

CHAPTER II

COMPLIANCE PROGRAMMING

A. Program Planning.

1. Purpose. This chapter provides a general outline of priorities and procedures to be used in planning compliance operations and related activities, and to provide implementation instructions.
2. Primary Consideration. The primary consideration is the attainment of effective inspection coverage. This chapter of the FOM and the ISS will be used together in establishing priorities and schedules for compliance operations.

B. Inspection/Investigation Types.

1. Un-programmed. This type of inspection responds to imminent dangers, fatalities/catastrophes, complaints, and referrals and also includes follow-ups.
2. Un-programmed-Related. Inspections of employers on multi-employer worksites other than those identified as exposing employers in the complaint, accident report, referral, etc., even if the employees of the un-programmed related employers are exposed to the same conditions listed in the complaint, accident report, referral, etc.
3. Programmed. Inspections of worksites which have been selected based upon objective criteria are programmed. The worksites are selected according to the ISS for safety and health, or according to scheduling procedures for local emphasis or for other special programs.
4. Programmed Related. Inspections of employers on multi-employer worksites, whose activities were not included in the programmed assignment.
5. Scope. Inspections, either programmed or un-programmed, may fall into one of two categories depending on the scope of the inspection.
 - a. Comprehensive. A substantially complete inspection of the potentially high hazard areas of the establishment. An inspection may be deemed comprehensive even though as a result of the exercise of professional judgment, not all potentially hazardous conditions, operations, and practices within those areas are inspected.
 - b. Partial. An inspection whose focus is limited to certain potentially hazardous areas, operations, conditions or practices at the establishment.
 - (1) Every partial inspection, whether programmed or un-programmed, may include, in addition to its principal focus, a review of injury and illness records, lockout/tagout programs, an evaluation of the employer's safety and health management program, and a brief walk-around to survey, as deemed appropriate, those areas, conditions, operations, and practices

that, based on the exercise of discretion and professional judgment, are believed to have the greatest hazard potential.

- (2) The information gathered during this review and walkaround shall be used to confirm or revise the determination made as to whether the inspection=s scope should be further expanded.
- (3) A complaint inspection of an establishment listed on the branch safety or health inspection register shall normally be a comprehensive inspection of the entire workplace, as indicated in Chapter IX, A.9.a.
- (4) The warrant sought when employer consent has been withheld shall normally be limited to the specific working conditions or practices forming the basis of the un-programmed inspection. A broad scope warrant, however, may be sought when the information giving rise to the un-programmed inspection indicates conditions which are pervasive in nature. (See Chapter III, D.1.d.(5).)
 - (a) Even where the walkaround is limited, by a warrant or an employer=s consent, to specific conditions or practices, a subpoena for records shall be served, if necessary. The records specified in the subpoena shall include (as appropriate) injury and illness records, exposure records, the written hazard communication program, the written lockout/tagout program and records relevant to the employer=s safety and health management program, such as safety and health manuals or minutes from safety meetings.
 - (b) In appropriate cases, a warrant based on the review of records or on Aplain view@ observations of other potential violations during a limited scope walkaround, may be sought.
 - (c) Joint Safety and Health Inspections. Scheduling criteria on an employer may suggest that safety and health issues may be encountered; therefore, a joint inspection should be coordinated between the branches with either branch becoming the lead inspection branch generating a master inspection case file.

C. Inspection Selection Criteria.

1. General Requirements. HIOSH=s priority system for conducting inspections is designed to distribute the division=s resources as effectively as possible to ensure that protection is provided to the working men and women of the State.

