

**Appendix B—California State Plan (Cal/OSHA)
Status of FY 2009 EFAME Findings and Recommendations**

No.	Findings	Recommendations	Corrective Actions	Status
09-1	<p>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.</p>	<p>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.</p>	<p>Cal/OSHA has emphasized to managers and compliance officers the importance of ensuring complaints are properly processed. On February 18, 2011, Cal/OSHA held a special advisory committee meeting with stakeholders to discuss responding to complaints. Cal/OSHA is considering modeling their complaint process procedures to be similar to Federal OSHA’s procedures as outlined in Chapter 9 of the Federal OSHA’s Field Operations Manual (FOM). Cal/OSHA to conduct training and submit revised policies and procedures, as well as a copy of their training curriculum, in regards to properly processing complaints after OSHA Information System (OIS) implementation.</p>	Pending
09-2	<p>The Cal/OSHA Policy and Procedures Manual does not address elements that are required in the complaint process.</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>Cal/OSHA held a special advisory committee meeting on February 18, 2011 where they presented Federal OSHA’s Field Operations Manual (FOM), Chapter 9 “Complaint and Referral Processing” requirements to their stakeholders. Cal/OSHA is currently in discussion with stakeholders to implement revised policies—awaiting copy of Cal/OSHA’s revised complaint policies and procedures.</p>	Pending
09-3	<p>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.</p>	<p>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.</p>	<p>On September 27, 2010, DOSH conducted mandatory training for all compliance personnel and managers to clarify the requirement for communicating with victims’ families. Awaiting copy of Cal/OSHA’s revised policies and procedures, as well as a copy of their training</p>	Pending

**Appendix B—California State Plan (Cal/OSHA)
Status of FY 2009 EFAME Findings and Recommendations**

No.	Findings	Recommendations	Corrective Actions	Status
			curriculum, in regards to communication with victims' families during fatality investigations.	
09-4	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.	Cal/OSHA has trained personnel to ensure that fatality information is appropriately entered into IMIS and documented in the case file. Awaiting copy of Cal/OSHA's revised policies and procedures, as well as a copy of their training curriculum, in regards to documenting fatality investigations.	Pending
09-5	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 Family Members, Information Letter, Letter to Victim's Emergency Contact, and Interviewing the Family (Federal FOM, page 11-12 to 11-13).	Cal/OSHA is in the process of updating their fatality policies and procedures, which was discussed at the quarterly meeting held on February 23, 2011—awaiting copy of Cal/OSHA's revised policies and procedures in regards to the fatality process.	Pending
09-6	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.	Cal/OSHA has updated their ASHIP and CSHIP protocols and has distributed them to Regional and District managers. Awaiting copy of Cal/OSHA's updated ASHIP and CSHIP protocols.	Pending
09-7	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.	Federal OSHA and Cal/OSHA have discussed providing guidance to enforcement staff on properly coding inspections to better reflect Cal/OSHA's statistics for programmed inspections.	Pending
09-8	Cal/OSHA's policy on classifying violations does not ensure violations that would be considered	Adopt Violation Classification policies and procedures equivalent to Federal OSHA regarding descriptions on	In January 2011, Cal/OSHA managers and compliance personnel were trained on the elements of AB 2774, which	Pending

