

Appendix A—California State Plan (Cal/OSHA) FY 2010 Findings and Recommendations

No.	Findings	Recommendations	Related FY 2009 No.
10-1	In 11 of the 109 complaint case files reviewed, Cal/OSHA did not respond to the complaint in a timely fashion. Twenty-four of the 109 complaint case files reviewed did not have initial letters to the complainant. Twenty-seven case files did not include follow-up letters to the complainant.	Ensure that complaints are responded to in a timely fashion. Ensure that initial notifications are made and all complainants are provided the results of their complaint in a timely manner.	09-1 Pending
10-2	<p>The Cal/OSHA Policy and Procedures Manual does not address elements that are required in the complaint process.</p> <p>(Formerly 09-21) The Complaint Response Log and Complaint Query revealed that half of all complaints inspected were not opened until after five days from receipt of the complaint. Also, the Complaint Employer Response Due standard report revealed outstanding complaints dating back to December of 2008 with employer response pending.</p> <p>(Formerly 09-22) Complaint Letters G and H are not being consistently entered in the database. (New) According to the FY 2010 Exceptions list for SAMM 3, there were 8 cases in which the letter to the complainant was not sent out until after the case was closed.</p>	<p>Adopt policies and procedures equivalent to Federal OSHA to include the following: E-Complaints Procedures (Federal FOM, page 9-2 and 9-5 to 9-7), the Handling/Processing of Referrals from Other Agencies (Federal FOM, page 9-2), Scheduling an Inspection of an Employer in an Exempt Industry (Federal FOM, page 9-5), Union Reference (Federal FOM, page 9-11), Complaint Questionnaire (Federal FOM, page 9-17 to 9-20), and the Five-day requirement for employer to submit written results of an investigation (Federal FOM, page 9-11).</p> <p>(09-21) Ensure that complaint IMIS reports are updated and accurate so that they can assist with properly managing the complaint process, and ensure that the Employer Response Due report and Complaint Response Log are regularly updated and cases are followed up on to ensure proper response was received.</p> <p>(09-22) Ensure that appropriate G and H notification letters are entered and being sent to all complainants. (New) Ensure all managers and compliance personnel understand that letters to complainants should be mailed out no later than 20 workdays after citation issuance date or 30 workdays after closing conference date for cases with no citations.</p>	09-2; 09-21; 09-22 Revised
10-3	Twenty-three of the 52 fatality inspections did not contain adequate information to determine whether Cal/OSHA communicated with the victim's family concerning the process and results of the investigations.	Ensure that family members of the fatality victim are contacted regarding the investigation and that all required correspondence is completed in a timely manner and documented in each case file.	09-3 Pending
10-4	Two of the 52 fatality inspections were not initiated in a timely fashion and the reasons for the delay were not documented in the case file.	Ensure that compliance officers initiate fatality inspections timely after initial notification and that compliance officers communicate and document reasons for any delays in the case file.	09-4 Pending
10-5	Cal/OSHA's policies and procedures does not address elements that are required in the fatality process.	Adopt policies equivalent to Federal OSHA's on Interview Procedures and Informer's Privilege (Federal FOM, page 11-7); on Investigation Documentation, which includes: Personal Data—Victim, Incident Data, Equipment or Process Involved, Witness statements, Safety and Health Program, Multi-Employer Worksite, and Records Request (Federal FOM, page 11-9 to 11-10); and on Families of Victims, which includes Contacting	09-5 Pending

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		Family Members, Information Letter, Letter to Victim’s Emergency Contact, and Interviewing the Family (Federal FOM, page 11-12 to 11-13).	
