, electrical work experienced a decrease in both in both total cases (36%) and lost workday (39%) rates; while heavy construction show an increase in total cases (15%) and in lost workday (31%) rates.

Performance Goal 1.2 (1)				
<i>Table B</i>	1999 BLS Total Cases Injury and Illness Rate	2001 BLS Total Cases Injury and Illness Rate	1999 BLS Lost Workday Injury and Illness Rate	2001 BLS Lost Workday Injury and Illness Rate
Heavy Construction (SIC 16)	6.8	7.8	3.6	4.7
Plumbing, Heating, Air- Conditioning (SIC 1711)	11.8	N/A (2)	6.6	N/A (2)
Electrical Work (SIC 1731)	10.9	7.0	5.6	3.4

Footnote 1: Data gathered, compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics

Footnote 2: Data not available for SIC 1711 for FY 2000. Sample size too small.

Recommendation: HIOSH should focus on active jobsites where hazards are most likely to exist and allocate resources to conduct enforcement and outreach and training activities to achieve their overall goal of reducing injury and illness. Also HIOSH needs to examine the low rate of identification of hazards in the construction industry to determine if compliance officers need further training.

FY03 Performance Goal 1.3: Reduce both total cases and lost workday injury and illness incidence rates by 3% in Local Government, Healthcare (SIC Codes 80), and Hotels (SIC code 7011).

Activities:

Inspections for this performance goal are based on BLS rates for industries. In FY03, HIOSH conducted 78 inspections in local government and exceeded its planned activity goal of 25. Of these, 10 were with identified hazards.

HIOSH exceeded its inspection activity goal of 60 for health care and 25 for hotels. HIOSH conducted 106 inspections in healthcare and 47 inspections in the hotel industries. Of these, 55 healthcare and 33 hotel establishments were issued violations for the correction of hazards.

Solicitations for consultation visits for this performance goal are based on the State's list of employers in targeted industries. HIOSH conducted 9 consultation visits in local government, 26 in health care and 18 in hotel industries. Of these, 45 (9 local government, 11 healthcare and 25 hotel) establishments resulted in the correction of hazards.Outcome:

The baseline to measure the reduction of injury and illness in local government and hotel and resort industries is the 1999 Bureau of Labor Statistics (BLS) total cases and lost workday injury and illness survey for the State of Hawaii.

Based on the table below, mixed results were obtained for the overall outcome. The 2002 BLS total case injury and illness rates for the State of Hawaii (the most recent data available) noted a reduction of 3% in local government and 34% in hotels, while an increase of 2% in healthcare when compared to 1999.

Lost workday injury and illness rates show an increase of 9% in local government and 3% in hotels, while a decrease of 15% in health care.

HIOSH states the increase was most likely due to the lack of an early return to work or case management program among small businesses. HIOSH will work with the various stakeholders through one-day conferences addressing what businesses can do to reduce days away from work for injured workers.

Performance Goal 1.3 (1)				
<i>Table C</i>	1999 BLS Total Case Injury and Illness Rate	2002 BLS Total Case Injury and Illness Rate	1999 BLS Lost Workday Injury and Illness Rate	2002 BLS Lost Workday Injury and Illness Rate
Local Government	9.2	8.9	4.7	5.1
Healthcare (SIC 80)	6.0 (2)	6.1	3.3 (2)	2.8
Hotels (SIC 7011)	8.3	5.5	3.6	3.7

Footnote 1: Data gathered, compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics

Footnote 2: Baseline for Healthcare is CY 2001.

Part II – Mandated State Plan Activities

A. Standards: Federal Program Changes for State Response and Adoption

Hawaii adopts standards in response to Federal standards and State needs. While Federal standards are generally adopted as written, changes can be made to address local conditions as warranted. Input from interested parties is obtained through public hearings. When comments from the public, Attorney General, Governor, and others are resolved, the governor signs the standard into law.

In FY03, OSHA published two Federal Register notices regarding amendments to the Occupational Injuries and Illnesses Recording and Reporting Requirements 29 CFR 1904 (12/17/02 FR and 06/30/03 FR). States are required to adopt the delayed effective dates of recordkeeping subsections related to Musculoskeletal Disorders (MSDs) and hearing loss from January 1, 2003 to January 1, 2004 and ensure that employers continue to record all injuries and illness relating to MSDs on the OSHA 300 log or develop an alternative that will ensure national uniformity in reporting. Hawaii has stated they intend to adopt both verbatim. However, they have not adopted either within the required time of six months.