**Appendix B—California State Plan (Cal/OSHA)
Status of FY 2009 EFAME Findings and Recommendations**

No.	Findings	Recommendations	Corrective Actions	Status
	<p>“Serious” under the Federal FOM are classified as Serious.</p>	<p>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).</p>	<p>statutorily re-defines a serious violation and prescribes standards for the investigation and resolution of these violations. Awaiting Cal/OSHA’s revised policies and procedures in regards to implementing AB 2774 so that it will be enforced.</p>	
09-9	<p>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).</p>	<p>Consider employer history statewide when citing Repeat violations.</p>	<p>All DOSH managers and compliance personnel have been instructed on considering employer’s enforcement history statewide. Cal/OSHA is currently working on rulemaking to propose a modification to Title 8, Section 334(d)(1) to make repeat violations for an employer statewide versus within the State regional boundaries. The projected date for promulgating this change is January 2012.</p>	Pending
09-10	<p>Employee representatives were not always afforded the opportunity to participate in all phases of the workplace inspection.</p>	<p>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.</p>	<p>Cal/OSHA has discussed and re-emphasized the requirement for giving union representatives the opportunity to participate in inspections with managers and compliance personnel. Awaiting copy of Cal/OSHA’s revised policies and procedures, as well as a copy of their training curriculum, in regards to union participation during an inspection.</p>	Pending
09-11	<p>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.</p>	<p>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).</p>	<p>Cal/OSHA trained managers and compliance personnel on properly documenting employer knowledge and employee interviews in accordance with AB 2774. Awaiting copy of Cal/OSHA’s revised policies and procedures, as well as a copy of their training curriculum, in regards to conducting employee interviews.</p>	Pending

**Appendix B—California State Plan (Cal/OSHA)
Status of FY 2009 EFAME Findings and Recommendations**

No.	Findings	Recommendations	Corrective Actions	Status
09-12	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.	Cal/OSHA has emphasized collecting 300 logs to all managers and compliance personnel. Awaiting copy of Cal/OSHA's revised policies and procedures, as well as a copy of their training curriculum, in regards to collecting 300 logs.	Pending
09-13	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.	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.	Cal/OSHA has trained all compliance personnel and managers on AB 2774, which addresses case file documentation. Awaiting copy of Cal/OSHA's revised policies and procedures, as well as a copy of their training curriculum, in regards to properly documenting case files for legal sufficiency.	Pending
09-14	In 50 of 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.	Cal/OSHA is currently providing training to enforcement personnel in regards to properly documenting case files for legal sufficiency—awaiting copy of Cal/OSHA's revised policies and procedures, as well as a copy of their training curriculum, in regards to legal sufficiency documentation.	Pending
09-15	Exposure monitoring was not conducted prior to issuing citations to employers in four health inspections.	Ensure health inspectors conduct appropriate sampling to evaluate exposure and support violations. Ensure the information is properly entered into IMIS.	Cal/OSHA has discussed monitoring requirements with managers and compliance personnel. Federal OSHA-Region 9 will continue to monitor Cal/OSHA's handling of health inspections.	Completed
09-16	There were 209 Serious/Willful/Repeat (S/W/R) violations identified in the SAMM Report that were not abated timely.	Develop a tracking system to ensure all violations are abated timely and/or ensure abatement data is accurately entered into IMIS.	Cal/OSHA is currently training managers and compliance personnel on the importance of issuing citations to employers who fail to provide abatement certification. Federal OSHA-Region 9 will continue to monitor Cal/OSHA's handling of abatement.	Pending
09-17	Informal Conference policy allows conferences to be held beyond 15 days and lacks guidance on obtaining counsel and does not require	Provide specific guidelines for the "Conduct of the Informal Conference," which includes conference subjects, subjects not to be addressed, and closing	Awaiting copy of Cal/OSHA's current policies and procedures in regards to Informal Conferences.	Pending

**Appendix B—California State Plan (Cal/OSHA)
Status of FY 2009 EFAME Findings and Recommendations**

No.	Findings	Recommendations	Corrective Actions	Status
	conference information to be posted properly and consistently throughout the state.	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.		
09-18	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.	This finding was discussed with the Appeals Board, who held training for their Administrative Law Judges (ALJs) in January 2011 in an effort to improve penalty retention. Awaiting copy of Cal/OSHA's current policies and procedures in regards to Informal Conferences.	Pending
09-19	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.	Upon implementation of OIS, Federal OSHA-Region 9 will work with DIR Accounting and Cal/OSHA to develop policies and procedures for inputting penalty collection data.	Pending
09-20	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.	Upon implementation of OIS, Federal OSHA will work with DIR Accounting and Cal/OSHA to develop policies and procedures for tracking debt collection data.	Pending
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.	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.	Cal/OSHA is currently training managers on running and utilizing complaint tracking reports—awaiting copy of Cal/OSHA's revised policies and procedures, as well as a copy of their training curriculum and list of all personnel trained, in regards to complaint tracking.	Pending