10-6	Cal/OSHA has not updated its protocols for its Agriculture Safety and Health Inspection Project (ASHIP), and Construction Safety and Health Inspection Project (CSHIP) since FY 2000.	Update ASHIP and CSHIP protocols at least annually.	09-6 Pending
10-7	Cal/OSHA’s Program Targeting System is not identifying industries where serious hazards are more likely to exist.	Re-evaluate the targeting system and the focus of enforcement resources to ensure that programmed inspections are being conducted at establishments where serious hazards are most likely to exist.	09-7 Pending
10-8	Cal/OSHA’s policy on classifying violations does not ensure violations that would be considered “Serious” under the Federal FOM are classified as Serious.	Adopt Violation Classification policies and procedures equivalent to Federal OSHA regarding descriptions on Supporting “Serious” Classification (Federal FOM, page 4-10 to 4-11), Supporting “Willful” Violations (Federal FOM, page 4-30 to 4-32), and Combining/Grouping Violations (Federal FOM, page 4-37 to 4-39).	09-8 Pending
10-9	When determining Repeat Violations, Cal/OSHA does not consider the employer’s enforcement history statewide. Instead, employer history is only considered within each of the six regions (refer to Cal/OSHA’s policies and procedures C-1B, page 14).	Consider employer’s enforcement history statewide when citing Repeat violations.	09-9 Pending
10-10	Employee representatives were not always afforded the opportunity to participate in all phases of the workplace inspection.	Ensure union representatives are presented the opportunity to participate in every aspect of the inspection and keep them informed as required in the Cal/OSHA policies and procedures manual. If unions choose not to participate in the inspection, ensure it is documented.	09-10 Pending
10-11	In 58 of 157 case files, employee interviews are not capturing employer knowledge, exposure to hazard(s), and/or the length of time hazardous conditions existed. In addition, interviews are not capturing the employee’s full legal name, address and phone number(s). In all cases reviewed, employer knowledge is not being adequately documented in a narrative form to assure a legally sufficient case.	Ensure that employees are interviewed to determine employer knowledge, exposure to hazard(s), length of time hazardous condition existed, and obtain the employee’s full legal name, address and phone number(s). Adopt policies for conducting employee interviews equivalent to Federal OSHA’s. Train employees on interviewing techniques (Federal FOM, page 3-23 to 3-27).	09-11 Pending
10-12	Sixty-three of 157 case files were missing copies of the OSHA 300 and did not indicate if information had been entered into the IMIS system. Citations were not issued to the employer for failing to maintain the log.	Ensure that compliance officers request and include copies of the 300 in the case file for each inspection for the last three years and enter the data into IMIS. If the employer can not provide them, document it in the file and issue appropriate citations.	09-12 Pending
10-13	Twenty-eight of 157 case files lacked complete injury and illness descriptions and did not clearly describe the hazard or exposure and (in 91 cases) photos did not always describe the violation, exposure, specific equipment/process, location, and employee job title (if applicable), the date and time of the picture, and the inspection number. (Formerly 09-14) In 50 of	Ensure that all aspects of the injury and illness documentation are included in the 1B or equivalent form to identify the hazard in enough detail to clearly describe the hazard or exposure. Ensure that photos identify the violation, exposure, specific equipment/process, location and employee job title (if applicable) and include the date and time of picture and the inspection number. (09-14)	09-13; 09-14 Revised

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	157 case files, narratives were either missing or lacked important details about what occurred during the inspection and (in 60 cases) diary sheets did not reflect inspection history.	Ensure that inspection narratives adequately describe the inspection and that diary sheets adequately reflect inspection activity including, but not limited to, opening conference date, closing conference date, supervisor review, telephone communications, and informal conference dates.	
10-14	There were 209 Serious/Willful/Repeat (S/W/R) violations identified in the SAMM Report that were not abated timely. (New) There were 83 S/W/R violations where the employer abated after receiving follow-up letters, phone calls and, in some cases, a follow-up inspection.	Develop a tracking system to ensure all violations are abated timely and/or ensure abatement data is accurately entered into IMIS. (New) Ensure all managers and compliance personnel know that they can cite 340.4 “Declaration of Abatement, Other Documentation, Employee Notification and Posting Requirements” from Title 8 of the California Code of Regulations rather than continued requests to employers about sending abatement verification.	09-16 Pending
10-15	Informal Conference policy allows conferences to be held beyond 15 days and lacks guidance on obtaining counsel and does not require conference information to be posted properly and consistently throughout the state.	Provide specific guidelines for the “Conduct of the Informal Conference,” which includes conference subjects, subjects not to be addressed, and closing remarks (Federal FOM, page 7-4 to 7-5); and hold informal conferences within the 15 working day contest period (Federal FOM, page 7-2). Also ensure guidance on obtaining counsel should an employer bring an attorney to the informal conference (Federal FOM, page 7-3) is provided and that posting requirements (Federal FOM, page 7-4) are clearly articulated.	09-17 Pending
10-16	The percent of penalty retention during post-contest procedures has decreased since FY 2007 and the percent of violations reclassified continues to increase.	Assess pre-contest procedures to ensure violations and penalties are being appropriately reclassified and decreased respectively and develop procedures to increase the percentage of penalties being retained during the post-contest.	09-18 Pending