In addition, there is a standard and Federal program change which has not been adopted from the previous evaluation period. These are Safety Standards for Signs, Signals, and Barricades (9/12/02 FR) and the proposed delay of effective dates on the Recordkeeping regulation regarding the reporting provisions of hearing loss (Memo 01-3b Occupational Injury and Illness Recording and Reporting Requirements - 7/1/02 FR).

Conclusion: The State's performance in standards adoption is taking longer than the six month time frame required by OSHA's regulations. In addition HIOSH is not meeting the requirements of Federal program changes which require state adoption within six months of the Federal promulgation date. Both of these deficiencies need immediate attention of the HIOSH Administrator.

B. Complaints

Hawaii's policies and procedures for processing complaints are generally similar to OSHA's. Serious complaints are normally investigated by an inspection of the employer's worksite. Other than serious complaints are generally investigated by telephone/fax or letter procedures. Non-formal (oral, unsigned and/or non-employee) complaints are scheduled for inspection if there is sufficient information to show that high gravity serious or imminent danger violations exist.

During this evaluation period, the State's performance in complaint response time and timeliness of complainant notification was very good and continues to improve from the previous evaluation.

The average number of days to initiate an inspection (3.85 to 3.84 days) and the average response time for complaints investigated through letter or telephone/fax (1.93 to 1.09 days) decreased slightly. These results are lower than the negotiated fixed reference for the State of 10 days and 5 days respectively. (SAM 1 and 2)

Complainants notified of inspection results within 20 working days of the citation issue date or 30 days of the closing conference for those inspections without citations increased from 91% (85/93) to 95% (63/66). (SAM 3)

C. Imminent Danger

Data available indicates that in FY03, HIOSH received 25 complaints or referrals that were classified as imminent danger. All were responded to within one day. (SAM 4)

D. Inspections

1. Planned versus Actual

In its FY03 Annual Performance Plan, Hawaii established a goal of 1,000 inspections. HIOSH conducted 999 inspections, only one inspection short of its projected goal. This is a significant increase from 812 in FY02 and 494 in FY01. The State is to be commended for increasing their number of compliance inspections.

2. Identification of Hazards

The identification of hazards in the workplace is evaluated from the percentage of programmed inspections with serious, willful and repeat violations, number of violations per inspection with violations and the percentage of serious violations.

Hawaii's percent of programmed inspections with serious, willful and repeat violations increased in safety from 27% (149/543) to 37% (241/641) and decreased in health from 54% (61/113) to 31% (37/121) in FY02/03. The results are lower than the National average (49% for safety and 40% for health) during the same time period. (SAM 8) Data indicates that hazards are being identified in less than half of the programmed inspections conducted.

HIOSH found that most general industry safety citations were serious. On the other hand, the low rate of construction serious hazards found was a factor of targeting. Often they were getting to the sites selected before full activity had begun. In health, establishments were selected based on high number of back injuries. HIOSH took

appropriate measures to address concerns by re-evaluating their targeting scheme to ensure non-hazardous operations were excluded. Managers review case files to identify potentially missed hazards, provide training and guidance to staff, and conduct accompanied inspections to further ensure the proper identification and classification of hazards.

The average number of violations per inspection remained fairly constant at 1.5 (820/556) for serious, willful, and repeat violations and 1.7 (966/556) for other violations during this evaluation period. These results are close to the National average of 2.0 and 1.5 respectively. (SAM 9)

The percentage of serious safety violations identified during inspections decreased from 48% in FY02 to 46% (608/1314) during the current evaluation. Health serious violations dropped from 48% (214/445) to 40% (116/293). These figures are lower than the Federal average of 76% and 61% respectively. (SIR C3)

Recommendation: HIOSH needs to address the low rate of identification of hazards with better targeting to focus on worksites where hazards are most likely to exist. They also should consider additional training where appropriate.

3. Denial of Entry

Traditionally, HIOSH experiences very few denials of entry. In FY03, the State obtained entry for all inspections. (SAM 5)

4. Citation Lapse Time

Citation lapse time is computed from the date of the inspection's opening conference until the date of issuance of the citation. Long lapse times are of concern because violations do not have to be corrected until the citations are issued. The longer the lapse time the longer employees may be exposed to these hazards.

In FY03, HIOSH's safety citation lapse time was 36 days, an increase from 31 days. Health citation lapse time was 40 days, up from 39 days in FY02. The National average for citation lapse time was 47 days for safety and 63 days for health. (SAM 7)

Despite the increase in lag time, HIOSH's performance is well below the National data.