**Appendix B—California State Plan (Cal/OSHA)
Status of FY 2009 EFAME Findings and Recommendations**

No.	Findings	Recommendations	Corrective Actions	Status
09-22	Complaint Letters G and H are not being consistently entered in the database.	Ensure that appropriate G and H notification letters are entered and being sent to all complainants.	Cal/OSHA is currently entering this data into IMIS and providing training to managers in regards to available IMIS tracking reports—awaiting copy of Cal/OSHA’s revised policies and procedures, as well as a copy of their training curriculum, in regards to inputting complaint data.	Pending
09-23	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.	Cal/OSHA has provided guidance to all managers to ensure referrals are tracked and inspected appropriately. Awaiting confirmation that all appropriate Cal/OSHA staff has been trained on reviewing the Referral Log on a regular basis to ensure that all referrals are handled timely.	Pending
09-24	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 time.	Cal/OSHA is conducting fatality investigations in a timely manner; however, the IMIS data does not always reflect the appropriate dates. Cal/OSHA is currently training enforcement personnel to ensure that the Cal/OSHA-36 reflects the correct data for fatality notification versus the date the fatality occurred; Cal/OSHA is training managers on utilizing IMIS tracking reports—awaiting copy of Cal/OSHA’s revised policies and procedures, as well as a copy of their training curriculum, in regards to tracking fatalities.	Pending
09-25	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.	Cal/OSHA has emphasized to managers and compliance personnel the need to complete draft forms. Data Entry training to be conducted after OIS implementation.	Pending
09-26	Cal/OSHA’s evaluation and adoption of Federal Program	Implement measures to ensure that new Federal Program	On November 10, 2010, Cal/OSHA assigned staff to	Revised

**Appendix B—California State Plan (Cal/OSHA)
Status of FY 2009 EFAME Findings and Recommendations**

No.	Findings	Recommendations	Corrective Actions	Status
	<p>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.</p>	<p>Changes are evaluated and adopted in a timely manner, as per 29 CFR 1953.4(b)(1) and (b)(3).</p>	<p>track Federal Program Changes to ensure that all are responded to in a timely manner. So far, Cal/OSHA has responded to all Federal Program Changes, which were released after November 10, 2010, within the mandated timeframe.</p>	
09-27	<p>State-initiated rulemaking that promulgated a standard on Bakery Ovens that was deemed not to be at least as effective as Federal OSHA standards.</p>	<p>Ensure standards are at least as effective as Federal OSHA standards and initiate actions to update deficient standards.</p>	<p>Federal OSHA is currently obtaining and reviewing nationally-related accidents to determine if Cal/OSHA’s standard effectively addresses prior accidents.</p>	Pending
09-28	<p>Of the 128 whistleblower (WB) investigations, 96% were not completed within the 90-day period as required.</p>	<p>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).</p>	<p>This issue continues to be a problem with the Division of Labor Standards Enforcement (DLSE). Federal OSHA has met with DLSE on March 17, 2011 to discuss training for investigators in an effort to provide the skills and knowledge necessary to process whistleblower cases more timely.</p>	Pending
09-29	<p>Oral complaints are not accepted and docketed in WB cases.</p>	<p>Accept and docket orally filed and e-mailed complaints in IMIS upon receipt and do not require a complainant to submit a complaint in writing (Form 205)</p>	<p>DLSE has implemented the acceptance of oral complaints—Federal OSHA-Region 9 will continue to monitor this.</p>	Completed