10-17	Cal/OSHA does not receive accurate and up-to-date information on the status of outstanding penalties from the DIR Accounting Office. Penalties are not being effectively collected and those that are no longer collectible are not being identified and removed from the system in a timely manner.	Assure that the DIR Accounting Office is providing information on penalty payments and update the details in IMIS. Ensure that penalties are either effectively collected and identify those cases where penalties are no longer collectible in order to reduce the high number of old cases in the system.	09-19 Pending
10-18	The 15-day “due date” following issuance of the citations on the Debt Collection report is not entered. This date is important for tracking appeals.	Ensure that the 15-day due date for all issued citations is tracked.	09-20 Pending
10-19	The Referral Log identified that the five offices had referrals that had not been appropriately inspected or investigated in a timely fashion, including some referrals that were deemed Serious in nature. Thirteen referrals showed no response at all.	Generate and review the Referral Log on a regular basis and ensure that all referrals are handled appropriately and timely.	09-23 Pending
10-20	Seven fatalities were not opened within one day of reporting; lapse time for inspection of all accident reports ranged from 7.6 days to 38.4 days.	Ensure accidents are opened timely. Generate and review a Fat/Cat tracker to ensure that accident reports are being evaluated and classified appropriately in order to improve accident lapse	09-24 Pending

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		time.	
10-21	The Citations Pending Report revealed that in three of the five offices, 19 cases have citations pending that are over 180 days old and in the four offices, of the 225 citations that have not been issued, 207 show either no opening or no closing date. The Unsatisfied Activity Report identified unsatisfied activity in four of the five offices.	Generate and review a Citations Pending Report to monitor that citations are reviewed and issued in a timely manner. Generate and review the Unsatisfied Activity Report to identify outstanding activities which need to be scheduled for inspection.	09-25 Pending
10-22	Cal/OSHA's evaluation and adoption of Federal Program Changes has not been timely. Cal/OSHA has not adopted both the <i>Employer Payment for Personal Protective Equipment, Final Rule</i> , published November 15, 2007 and the <i>Clarification of Employer Duty to Provide Personal Protective Equipment and Train Each Employee</i> , published December 12, 2008. They adopted the <i>Final Rule on Electrical Installation Requirements—29 CFR 1910 Subpart S</i> , effective February 18, 2010; they were two-and-a-half years late adopting this rule. In addition, California has not submitted a supplement in response to <i>CPL 02-00-148 2009, Field Operations Manual</i> . Many of the procedural issues discussed in this report relate to items not covered in the State's current policies and procedures manual which should be addressed in the response to the Federal FOM.	Implement measures to ensure that new Federal Program Changes are evaluated and adopted in a timely manner, as per 29 CFR 1953.4(b)(1) and (b)(3).	09-26 Pending
10-23	State-initiated rulemaking that promulgated a standard on Bakery Ovens that was deemed not to be at least as effective as Federal OSHA standards.	Ensure standards are at least as effective as Federal OSHA standards and initiate actions to update deficient standards. (New) Ensure that all appropriate Cal/OSHA staff are receiving ATS e-mails that include response due dates and adoption requirements for FPCs.	09-27 Pending
10-24	Of the 128 whistleblower (WB) investigations, 96% were not completed within the 90-day period as required.	Take necessary measures to ensure that investigations are completed within the 90-day period (Section 11(c) of the OSH Act and implementing regulation 29 CFR Part 1977.6, Section 98.7(e) of the California Labor Code establishes an even shorter timeframe—60 days).	09-28 Pending
10-25	Opening and closing letters were inconsistently sent to both complainant and respondent or not placed in the case files, and dates were not recorded on the DLSE 900 diary sheet.	Consistently maintain and track opening and closing letters and phone calls in the case file. All documents received and telephone calls made during the course of the investigation should be written in the DLSE 900 diary sheet (DIS 0-0.9 Federal Whistleblower Manual, Chapter 2, Section III (D&E), Chapter 3, Sections IV(B)(1) and IV(K), and Chapter 4, Section IV(B)(2). Ensure that the DLSE 900 is regularly updated.	09-30 Pending
10-26	Complainant interviews were not conducted or documented in each case file and signed statements were not always obtained when feasible. Interviews with relevant witnesses,	DLSE should attempt to interview all relevant witnesses, including management and third parties. Attempt to obtain signed statements from each relevant witness when possible. Witnesses should	09-31; 09-32 Revised

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	including management and third parties are not being determined. (Formerly 09-32) Investigators do not conduct closing conferences with complainants and the equivalent of OSHA's Final Investigative Report or similar summary of relevant facts is not prepared for all WB case files.	be interviewed separately and privately to avoid confusion and to maintain confidentiality (Retaliation Complaint Investigation Manual, Chapter 3, and DIS 0-0.9 Federal Whistleblower Manual, Chapter 3). (09-32) Conduct closing conferences with complainants as per DIS 0-0.9 Federal Whistleblower Manual, Chapter 3, Section J, and prepare a summary of relevant facts for case files that are signed and dated by both the Investigator and the evaluating Team Leader (DIS 0-0.9 Federal Whistleblower Manual, Chapter 4, Section III, and Chapter 5, Section IV).	