5. Abatement

HIOSH's written abatement policy is identical to OSHA's. When abatement is not accomplished at the time of the inspection or the employer does not notify HIOSH of the abatement, verification is determined through telephone contact or follow-up inspection.

The percentage of serious, willful and repeat violations verified abated within 30 days of the abatement due date was 99%, up from 87% in the private sector and 100%, up from 82% in the public sector. The National goal in this category is 100%. (SAM 6)

Hawaii utilizes tracking reports to closely monitor their performance in this area.

E. Penalties

Hawaii's policies and procedures for computing penalties are identical to OSHA's. During FY03 the average initial penalty per serious violation was \$962, a decrease from \$1089 in FY02 and slightly below the National average of \$1,332. (SAM 10)

F. Review Procedures

Hawaii's review procedures provide for the appeal of contested citations to the Hawaii Department of Labor and Industrial Relations Appeals Board and subsequently to the State courts. The State has a statutory time period for the filing of contests of 20 calendar days rather than the 15 working day period used by OSHA. Although employers or employees may request an informal conference with HIOSH, once a formal appeal has been filed with the Appeals Board, any decision, including settlement or withdrawal, must have Board approval. There is no State equivalent to OSHA's hearings before an Administrative Law Judge. The Appeals Board holds all hearings. HIOSH is represented before the Appeals Board by attorneys of the State's Attorney General (AG) and by the Administrator of HIOSH.

In FY03, HIOSH continued to sustain both violations and penalties during informal conferences. Only 0.6% (10/1804) of violations were vacated, 0.2% (3/1804) of violations were reclassified and 61.9% of the penalties were retained. This compares favorably with the Federal experience of 4.8%, 4.5% and 59.2% respectively. (SIR C7-C9)

As noted below, of the violations contested, 16.7% were vacated, 0% were reclassified and 83.5% of the penalties were retained. The State's performance in this category exceeds Federal experience of 22.0%, 13.0% and 50.8% respectively. (SIR E1-E3)

POST-CONTEST (1)

<i>Table D</i>	2002 Fiscal Year Oct 01 - Sept 02	2003 Fiscal Year Oct 02 - Sept 03
Lapse time (SAM 12)	133 days	217 days
% Violations vacated (SIR E-1)	8.4% (20/237)	16.7% (14/84)
% Reclassified (SIR E-2)	3.8% (9/237)	0% (0/84)
% Penalty retention (SIR E-3)	54.7% (109,418/19,925)	83.5% (23,015/27,575)

Footnote 1: FY02/FY03 SAM 12, SIR (E 1-3)

Hawaii's Labor and Industrial Relations Appeals Board adjudicates contested cases at an average of 217 days (National data is 171 days), approximately 7 months. This is a significant increase from 133 days in FY02. HIOSH is monitoring this procedure and indicated that the delay may be due to the backlog of cases which were granted repeated extensions to employers.

Recommendation: The State should continue to explore means of reducing the time for adjudication of contested cases.

Overall Assessment – Private Sector Enforcement Program:

Overall, the results of Hawaii's enforcement program are considered effective in most required program areas including responding promptly to complaints, obtaining entry to conduct inspections when entry was denied, response to imminent complaints or referrals classified as imminent danger, citation lapse time, abatement verification and sustaining violations and penalties in informal conferences and when they are formally contested.

The State is to be commended for their efforts in increasing their number of compliance inspections. However, attention is needed in the areas of programmed inspections with violations and decrease in the percentage of serious violations. Hawaii must to address this concern by focusing their resources on high hazard employers where hazards are most likely to exist and carefully review proposed citations to ensure that all violations are properly classified.

G. Discrimination

Hawaii uses Chapter 396 of the Hawaii Occupational Safety and Health Law and the policies and procedures contained in Chapter X of their Field Operations manual as a guide for investigation of discrimination complaints. HIOSH investigates discrimination complaints in both the private and public sector.

Hawaii's discrimination program has three unique features: (1) complainants may file up to 60 days from the date of the adverse action; (2) meritorious complaints which cannot be resolved through a settlement agreement require the HIOSH Administrator to issue a resolution order to the respondent; and (3) complainants may appeal HIOSH's decision to the Department of Labor and Industrial Relations Appeals Board which also processes HIOSH contested cases.

Hawaii investigated 19 safety and health related discrimination complaints during this evaluation period. Of these, 17 (90%) were completed within 90 days and 12 were found to be meritorious.