**Appendix B—California State Plan (Cal/OSHA)
Status of FY 2009 EFAME Findings and Recommendations**

No.	Findings	Recommendations	Corrective Actions	Status
		(DIS 0-0.9 Federal Whistleblower Manual, Chapter 7, Section V (A)).		
09-30	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.	This issue continues to be a problem with the Division of Labor Standards Enforcement (DLSE). Federal OSHA has met with DLSE on March 17, 2011 to discuss training for investigators in an effort to provide the skills and knowledge necessary to document whistleblower cases with the appropriate information.	Pending
09-31	Complainant interviews were not conducted or documented in each case file and signed statements were not always obtained when feasible. Interviews with relevant witnesses, including management and third parties are not being determined.	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 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).	This issue continues to be a problem with the Division of Labor Standards Enforcement (DLSE). Federal OSHA has met with DLSE on March 17, 2011 to discuss training for investigators in an effort to provide the skills and knowledge necessary to document whistleblower cases with the appropriate information.	Pending
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.	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).	This issue continues to be a problem with the Division of Labor Standards Enforcement (DLSE). Federal OSHA has met with DLSE on March 17, 2011 to discuss training for investigators in an effort to provide the skills and knowledge necessary to ensure whistleblower cases are properly investigated and closed.	Pending
09-33	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.	This issue continues to be a problem with the Division of Labor Standards Enforcement (DLSE). Federal OSHA has met with DLSE on March 17, 2011 to discuss training for investigators in an effort to provide the skills and knowledge necessary to ensure that settlement agreements do not inappropriately waive an	Pending

**Appendix B—California State Plan (Cal/OSHA)
Status of FY 2009 EFAME Findings and Recommendations**

No.	Findings	Recommendations	Corrective Actions	Status
			employee's rights. Furthermore, DLSE was provided sample settlement agreements to ensure settlement agreements are written appropriately.	
09-34	Applicants in the Cal/VPP are not disqualified for open enforcement investigations, contested citations, notices under appeal, or affirmed 11(c) violations that are unresolved or outstanding enforcement within the last three years.	Adopt Federal OSHA's specific "disqualifying" factors (CSP 03-01-003 VPP Policies and Procedures Manual, Chapter V).	Cal/OSHA submitted their revised VPP policies and procedures on February 18, 2011, which addressed "disqualifying factors" for Cal/VPP applicants.	Completed
09-35	Cal/VPP participants are not required to submit a new statement of commitment, signed by both management and any authorized collective bargaining agents, as appropriate within 60 days of a change.	Ensure a 60-day policy (or equivalent) for submission of a new statement of commitment (CSP 03-01-003, VPP Policies and Procedures Manual, page 49) is adopted.	Cal/OSHA submitted their revised VPP policies and procedures on February 18, 2011, which addressed Federal OSHA's 60-day policy for submission of a new statement of commitment.	Completed
09-36	Specific Team Member (STM) qualifications are not required for participation in a Cal/VPP on-site investigation.	Adopt detailed qualifications for both the Team Leader and Special Team Member (STM) positions to ensure qualified personnel are reviewing potential VPP sites (CSP 03-01-003, VPP Policies and Procedures Manual, Chapter VI).	Cal/OSHA submitted their revised VPP policies and procedures on February 18, 2011, which addressed specific qualifications for STMs.	Completed
09-37	The Cal/OSHA VPP program does not require a Medical Access Order (MAO) or equivalent to review establishments' medical records.	Adopt MAO procedures and have the employer post it prior to the on-site visit.	Cal/OSHA submitted their revised VPP policies and procedures on February 18, 2011, which included MAO procedures.	Completed
09-38	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.	Despite current budgetary constraints, Cal/OSHA has ensured that they will respond to emergencies in a timely manner. Federal OSHA will continue to monitor this issue.	Pending
09-39	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	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	California's Governor Jerry Brown has continued the state-wide hiring freeze from the previous administration, which impacts Cal/OSHA's ability to hire personnel. Although	Pending

