

FY 2010 Federal Annual Monitoring and Evaluation (FAME) Report

On the

CALIFORNIA DIVISION OF OCCUPATIONAL SAFETY AND HEALTH (CAL/OSHA)



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Executive Summary

Introduction

The Department of Industrial Relations (DIR) administers the California Occupational Safety and Health Plan, which is commonly referred to as Cal/OSHA. The Division of Occupational Safety and Health (DOSHS) is the principal executor of the plan. In FY 2010, Mr. John Duncan was the Director of the Division of Industrial Relations and the State Designee. Presently, Ms. Christine Baker, Chief Deputy of DIR, is the acting State Designee. Mr. Len Welsh was the Chief of Cal/OSHA during this review period. On April 15, 2011, Ms. Ellen Widess was appointed as Chief of Cal/OSHA. Mr. Christopher Lee, Deputy Chief for Enforcement, and Ms. Vicky Heza, Program Manager for Consultation Service, provide support for the Chief of Cal/OSHA.

Cal/OSHA has an independent Occupational Safety and Health Standards Board (OSHSB) that promulgates its own standards, such as Heat Illness, Aerosol Transmissible Disease (ATD), ATD—Zoonotics, and Food Flavorings standards. This plan also has an independent Occupational Safety and Health Appeals Board (OSHAB) that adjudicates contested cases. The Division of Labor Standards Enforcement (DLSE) investigates allegations of discrimination.

Cal/OSHA covers all safety and health issues, except those where the State is precluded from enforcing such as Federal civilian employees, private sector employers on Native American lands, maritime activities on the navigable waterways of the United States, private contractors working on land designated as exclusive Federal jurisdiction, and employers that require Federal security clearances.

Federal OSHA funds this plan under grants authorized by Section 23(g) and 21(d) of the Occupational Safety and Health Act—23(g) covers enforcement of private and public sector employees and consultation of public sector employers and 21(d) covers consultation of private sector employers.

In FY 2010, the total budget for Cal/OSHA's 23(g) grant was \$66,919,800; the Federal share was \$27,418,800 that the State overmatched by \$12,082,200. This grant agreement funded approximately 524 authorized positions with an onboard staff of over 400.

Report Summary

The Fiscal Year (FY) 2010 Federal Annual Monitoring Evaluation (FAME) Report is not a comprehensive evaluation, but is focused on the State's response to the recommendations in the FY 2009 Enhanced Federal Annual Monitoring and Evaluation (EFAME) Report. This EFAME Follow-up Report addresses their progress towards achieving the actions specified in their final approved Corrective Action Plan (CAP) and the State's progress towards achieving their annual performance goals established in their FY 2010 Annual Performance Plan and reviews the effectiveness of the programmatic areas related to enforcement activities.

Cal/OSHA has yet to complete many of the issues found in the CAP—only 8 findings and recommendations (out of 46) have been completed. Many of the responses from CalOSHA regarding the eFAME findings conclude that the findings were not accurate or were not adequately backed up by data. However the previous administration verbally acknowledged the need to correct the findings and was provided the data used to support the finding. Due to the inconsistent responses and the argumentative nature of the responses by the previous Cal/OSHA

leadership the current leadership in Cal/OSHA must review the findings and proposed corrective actions and update the CAP to show what actions will be taken.

The annual performance plan results, which Cal/OSHA reported in their SOAR, indicate that the program has made significant advancements towards achieving its three main strategic goals. Evaluation of goal achievement or significant progress toward goal accomplishment has been reviewed and the results are identified in this report.

With respect to Cal/OSHA's first Strategic Goal—*Improve workplace safety and health for all workers through direct intervention methods that result in fewer hazards, reduced exposures, and fewer injuries, illnesses, and fatalities*—Cal/OSHA focused its enforcement resources in construction, select high hazard establishments, food processing/manufacturing, and agriculture industries. Based on the latest Bureau of Labor Statistics (BLS) data, injuries/illnesses and fatalities in the construction and private sector industries are decreasing. However, injuries and illness rates in the agriculture industry increased from the CY 2007 baseline while at the same time the fatality rate decreased.