- a. Scheduling. The branch managers shall ensure that inspections are scheduled within the framework of the priorities outlined in this chapter and that they are consistent with the objectives of the current inspection policies as set by the administrator. (See current HIOSH guideline on Congressional Funding Restrictions.)
- b. Effect of Contest. If an employer scheduled for inspection, either programmed or un-programmed, has contested a citation or a penalty, or both, received as a result of a previous inspection and the case is still pending before the Hawaii Labor Relations Board, these guidelines apply.
 - (1) If the employer has contested the penalty only, the inspection shall be scheduled in accordance with the instructions given under paragraph E below; that is, it shall be scheduled as though there were no contest.
 - (2) If the employer has contested the citation itself or any items thereon, then:
 - (a) Un-programmed inspections shall be scheduled in accordance with the instructions given in E.1. The scope of such an inspection normally shall be partial with the inspection related to issues in contest and shall be documented for future use. However, any violations related to items under contest shall be excluded from the citation unless a potential imminent danger is involved. When the contest is resolved, any violative conditions documented, but not cited, shall be referred to the branch manager who will confer with the administrator and deputy attorney general to determine appropriate action.
 - (b) An employee contest normally will not influence inspection selection criteria.
- 2. Employer Contacts. Contacts for information by employers or their representatives shall not initiate an inspection. Neither shall employer inquiries protect them against regular inspections conducted pursuant to instructions established by the division. Further, if an employer or employer=s representative indicates that an imminent danger exists or that a fatality or catastrophe has occurred, the branch managers shall act in accordance with established inspection priority procedures.

D. Inspection Priorities.

- 1. Order of Priority. Priority of accomplishment and assignment of personnel resources for inspection categories shall be:

<u>Priority</u>	<u>Category</u>
First	Imminent Danger
Second	Fatality/Catastrophe Investigations

Third Investigation of Complaints/Referrals
Fourth Programmed Inspections

2. Efficient Use of Resources. Unprogrammed inspections normally shall be scheduled and conducted prior to programmed inspections. However, a programmed inspection in which serious deficiencies are anticipated, may take precedence over a follow-up inspection, and a programmed inspection may be conducted during the response period for a formal complaint of a general violation.

E. Inspection Scheduling.

1. Unprogrammed Inspections. Those inspections conducted in response to specific evidence of hazardous conditions at a worksite are considered unprogrammed inspections.
 - a. General. Unprogrammed inspections (excluding follow-ups) shall normally be scheduled with these priorities:
 - (1) Reports of alleged imminent danger situations from any source, including referrals and complaints regardless of formality;
 - (2) Fatalities/catastrophes;
 - (3) Valid serious complaints and compliance officer referrals, reinspection referrals, and referrals from other safety and health agencies, classified as serious;
 - (4) Reports of hazards of a serious nature from any credible source (reports of hazards that are likely to attract media attention shall be promptly referred to the administrator);
 - (5) Valid general complaints; and
 - (6) Nonformal complaints requiring an inspection.
 - b. Follow-up Inspections. In cases where the branch manager decides that a follow-up inspection is necessary, it shall be conducted as promptly as resources permit. The seriousness and imminence of the original hazards or conditions requiring action shall be considered in assigning a priority to follow-up inspections.
 - (1) Follow-up Inspection Priority. Follow-up inspections normally shall be conducted within 10 days following the abatement date and shall normally take priority over programmed inspections.
 - (2) Required Follow-up Inspections. Follow-up inspections, allowing for available resources, efficiency of operations, and suitability of a follow-up inspection after some time has transpired, are required in these situations.

- (a) Wilful, repeated, and high gravity serious violations;
 - (b) Failure to abate notifications;
 - (c) Citations related to an imminent danger situation;
 - (d) When the employer fails to respond to requests for abatement certification; or
 - (e) Whenever the branch manager believes that particular circumstances (the number or type of violations, past history of the employer, complex engineering controls, etc.) indicate the need for a follow-up.
- (3) Exceptions to Required Follow-up Inspections. It will not be necessary to conduct a follow-up inspection if any of the following apply.
- (a) Abatement Documented During Inspections. A follow-up inspection will not be necessary where the compliance officer has observed and documented (to include how the violation was corrected) the correction of the cited condition during the inspection. The correction must have occurred within 24 hours of the identification of the alleged violation or before the compliance officer leaves the establishment, whichever comes first.
 - (b) Administrator Determination. The administrator may determine that a follow-up inspection is not required. Justification for not conducting follow-up inspections may include reliable information that the company is out of business and where the follow-up inspection is triggered by the employer's failure to respond to requests for abatement certification, information from the employer or employer representative, employees or employee representatives, or knowledgeable professionals attesting to the correction of the violation.
- NOTE: Written signed statements are preferred; however, verbal communications are acceptable if summarized by HIOSH personnel in a written memorandum for the case file or on the case diary log.
- (4) Multiple Abatement Dates. If a follow-up inspection is to be conducted where an employer has been cited for a number of violations with varying abatement dates, the follow-up inspection normally shall not be scheduled until after a majority of the abatement dates set forth for the more serious violations in the citations have passed. If satisfactory corrective action has been taken by the employer, additional follow-up activity normally shall not be scheduled unless the branch manager believes that

complex engineering controls or other special factors involved in the case warrant this activity.

