

OSHA – HIOSH Operational Status Agreement (OSA) - FAQs

1. Which industries will OSHA provide oversight for under the three-year agreement?

OSHA will regulate General Industries with the exception of Transportation and Warehousing during federal fiscal year 2013 (Oct 1, 2012 – Sept 30, 2013). OSHA will progressively give responsibility back to HIOSH for specific industries as outlined below during FY2014 and FY2015. Moreover, OSHA will retain regulatory responsibilities for those industries that it currently oversees: private maritime activities, over federal government employers and workers and contractors or subcontractors where the land is under exclusive federal jurisdiction including military bases and national parks, and over the U.S. Postal Service and contract workers and contractor-operated facilities engaged in postal operations.

2. Which industries will HIOSH regulate under the three-year agreement?

HIOSH will enforce health and safety laws for the Construction, Transportation and Warehousing and maintain responsibility for state and local governments, including public sector maritime activities, for the duration of the agreement. During FY2013 HIOSH will resume authority over Manufacturing except Refineries. In addition, HIOSH will also investigate complaints of alleged violations of Hawaii's health & safety law "Whistleblowers" and may investigate any workplace for Permissible Exposure Limits (PELs) where hazardous chemicals or gases are present during the course of the agreement.

3. What industries will HIOSH resume responsibility for in federal FY2014 & FY2015?

HIOSH will resume responsibility for Accommodations/Food Service by the end of FY2014 and the remainder of General Industry by FY2015.

4. What if I am not sure which industry category my business falls under?

OSHA and HIOSH use the North American Industry Classification System (NAICS) developed under the auspices of the Office of Management and Budget (OMB). The official U.S. Government Website for the NAICS that includes more information and a listing of industries is at www.census.gov/eos/www/naics. You can also contact HIOSH by email HIOSH at dlir.hiosh@hawaii.gov or by phone at 586-9100.

5. Will free on-site safety and health consultation services still be available?

Yes, confidential consultations to help you identify potential hazards, improve safety and health programs, and perhaps qualify for a one-year exemption from routine inspections in industries regulated by HIOSH. The consultation program primarily serves smaller businesses and will be available to all industries whether regulated by HIOSH or OSHA.

6. How will OSHA assist rebuilding the State's program so that it operates in a manner "at least as effective" as the federal health and safety program?

OSHA will provide substantial training support and additional federal staff and resources in the state. Additional training support will include OSHA working with HIOSH to develop a training plan, On-the-Job training, On-the-Job evaluations, priority access to required OSHA trainings, and mentoring of HIOSH inspectors during inspections.

7. By what criteria will OSHA use to determine whether the HIOSH program is “at least as effective” as OSHA?

HIOSH will need to maintain staffing milestones for health and safety inspectors, consultation staff, meet inspection benchmarks, develop appropriate case file documentation skills, implement effective compliance assistance programs, and improve grant management and reporting.

8. Are there any other benefits to the State in the agreement?

Yes, funding for the HIOSH grant will not be permanently reduced during the period of the agreement (pending Congressional action) and federal funds not matched by HIOSH will be redirected to support OSHA assistance to the State. Previously, federal funding not used or matched by HIOSH was de-obligated and returned to the federal government.

9. How do I file an appeal if OSHA cites my company?

Within 15 working days after the receipt of a citation you may either call the Honolulu Area Office (808-541-2680) to request an informal conference; or you may write or fax (808-541-3456) a letter to the Area Director to appeal a citation, the violations, the time set for abatement or the proposed penalty (this written notice is called a Notice of Contest). The Area Director forwards the Notice of Contest to the Occupational Safety and Health Review Commission (OSHRC). The Commission is an independent agency not associated with OSHA or the U.S. DOL. The Commission assigns the case to an administrative law judge who may disallow the contest or convene a hearing—most likely in Honolulu or via teleconference. Commission rulings may be appealed to the U.S. Court of Appeals.

10. Are there any other differences between OSHA and HIOSH regulating my business?

OSHA and HIOSH use the same gravity based penalty system whereby violations are determined by the severity and probability of harm. Once the gravity-based penalty is determined, the employer gets reductions based on employment size, good faith and history. OSHA has a different method of calculating penalty reductions that may result in somewhat higher penalties.