10-27	In settled cases, the settlement agreement is reviewed and an un-redacted copy is not maintained within the case file.	Obtain and file a copy of the un-redacted settlement agreement, review it for public policy concerns such as waivers of future employment, and approve the settlement before dismissing the complaint.	09-33 Pending
10-28	Budgetary constraints, including 3 days a month furloughs and hiring freezes, are potentially impacting Cal/OSHA's ability to provide effective enforcement coverage at workplaces throughout the State, during regular working hours and in response to emergencies.	Cal/OSHA must ensure that it has sufficient on-board staff available to provide effective worker protection.	09-38 Pending
10-29	Cal/OSHA operated with only 375 out of 419.5 authorized positions. Also, the current benchmark positions allocated are 122 (36.6%) for safety and 75 (16.0%) for health.	Increase efforts to hire additional staff to fill the 44.5 vacant positions. Continue to reconcile staffing levels with realistic revised benchmarks, taking into consideration allocated versus filled positions, covered workers, and employment in the State.	09-39 Pending
10-30	The Standards Board and Appeals Board could not provide actual hours, timesheets or employment status at any given time for all employees.	Provide periodic certifications of employment status for all employees.	09-41 Pending
10-31	Travel costs in October 2009 (FY 2010) were paid with money from FY 2009 and some Area Office rent payments were erroneously charged to the current year grant funds and some funds are used improperly. (Formerly 09-43) Indirect cost rates were incorrectly applied and are not allowable costs to the grant.	Ensure expenditures are paid with funds from that funding period and any misallocated expenditures should be re-allocated to State matching funds or return the grant monies that were incorrectly allocated. (09-43) Ensure that the correct indirect cost rate is properly applied to the costs associated with the appropriate period of the fiscal year. Ensure that expenditures posted to the general ledger are listed individually with as much detail as possible.	09-42; 09-43 Pending
10-32	There are substantive gaps in training noted for new hires. Staff members hired as of December 2008 are not scheduled to take the Initial Compliance course until February 2010. None of Cal/OSHA's VPP staff has attended the OTI Course #2450 <i>Evaluation of Safety and Health Management Systems (SHMS)</i> . DLSE investigators and team leaders have not attended the Basic Whistleblower training course. (Formerly 09-46) Cal/OSHA has not established a curriculum of core courses that all	Ensure staff members receive appropriate training such as the Initial Compliance course; OTI Course #2450 <i>Evaluation of Safety and Health Management System (SHMS)</i> as required by TED 01-00-018, Appendix C and CSP 03-01-003, pages 59-60 or equivalent; and ensure DLSE investigators and team leaders attend the Basic Whistleblower training course or equivalent. (09-46) Establish a curriculum of core courses for newly hired compliance officers that are equivalent to Federal OSHA (TED 01-00-018	09-45; 09-46 Revised

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	<p>CSHOs are required to take and could not provide a complete list of courses offered as classes are not scheduled on a regular basis. A review of the courses revealed a lack of consistency and appropriate length in comparison to TED 01-00-018 <i>Initial Training Program for OSHA Compliance Personnel</i>.</p>	<p><i>Initial Training Program for OSHA Compliance Personnel</i>). Ensure that training is scheduled on a regular and timely basis and that course curriculums are equivalent to OSHA OTI courses in quality, content, and length. Need to develop a course equivalent to OTI courses 2000 Construction Standard, 2450 Evaluation of Safety and Health Management, multi-disciplinary courses (e.g. OTI course #1280 Safety Hazard Awareness for Industrial Hygienists and #1080 Health Hazard Awareness for Safety Officers), and 8200 Incident Command System.</p>	