The State's performance of timeliness to complete an investigation has improved. The previous evaluation found 26% (5/19) of the complaints required more than the 90 day statutory requirement to complete.

We have determined that the training HIOSH investigators receive is not as comprehensive as the OSHA Training Institute (OTI) training course OSHA offers to State and Federal discrimination investigators. HIOSH stated the reason they have not sent their investigators to this training class is because they believed the class has more subjects than just anti-discrimination required under the OSHA Act.

Conclusion: This assumption is not correct and we encourage HIOSH to send its investigators to OSHA training.

H. Variances

There were no variances issued during this evaluation period.

I. Public Employee Coverage

Hawaii's occupational safety and health program includes coverage of State and local public sector employees. Enforcement program policies and procedures are the same for the public and private sector and include inspections that result in the issuance of citations and penalties. If evidence of abatement is inadequate, follow-up inspections are scheduled just as they are in the private sector.

During FY 2003, Hawaii conducted 84 (9%) of its total inspections in the public sector, a slight increase from 8% in FY02. (SAM 11)

The percentage of safety violations classified as serious in the public sector is 47% (44/116) and 57% (16/28) in health. While the figures are close to private sector results for safety (46%), it is lower for health (40%). This may be attributed to almost all public sector inspections were in response to complaints and referrals. It is suggested that HIOSH re-examine their low number of hazards in safety and health and focus on high hazard public employers where hazards are more likely to exist. (SIR C3, D1, D2)

J. Voluntary Compliance Programs

HIOSH provides consultation and employer and employee training services to both public and private sector employers through its Consultation and Training Branch. In FY 2003, this program had a budget of \$505,493 and a total of 9 people of which 5 are consultants.

As noted under Unique Programs (page 3), the Consultation and Training Branch previously carried out promotional and outreach efforts through the 100% State funded Training and Assistance Fund. However, this program sunset in June 2003.

1. Consultation Program (Private Sector)

a. Number of Consultations

In its FY03 Consultation Annual Performance Plan, HIOSH projected conducting 245 consultation visits. Of these, 230 were planned as initial safety and health consultation visits.

Historically Hawaii's 21(d) program goals in terms of number of consultation visits have been relatively low compared to those of other consultation programs and OSHA has raised this concern over the last several evaluations. In spite of the modest number of consultations projected, the program often failed to meet its projections until this fiscal year. As a result of State officials having made a concerted effort to market and revive the program to the business community, HIOSH almost met its goal this year by completing 238 visits.

The State should continue to increase the level of consultation productivity. OSHA will continue to work with the State closely and monitor this area.

b. Level of Service

1. Initial Consultation Visits

The national goal for consultation programs is to prioritize consultation visits to small

workplaces in high hazard industries.

During this evaluation period HIOSH conducted 203 initial consultation visits, a significant increase from 106 in FY02. Of these, 98.5% (200/203) were in high hazard establishments and 93.1% (189/203) were in smaller businesses with less than 250 employees. (MARC 1 and 2 Private)

HIOSH met this objective.

2. Visits where Consultant Conferred with Employees

The consultation policies and procedures manual specify that consultants should speak to a reasonable number of employees about workplace safety and health. The involvement of employees is key to ensuring the fullest protection of employees in the workplace, to properly identify and assess the nature and extent of hazards, and in determining the effectiveness of the employer's efforts to establish and maintain a workplace safety and health program.

In FY03, the percent of initial visits with affected workers consulted was 99.5% (202/203), a slight increase from 99% (105/106) in FY02. Employee conferences were held with 89% (17/19) follow-up visits conducted by HIOSH. There were no training and assistance visits involving compliance assistance/employee conference during this fiscal year. (MARC 3 Private)

3. Verification of Serious Hazards

The consultation program goal in this area is to ensure timely and adequate abatement of serious hazards. The timely abatement of hazards identified during a consultation visit is evaluated from the number of serious hazards verified corrected within 14 days of the latest correction due date.

Based on closed consultation cases in FY 2003, 659 serious hazards were identified. Of these, 596 (90%) were verified corrected in a timely manner: 17 (3%) were verified on site, 386 (65%) within the original time frame, 92 (15%) within the extension time frame and 101 (17%) were within 14 days of the latest correction due date. (MARC 4A Private)

Sixty-three (10%) of the serious hazards were not verified corrected in a timely manner. This is a significant improvement from 20% in FY02. (MARC 4B and 4C Private)

During the last time period, case files were reviewed we found a lack of specific information on how hazards were corrected.