- (5) Contested Cases. The scheduling of follow-up inspections will be affected in various ways by potential or actual employer contests, depending on the status of the Notice of Contest.
 - (a) Notice of Contest Not Filed. Follow-up inspections may be conducted during the 20-day notice of contest period provided the employer has not actually filed such a notice. If such a follow-up inspection reveals a failure to abate, a Notification of Failure to Abate Alleged Violation (HIOSHL-2B) shall be issued immediately without regard to the contest period of the initial citation.
 - 1 If the employer contests the proposed penalty but not the underlying citation, a follow-up inspection normally shall not be conducted unless the violations are considered serious and the branch manager decides that a follow-up is necessary.
 - 2 If a follow-up inspection is conducted at establishments involved in proceedings before the Hawaii Labor Relations Board, the compliance officer shall explain in the opening conference that the inspection will not involve matters before the Board.
 - (b) Notice of Contest Filed. When a citation is currently under contest, a follow-up inspection shall not be scheduled regarding the contested items.
 - (c) Final Order. When the Board approves the withdrawal of a notice of contest, the proceeding is settled, or the Board affirms alleged violations that are contested, the abatement period begins; a follow-up inspection may be scheduled as appropriate after the administrator has received the final order.
- c. Monitoring Inspections. Monitoring inspections are normally required for petitions for modification of abatement date (PMA) on serious, willful, and repeated violations which would result in a final abatement date of one year or more from the original or most recent abatement date. These inspections shall be conducted as soon as possible after first contact with the employer but no later than 20 days following the receipt of certification of posting. (See Chapter III, E.9.e.)
 - (1) Monitoring visits in response to PMAs of less than one year or to check on progress made on long-term or multistep abatement plans shall be scheduled at the discretion of the administrator.

- (2) Monitoring visits shall be scheduled to verify compliance with the terms of granted variances.
 - (a) The Administrative and Technical Support branch shall provide to each affected branch an updated list of granted variances at the beginning of each fiscal year.
 - (b) The branch manager shall review each variance annually to determine if an inspection is warranted based on:
 - 1 Significant differences from standards;
 - 2 No monitoring for current and previous two fiscal years; or
 - 3 Employer not in compliance with terms on previous inspections.
 - (c) Such inspections shall have a priority equal to that of a serious formal complaint.
- (3) Monitoring visits may also be made by other reasons, as outlined in Chapter III, I.1.

2. Programmed Inspections. A programmed inspection generally is a comprehensive inspection of the establishment but may be limited as necessary in view of resource availability and other enforcement priorities.

a. General. HIOSH concentrates enforcement effort on the most hazardous industries or processes. This system targets establishments within high-hazard industrial groupings (SIC/NAICS), or industrial groupings with hazardous processes.

(1) “High-Hazard Industry” means one of the group of industries, identified by a 2- to 4-digit Standard Industrial Classification (SIC) code or North American Industrial Classification System (NAICS) code that has an occupational injury and illness incidence rate higher than that of the State average for the private sector as shown in the most recent Bureau of Labor Statistics (BLS) Occupational Injuries and Illnesses Survey.

(2) “Hazardous Processes” means a process that is known to be hazardous. Such information may come from the National Institute for Occupational Safety and Health (NIOSH), The Occupational Safety and Health Administration (OSHA), and other recognized organizations such as the National Safety Council.

b. Guidelines and Procedures. Programmed inspections shall be conducted jointly by both safety and health personnel whenever resources are available and it is likely, based on experience in inspecting similar workplaces, that both safety hazards and health hazards exist to a

significant degree. If an inspection is begun as safety only or as health only but the compliance officer determines during the course of the inspection that it should be expanded, the compliance officer shall contact the supervisor. A decision will then be made on the basis of the information available whether or not the inspection should be expanded and, if so, to what extent. The decision may also be, based on resource availability, to handle the information as a compliance officer referral for inspection at a later time. (See Chapter IX, B.2.b.(1) for compliance officer referral guidelines.)