**Appendix B—California State Plan (Cal/OSHA)
Status of FY 2009 EFAME Findings and Recommendations**

No.	Findings	Recommendations	Corrective Actions	Status
	(16.0%) for health.	filled positions, covered workers, and employment in the State.	Cal/OSHA is not funded under appropriated State funds, the Governor is unwilling to lift the hiring freeze with the exception of public safety (police and fire departments). Federal OSHA-Region 9 will continue to monitor these restrictions.	
09-40	Cal/OSHA failed to process the unpaid bills of 1,229, 548.69 before December 30. Also, after the end of the grant year close-out, DIR drew down FY 2009 funds on January 21, 2009 in the amount of \$1,201,656.98.	Ensure all bills are processed timely and closely monitor grant draw downs of funding to ensure grant funds are properly managed. Liquidate all obligations incurred under the award no later than 90 days after the end of the funding period.	Cal/OSHA communicated to appropriate personnel to ensure all bills are processed timely and closely monitor grant draw downs of funding to ensure grant funds are properly managed.	Completed
09-41	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.	DOSH Appeals Board and Standards Board will provide periodic certifications of employment status for all employees. Federal OSHA will continue to monitor this issue.	Pending
09-42	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.	Ensure expenditures are paid with funds from that funding period and any mis-allocated expenditures should be re-allocated to State matching funds or return the grant monies that were incorrectly allocated.	DIR revised their Accounting Procedures Manual to ensure that travel costs are reimbursed with funds from the proper periods. Federal OSHA has received Cal/OSHA's revised Accounting Manual, which is currently under review.	Pending
09-43	Indirect cost rates were incorrectly applied and are not allowable costs to the grant.	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.	Cal/OSHA has implemented procedures to ensure that indirect costs are properly implemented. Federal OSHA has received Cal/OSHA's revised Accounting Manual, which is currently under review.	Pending
09-44	A "Program Report Narrative" that describes in detail the ARRA activity for each quarter was not submitted in a timely fashion.	Submit all required ARRA reports in a complete and timely fashion.	ARRA grant has been completed so no further action is required.	Completed
09-45	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	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	Compliance personnel are currently being trained on courses developed by Cal/OSHA, which have similar curriculum course descriptions as listed under the Federal Directive TED 01-00-018 <i>Initial Training Program for</i>	Pending

**Appendix B—California State Plan (Cal/OSHA)
Status of FY 2009 EFAME Findings and Recommendations**

No.	Findings	Recommendations	Corrective Actions	Status
	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.	equivalent; and ensure DLSE investigators and team leaders attend the Basic Whistleblower training course or equivalent.	<i>OSHA Compliance Personnel</i> —awaiting copy of Cal/OSHA’s revised training policies and procedures.	
09-46	Cal/OSHA has not established a curriculum of core courses that all 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> .	Establish a curriculum of core courses for newly hired compliance officers that are equivalent to Federal OSHA (TED 01-00-018 <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.	Cal/OSHA is currently training their compliance personnel with similar curriculum listed under the Federal Directive TED 01-00-018 <i>Initial Training Program for OSHA Compliance Personnel</i> —awaiting copy of Cal/OSHA’s revised training policies and procedures.	Pending

Appendix B continued—Status of FY 2009 EFAME Appeals Board Special Study Findings and Recommendations