Recommendation: The Consultation Branch must track correction due dates and

ensure abatement evidence is specific and timely for all hazards classified as serious. If the employer does not correct serious hazards the case must be referred to enforcement.

4. Safety and Health Program Assistance

The consultation program encourages employers in establishing safe and healthful workplace policies, procedures and practices. Assistance is provided on all consultations, whether partial or comprehensive, and is documented in the report to the employer.

During the last time when case files were reviewed 40% (19/48) of the reports were either too general or not related to the specific hazards found at the worksite and only 15% (19/48) were well documented and contained very good reports to the employer.

Based on this review, OSHA concluded that consultants need to encourage and assist employers in establishing workplace policies procedures and practices for sustaining a safe and healthful workplace. Reports should address the specific safety and health program needs of the employers and provide guidance for correction and improvement of their safety and health programs that relates specifically to the type of operations and hazards found in the specific establishment visited. Hopefully action has been taken to implement this recommendation. Case file reviews scheduled for FY04 will determine if improvement has been made.

Overall Assessment – Private Sector Consultation:

The State is to be commended for their efforts in increasing their number of consultation visits. OSHA will continue to work with the State closely and monitor this area.

Performance has improved in ensuring that abatement evidence is specific and timely for all hazards classified as serious. However, the Consultation Branch must continue to track correction due dates and ensure abatement evidence is specific.

HIOSH consultants must make every effort to speak to employees and management as part of the consultative process during all visits.

2. Consultation Program (Public Sector)

Hawaii's consultation program includes the public sector and is conducted in a manner similar to that of the private sector.

Hawaii conducted 15 public sector consultation visits in FY03, an increase from 2 in FY02. Of these, 12 were in high hazard establishments and in smaller agencies with less than 250 employees. The percent of initial visits with affected workers consulted was 100% (12). (MARC 1, 2, and 3 Public)

During this evaluation period, 73 serious hazards were identified. Of these, 30 (41%) were verified corrected in a timely manner: 0 (0%) were verified on site, 7 (23%) within the original time frame, 16 (53%) within the extension time frame, and 7 (23%) were within 14 days of the latest correction due date. (MARC 4A Public)

Forty-three (59%) of the serious hazards were not verified or corrected in a timely manner and none were referred to enforcement. This is a significant increase from 9% in FY02. (MARC 4B and 4C Public)

Recommendation: HIOSH must address the potential for uncorrected hazards and make certain to obtain closure on all open serious hazards. If hazards are not corrected they must be referred to enforcement.

3. Training Program

In FY03, HIOSH provided a wide variety of safety and health training courses to Hawaii employers, employees, and professional business groups with a contractor paid for by their Training and Assistance Fund. The courses conducted addressed the following subjects or industries: Developing and Implementing a Safety and Health Program that Works, Whistleblower, Hotel Maintenance, Safety and Health Awareness, OSHA Recordkeeping, Effective Safety and Health Supervision, Ergonomics, Introduction to HIOSH, Specific Training for Dentists, Positive Safety Attitude, Affirmative Defense, Effective Listening, Prepare for OSHA, and Slips/Trips/Falls. Twenty eight (28) safety and health workshops or training sessions were conducted reaching 1,220 participants.

However, that fund reached its sunset provision and consequently it was eliminated in June 2003 and consequently the contractor is no longer working for the State. It is suggested that HIOSH looked at its total program when proposing a budget in FY2005 which will include some provision for training.

In April 2003, HIOSH jointly sponsored eight one-day conferences with 800 participants from Maui, Oahu, Kauai and Hawaii. The conference was geared toward the small business employers and topics included Reduction in Workers' Compensation, Back and Injury Prevention, Communicating Safety and successfully working with HIOSH to meet regulatory responsibilities.

In response to the Governor's approval of Hawaii's Steel Erection standard, currently

under review by OSHA, HIOSH partnered with the Iron Workers' Union local 625 to train 155 participants.

4. Internal Quality Assurance

HIOSH has established several internal quality assurance procedures to provide guidance and assure standardization of activities and continuing effectiveness of their section. One of these procedures includes accompanied visits which necessitates the consultation program manager to accompany each consultant on an actual onsite visit at least once per fiscal year to ensure conformance with consultation policies and procedures.

During FY03, the program manager accompanied one safety consultant trainee on a visit. Results indicated the need for training on the identification of machine guarding hazards for woodworking machinery. HIOSH did not meet its commitment on the balance of accompanied visits for consultation staff.