- (1) Inspection Scheduling for General Industry (Safety and Health). The following procedures are to be followed in scheduling safety inspections.
 - (a) Workload. Each fiscal year, the estimated number of inspections that the division can perform within the coming fiscal year shall be calculated using projected staffing levels. From this the number of programmed inspections shall be determined.
 - (b) Relationship to Strategic Plan. The high-hazard or hazardous process industries from which specific establishments to be selected for inspection are derived comes from the divisions' Strategic Plan and related Annual Performance Plans.
 - (c) Inspection Scheduling Report (ISR). Every two years, the research and statistics office of the department provides the division with a listing of all establishments within the high-hazard or hazardous process industries that have more than 10 employees. The research and statistics office normally uses the BLS ES-202 to establish a universe of establishments within the specific industry targeted for inspection, and unemployment insurance division data, average number of employees for the most recent calendar year, to determine establishment size.
 - 1 Adjustments to ISR. Deletions may be applied to the ISR as follows:
 - a Establishment has been approved for exemption from a partnership or Hawaii Recognition and Exemption Program (HREP).
 - b Establishment has been inspected within the past two fiscal years and it was a comprehensive inspection.
 - c Establishment is not within HIOSH jurisdiction, i.e. Maritime, MSHA or other.

2 The ATS-CSU shall make the deletions and note the reasons for the deletion.

(d) Inspection register. Because the ISR list of establishments is often larger than the number of inspections that can be performed each fiscal year (workload), it must be modified based on the hazardousness of the industry or hazardousness of the process such that more inspections are performed within the most hazardous industries or processes.

1 50% of the most hazardous industries or processes shall be selected for inspection each year, such that within two years all establishments have been selected for inspection.

2 Establishments within all other hazardous industries or processes will have from a 40% to 10% chance of inspection the first year. Depending on inspection findings, the remaining establishments within a selected industry grouping may have either an increased decreased chance of inspection during the second year.

The adjusted list is divided between safety and health branches in accordance with projected workload accomplishments. Knowledge of processes or hazards within discrete industries may be used to determine whether the industry should be placed on the health or safety inspection register.

(e) Inspection Order. Within a fiscal year, establishments within the branch inspection register may be inspected in any order that makes efficient use of available resources. Inspections of establishments on the fiscal years' inspection register must be completed before the next years' register is used. The establishment may be carried over to another fiscal year if:

1 The establishment is not operating normally because of strikes, seasonal fluctuations, or other factors.

2 Necessary equipment or personnel with necessary experience and qualifications to perform the inspection are not presently available.

3 It is the last remaining inspection but its inspection would require neighbor island travel and it cannot be combined with other inspection activity.

- 4 The employer:
- a has not yet completed abatement action required as a result of a previous comprehensive HIOSH inspection of the same inspection type (safety or health) because the final abatement date has not yet arrived.
 - b has contested a citation or a citation item issued as a result of a previous HIOSH inspection of the same inspection type (safety and health) and the case is still pending before the Hawaii Labor Relations Board.
 - c has refused to allow the inspection.
- 5 An establishment may be carried over or moved up to another cycle in order to schedule joint safety/health inspections of an establishment on both the safety and health inspection registers. For example, an establishment appears in the first cycle of the safety list. It is also in the second cycle of the health list. The safety inspection may be carried over or the health inspection may be moved up so that they can both be conducted at the same time.
- 6 Approval for carrying over an establishment for reasons not listed above must be requested from the administrator.

(f) Other Deletions or Non-Inspections. Once the inspection cycle itself begins, the following policy shall guide additions and deletions.