No.	Findings	Recommendations	Corrective Actions	Status
09-1	<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>California enacted AB 2774 on September 30, 2010, which statutorily re-defines a serious violation and prescribes standards for the investigation and resolution of these violations. In January 2011, the Appeals Board conducted training for all of their Administrative Law Judges (ALJs), in regards to AB 2774, to ensure they are aware of the elements to support a serious violation. Awaiting copy of OSHAB’s updated policies and procedures manual (commonly referred to as the “Gold Book”). The updated policy should reflect when a serious citation would be upheld. Federal OSHA-Region 9 will also continue to track AB 2774’s impact on Cal/OSHA’s rate of serious violations. The full impact of AB 2774 will not be realized until the end of FY 2012 because FY 2011 will only be a partial year where AB 2774 was in effect.</p>	Pending
09-2	<p>Writs of Mandate on OSHA Decisions and DARs that result in loss of citations, citation classifications, or penalties are not being filed by Cal/OSHA in many cases where warranted.</p>	<p>Cal/OSHA must select sufficiently strong cases for appeal that would set precedent to challenge OSHAB decisions and practices regarding the classification of violations as serious in order to ensure that California meets the criteria in 29 CFR 1902.37(b)(14), which states: Wherever appropriate, the State agency has sought administrative and judicial review of adverse adjudications. This factor also addresses whether the State has taken the appropriate and necessary administrative, legislative or judicial action to correct any deficiencies in its enforcement program resulting from an adverse administrative or judicial determination.</p>	<p>Cal/OSHA has trained managers and compliance staff on the requirements of AB 2774. DOSH is closely monitoring ALJ decisions to identify cases that would be appropriate for appeal and will submit copies of each ALJ decision and DAR to the Oakland Area Office within 30 days of the final order.</p>	Completed
09-3	<p>The rules of evidence used by OSHA prevent many serious hazards from being</p>	<p>Cal/OSHA must take appropriate action—administrative, judicial, or legislative—to ensure that</p>	<p>DOSH has initiated training to all compliance staff to conduct enforcement inspections and</p>	Pending

Appendix B continued—Status of FY 2009 EFAME Appeals Board Special Study Findings and Recommendations

No.	Findings	Recommendations	Corrective Actions	Status
	<p>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>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>develop case documentation in accordance with the requirements of AB 2774, which is anticipated to be completed by June 30, 2011—Federal OSHA-Region 9 will follow-up on their progress towards completing this item during every quarterly meeting.</p>	
09-4	<p>OSHAB’s reduction of penalties including those for violations of 342(a), result in Cal/OSHA’s having a significantly lower percentage of penalty retention rate post-contest.</p>	<p>Cal/OSHA, using all available appeal resources, must select sufficiently strong cases for appeal that would set precedent regarding retention of penalties overall and a minimum penalty for violations of 342(a).</p>	<p>DOSH’s interpretation of 342(a) is that DOSH must issue a \$5,000 penalty for failure to report a serious injury/accident within 8 hours. This penalty receives no adjustment regardless of the employer’s size or any other mitigating factors—Federal OSHA-Region 9 will continue to address this issue with DOSH at all quarterly meetings.</p>	Pending
09-5	<p>Cal/OSHA field staff do not have sufficient legal training or background to present cases at hearings.</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</p>	<p>In January 2011, DOSH established a new training program, which addresses these issues—Federal OSHA-Region 9 will follow-up on their progress towards completing this item during every quarterly meeting.</p>	Pending

Appendix B continued—Status of FY 2009 EFAME Appeals Board Special Study Findings and Recommendations

No.	Findings	Recommendations	Corrective Actions	Status
		access to technical and legal resources to ensure at least as effective presentation of cases to OSHA.		
09-6	OSHA schedules multiple cases for the same Cal/OSHA staff member on the same day or in the same week without consideration for the time each party indicates is necessary to present their case.	Cal/OSHA must take appropriate action—administrative, judicial, or legislative—to address the problems associated with over scheduling of cases and assure that compliance officers or attorneys have adequate time between scheduled dates to prepare for upcoming hearings. If compliance officers are to continue to present their own cases, Cal/OSHA must provide adequate legal and administrative support to help them review the case file and prepare to testify.	OSHA has changed the calendaring practice previously in place that allowed the backlog to be eliminated.	Completed
09-7	OSHAB’s notification system is inaccurate and inefficient, Reconsideration Orders are unclear on the specific issue(s) being reconsidered and notifications are not always sent to the correct Cal/OSHA office.	Cal/OSHA must take appropriate action to assure that the system for hearing contested cases includes a method of notification that ensures clear, concise, accurate and timely notification to parties involved in the appeals process and is at least as effective as the OSHRC method.	OSHAB sends out a master calendar to DOSH Headquarters as well as the Regional and District offices.	Completed
09-8	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.	Cal/OSHA must take appropriate—administrative, judicial, or legislative—action to assure that all parties are afforded the opportunity for hearings in an appropriate manner consistent with the OSH Act including following the protocols outlined in the policies and procedures “Gold Book”; formally documenting the Pre-hearing conferences; and developing a system which results in timely and objective ALJ hearing procedures and decisions.	In January 2011, OSHAB held training for ALJs on ethics, appearance of neutrality, and other issues. OSHAB has also instituted a confidential liaison position for anyone who would like to report concerns with an ALJ. The phone number and point of contact has been communicated to DOSH personnel.	Completed
09-9	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	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	DOSH has initiated training to all compliance staff to conduct enforcement inspections and develop case documentation in accordance with the requirements of AB 2774, which is anticipated to be completed by June 30, 2011—Federal OSHA-Region 9 will	Pending