10-33	<p>In its decisions, Occupational Safety and Health Appeals Board (OSHAB) is not defining “serious hazard” or interpreting “substantial probability” consistent with Federal OSHA interpretations, Federal OSH Review Commission (OSHRC), and with U.S. Federal Court of Appeals decisions. The “more likely than not” construct used by OSHAB is not consistent with the intent of the OSH Act nor the requirements of Section 18 that a State Plan must provide a program of standards and enforcement that is at least as effective as the Federal OSHA program.</p>	<p>Cal/OSHA must take appropriate action—administrative, judicial, or legislative—to ensure that OSHA’s interpretation of “serious hazard” is consistent with and at least as effective as the Federal definition.</p>	<p>09-1 (Appeals Board Special Study) Pending</p>
10-34	<p>The rules of evidence used by OSHA prevent many serious hazards from being appropriately classified without the use of “Expert” testimony and relevant medical training on specific injuries. Federally, expert testimony is not always required to establish whether a hazard is serious. In some cases, expert testimony may be needed, but the OSHA appears to be applying a test that far exceeds well-settled law in both the Occupational Safety and Health Review Commission (OSHRC) and Federal courts.</p> <p>Cases have been identified showing an extreme standard of evidence to prove classification of violations where the compliance officer’s ability to identify, evaluate, and document conditions in the workplace are not considered.</p> <p>A medically qualified person is necessary to sustain violations based on exposure and “work-relatedness” under the current Appeals process.</p>	<p>Cal/OSHA must take appropriate action—administrative, judicial, or legislative—to ensure that OSHAB’s test for acceptance of compliance officers’ testimony is at least as effective as the test at the federal level and results in a similar classification of violations as serious.</p>	<p>09-3 (Appeals Board Special Study) Pending</p>
10-35	<p>DOSH’s interpretation is that they don’t have the authority to adjust this penalty at the informal conference. On the other hand, OSHA believes that the Appeals Board does have the authority to adjust the proposed penalty and does so routinely when these violations are</p>	<p>DOSH should consider amending 342(a) to allow for size and history adjustments before issuing penalties as well as considering appropriate adjustments at the informal conference. Federal OSHA will continue to address this issue during</p>	<p>09-4 (Appeals Board Special Study)</p>

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	appealed.	quarterly meetings with DOSH and OSHAB in an attempt to amend Cal/OSHA’s policies and procedures manual.	Pending
10-36	<p>Cal/OSHA field staff do not have sufficient legal training or background to present cases at hearings. (Formerly 09-9)</p> <p>Pre-hearing conferences are not recorded, some stipulated agreements are rejected by ALJs and hearings convened, decisions are amended through the DAR process and furlough Fridays have affected the amount of time ALJs have to hear cases and issue Decisions.</p>	<p>Cal/OSHA must take appropriate action to ensure that their enforcement actions are appropriately defended at contest, either through attorney representation or, if necessary, through a system where Cal/OSHA field staff are trained and provided with adequate access to technical and legal resources to ensure at least as effective presentation of cases to OSHA. (09-9) Cal/OSHA must determine whether the problems associated with the current system of having compliance officers’ defend their own cases during contest can be corrected. If not, they should utilize Cal/OSHA attorneys during the entire appeals process including settlements as is done in the Federal Program and most other OSHA-approved State Plans.</p>	09-5; 09-9 (Appeals Board Special Study) Revised
10-37	The agricultural industry’s injury and illness rates continue to increase from the CY 2007 baseline.	Continue to focus on the agriculture industry with a goal of reducing injury and illness rates and fatalities below the CY 2007 baseline.	New
10-38	Case file workload does not appear to be managed in a manner to ensure the most expedited issuance of citations. The “first in-first out” case file management system being used seems to negatively affect this rate	Develop policies or procedures to assist in lowering the citation lapse time such as completing less complicated cases before the completion of cases requiring extensive research and development, where appropriate.	New