- 1 An establishment shall be deleted from an inspection cycle in which it appears whenever one of the criteria for deletion becomes applicable. For example, an establishment may have received a complete inspection during the fiscal year as a result of a formal employee complaint.
- 2 Where it is learned only after the compliance officer has arrived at the establishment that one of the criteria for deletion applies, the inspection shall not be conducted (or continued if already begun). Citations for the completed portion of the inspection

shall still be issued, unless the SIC is exempted.
(See the current HIOSH guideline on
Congressional Funding Restrictions.)

- 3 If the compliance officer learns after arrival that the establishment has been classified in the wrong SIC, the supervisor shall be contacted to determine if the correct SIC is also on the inspection register. If so, the compliance officer shall go ahead and conduct the inspection at that time.

(2) Inspection Scheduling for Construction Jobsites. Due to the mobility of the construction industry, the transitory nature of construction worksites, and the fact that construction worksites frequently involve more than one construction employer, a list of construction worksites shall be prepared on a quarterly basis to supplement the above inspection scheduling system.

- (a) Construction Awards Report. A separate report for active construction jobsites is generated quarterly by the research and statistics office. A list of construction projects awarded to contractors from the permit list is compiled into the quarterly report and segregated by island or area, i.e. West Hawaii and East Hawaii, and random ordered. This construction awards report is provided to the Occupational Safety Branch whose inspectors perform construction jobsite inspections in accordance with the site's position on the report, i.e. first on the report is inspected first, second on the list is inspected second, etc.

- 1 If the jobsite is found to be inactive because the work has not yet started, the inspector shall notate this on the report and move on to the next on the list. The inspector shall return to the jobsite when time or circumstances permit, e.g., when at a nearby location, or based upon information obtained from evidence obtained at the site.

- 2 If the construction work has been completed, the inspector shall notate that information on the report and move on to the next on the list.

- 3 A jobsite that should have been inspected in accordance with its order on the list may be carried over to the next quarter if:

- a The jobsite was not operating normally because of strikes, weather, or other factors.

- b Necessary equipment or personnel with experience and qualifications to perform the inspection are not presently available.
- c It is the last remaining worksite in the cycle but its inspection would require travel in excess of 50 miles and it cannot be combined with other inspection activity.
- d The inspection cannot be completed due to the employer=s refusal to allow entry.
- e Conditions (construction activity at the site) have not changed substantially since a prior inspection.
- f Approval for carrying over a worksite for reasons not listed above must be requested from the administrator.

(b) Deletions and Additions. After the beginning of an inspection cycle, the following policy shall guide the deletion and addition of worksites.

(3) Special Emphasis Programs. Special Emphasis Programs provide for programmed inspections in high potential injury or illness rate situations which are not covered by the ISS or do not fall under the other inspection scheduling programs covered under the previous subsections E.2.b. or, if covered, are not addressed to the extent considered adequate under the specific circumstances present. They include Local Emphasis Programs and Special Programs.

(a) Description. The description of, and reasons for, specific Special Emphasis Programs will be set forth in HIOSH guidelines as the occasion arises.

1 The description of the particular program will be identified by one or more of the following.

- a Specific industry.
- b Trade or craft.
- c Substance.
- d Type of workplace operation.
- e Type or kind of equipment.
- f Other identifying characteristics.

2 The reason for and the scope of a Special Emphasis program shall be described and may be limited by geographical boundaries, size of establishment, or similar considerations.

3 Pilot programs may also be established under Special Emphasis Programs. These programs may be conducted for the purpose of assessing the actual extent of suspected or potential hazards, determining the feasibility of new or experimental compliance procedures, or for any other legitimate reason.

(b) Scheduling Inspections. The following guidelines shall apply in scheduling Special Emphasis Program inspections.

1 Certain Special Emphasis Programs identify the specific establishments or industries that will be inspected; therefore, the only action remaining to be taken is the scheduling of inspections.

2 Other Special Emphasis Programs identify only the subject matter of the program and not all establishments within the program will necessarily be inspected.

F. Exemptions and Limitations. Congress may place exemptions and limitations on occupational safety and health enforcement activities through the annual Appropriation Act. Refer to the current HIOSH guideline on Congressional Funding Restrictions for instructions on how to apply current exemptions and limitations to compliance programming.