Consultants' performance is also routinely evaluated through the consultation visit report. The program manager reviews each case file and approves the written report prior to its release to the employer.

Other performance indicators include number of consultation visits completed, hazards identified per visit and length of time to complete consultation visit reports using IMIS data. During this evaluation period, HIOSH experienced difficulty in obtaining timely abatement for serious hazards identified in public sector establishments. The program manager will be tracking the consultants' performance closely to ensure correction due dates are met.

Recommendation: HIOSH program manager must conduct one accompanied visit each year for every consultant.

K. Voluntary Protection Program (VPP)

Hawaii's Voluntary Protection Program (VPP) is similar to OSHA's STAR exemption program. This program is designed to recognize general industry employers who have implemented model safety and health programs and who have injury and illness rates at or below those for their industry.

Region IX Federal OSHA approved Hawaii's policies and procedures on June 28, 2002.

During FY03, Hawaii granted the VPP award, also known as Hana Po' okela, to Chevron Hawaii-Refinery. In addition the VPP team conducted an evaluation of Frito

Lay and reviewed an application of a major construction company Dick Pacific. The final conclusion of both efforts did not occur until after the end of this evaluation period.

Hawaii has also been consistently active in national VPP efforts and has participated in meetings sponsored by OSHA as well as the Voluntary Protection Program Participant's Association (VPPPA).

L. Recognition and Exemption Programs

Hawaii adopted a recognition and exemption program similar to OSHA's Safety and Health Achievement Recognition Program (SHARP). Hawaii's SHARP recognizes small high hazard employers that have instituted a safety program that meets OSHA's 29 CFR 1908 guidelines and have achieved a lower than average injury rate.

Hawaii also proposed a Pre-SHARP program that provides assistance for other employers who are working towards an exemplary safety and health program. Inspection deferral is granted to those who meet the eligibility requirements for pre-SHARP, correct all hazards identified during the visit and show reasonable promise of achieving milestones outlined in the action plan to improve their overall safety and health program.

M. Program Administration

1. Budget

In FY03, the Hawaii Occupational Safety and Health Program had a budget of \$3,694,000 (\$1,634,500 in Federal funds and \$2,059,500 in State funds) funded under Section 23(g) of the OSH Act. The State provided 55% of the program's annual budget.

The 21(d) program had an annual budget of \$505,493 consisting of \$468,000 in Federal funds and \$48,614 in State funds (including 7 consultants with a goal of 245 visits).

2. Staffing Levels

Hawaii's compliance program staffing benchmarks, pursuant to the 1984 U.S. Court of Appeals decision (AFL-CIO vs. Marshall; CA. No. 74-406) is 9 safety and 9 health compliance officer positions. In FY03 Hawaii met the benchmark numbers. Hawaii actually has State approval for 14 safety and 10 health positions and if all positions were filled would exceed minimum staffing benchmarks.

Historically HIOSH experiences a high turn over rate due to State budgetary problems, low salaries and other issues surrounding the program. There have been periodic hiring

freezes which results in the continuous need to fill vacant positions. In FY 2003, HIOSH was working on revising the selection process materials to expedite the recruitment process. At the end of the fiscal year they had one supervisor, two safety specialists and one industrial hygienist position vacant.

The Consultation Branch consists of a program supervisor, seven consultants, and three administrative support persons. However, two consultant positions were vacant for most of fiscal year 2003.

Recommendation: HIOSH should fill all vacancies with qualified people as soon as possible. They also need to address their high turnover rate to retain experienced personnel.

Appendices

Appendix A – Complaints About State Program Administration (CASPA's)

During this evaluation period, one CASPA concerning the Hawaii Occupational Safety and Health program was accepted and investigated by OSHA.

This CASPA alleged that HIOSH failed to enforce a discrimination settlement agreement. OSHA's initial investigation did not reveal any systemic deficiencies in the State's execution of its policies and procedures. An appeal was filed but the complainant eventually withdrew the complaint.

Appendix B

- Computerized State Activity Mandated Measures (SAMMs)

- October 1, 2002 – September 30, 2003
- State Indicator Report (SIR)
October 1, 2002 – September 30, 2003
 - Public Sector Mandated Activities Report for
Consultation (MARC)
October 1, 2002 – September 30, 2003
 - Private Sector Mandated Activities Report for
Consultation (MARC)
October 1, 2002 – September 30, 2003

Appendix C

- Hawaii's FY 2003 State OSHA Annual Report (SOAR) and
Consultation Annual Project Report (CAPR)