Appendix B continued—Status of FY 2009 EFAME Appeals Board Special Study Findings and Recommendations

No.	Findings	Recommendations	Corrective Actions	Status
	issue Decisions.	settlements as is done in the Federal Program and most other OSHA-approved State Plans.	follow-up on their progress towards completing this item during every quarterly meeting.	
09-10	ALJs do not follow the OSHAB regulations (Gold Book) for amending Cal/OSHA citations.	Cal/OSHA must take appropriate action to establish the necessary rules and/or practices with OSHAB that allow amendment of citations in a manner at least as effective as Federal case law and OSHRC procedures—including amendment for technical errors and to conform with evidence presented. Cal/OSHA should also take steps to assure that case files contain accurate information, especially regarding company name and standards cited, through staff training and improved case file review, and fully utilize all appeals processes when citations/cases are vacated for minor technical errors.	In January 2011, OSHAB held training for ALJs on ethics, appearance of neutrality, and other issues. OSHAB has also instituted a confidential liaison position for anyone who would like to report concerns with an ALJ. The phone number and point of contact has been communicated to DOSH personnel.	Completed
09-11	Witness availability has affected the outcome of appealed cases.	When an appeal does occur, Cal/OSHA should consider witnesses availability when determining whether settlement is warranted. Utilize informal conferences as a means of lowering the appeals rate and more successful retention of citations including violation classification and appropriate penalties.	OSHAB is promoting more pre-hearing settlement conferences to more expeditiously resolve appealed cases.	Completed
09-12	Cal/OSHA's informal conference policies do not encourage informal settlement and are not similar to the Federal Program.	Cal/OSHA must discontinue the automatic 50% reduction of proposed penalties based on an assumption of future abatement. Cal/OSHA should adopt policies on informal conferences that are at least as effective as Federal policies.	Penalty amounts and credits are set by regulation—DOSH has had extensive discussions with stakeholders about amending its penalty regulations and intends to address through rulemaking the issue of abatement credit as well as a number of other issues.	Completed
09-13	Through its practices, Cal/OSHA is effectively extending the 15 working day contest period established by statute by 10 days by accepting contests by phone, allowing 10 additional days for submission of documentation regarding the grounds for contest, and allowing the use	Cal/OSHA must determine whether this practice is in accordance with State Law and evaluate how these practices affect their contest rate. The State should determine whether the adoption of contest, informal conference, and settlement procedures more in line with statutory requirements and Federal practice would resolve	OSHA recognizes that this finding did not fully reflect Cal/OSHA's appeals procedures.	Completed

Appendix B continued—Status of FY 2009 EFAME Appeals Board Special Study Findings and Recommendations

No.	Findings	Recommendations	Corrective Actions	Status
	of a “check-off box” form, in lieu of a written submission, for the filing process.	many of the issues identified in this report. Absent a determination to change these practices, OSHAB must submit a plan change supplement for Federal review, documenting its entire appeals process with a detailed comparison to the Federal program, showing how it is “at least as effective,” and a legal opinion that it is in accordance with State law.		