Cal/OSHA's second Strategic Goal—*Promote workplace cultures that increase employer and employee awareness of, commitment to, and involvement in safety and health*—consisted of 4 sub-goals: Heat Illness Prevention Awareness, Educational Outreach to Hispanic Employee Groups in High Risk Industries, Partnership Programs, and Heat Illness Outreach. To meet these goals Cal/OSHA partnered with numerous organizations providing educational information on a variety of topics in both English and Spanish. Included in that was information to farm labor contractors and supervisors about their responsibilities under California's heat illness prevention standard. Cal/OSHA also increased their partnership activities and added a total of 15 new sites to VPP status.

California's third Strategic Goal—*Secure public confidence and maximize Cal/OSHA's capabilities by improving the effectiveness and efficiency of CAL/OSHA's programs and services* - This goal focused on reducing citation lapse time for Cal/OSHA enforcement. While there were efforts implemented to improve effectiveness and reduce the lapse time of enforcement case files, they failed to reduce the lapse time below their goal of 65 days. Additional methods and processes for improving effectiveness and reducing case file lapse time must be developed and implemented.

Additionally Cal/OSHA did not always provide timely notification to the complainant after a complaint investigation is completed (SAMM 3). They also did not ensure timely abatement of S/W/R violations in private sector (SAMM 6) in all cases. Procedures and oversight in these measures must be accomplished.

While overall performance and accomplishment of the strategic goals is good, many items from the 2009 evaluation remain uncorrected. The new administration needs to thoroughly review the corrective action plan and move forward on a realistic implementation plan to accomplish many of the actions necessary to ensure they are effective providing safe and healthy workplaces for all workers.

Monitoring Methodology

Information and data referenced in this report are derived from computerized State Activity Mandated Measures (SAMMs), Public Sector Mandated Activities Report for Consultation

(Public MARC), California's FY 2010 State OSHA Annual Report (SOAR), FY 2010 23(g) Grant, Complaints About State Program Administration (CASPs), other Integrated Management Information System (IMIS) reports, State policies and procedures, and discussions with State staff.

Meetings were held on December 17, 2010 and February 23, 2011 to discuss the FY 2009 EFAME findings and recommendations—Cal/OSHA's progress towards resolving each issue was discussed and action plans were established.

The Oakland Area Office held separate meetings with OSHAB on December 16, 2010 and DLSE on March 16, 2011. OSHAB continues to work with the Oakland Area Office in addressing pending issues from the FY 2009 EFAME—Appeals Board Special Study. OSHAB has completed 8 (out of 13) findings and recommendations from the Appeals Board Special Study CAP. The meeting with DLSE included discussions regarding their high backlog and pending case rate, low merit rate, and lack of investigator training as well as the findings and recommendations from the FY 2009 EFAME.

II. Major New Issues

Agency Leadership

In FY 2010, Mr. John Duncan was the Director of the Division of Industrial Relations and the State Designee. Ms. Christine Baker was recently appointed as Chief Deputy of DIR and is serving as the acting State Designee. Mr. Len Welsh was the Chief of Cal/OSHA during this review period, however on April 15, 2011, Ms. Ellen Widess was appointed as Chief of Cal/OSHA.

Furloughs and Vacancies

In FY 2010, Cal/OSHA's general staff had three furlough days per month and managers had one floating furlough day per month. Throughout this fiscal period, the Program was staffed by approximately 128 safety compliance officers, 74 health compliance officers, and 19 District Managers with 19 compliance officer positions vacant and 4 District Manager positions vacant.

Currently, Governor Jerry Brown has continued the State-wide hiring freeze, which was established by Governor Arnold Schwarzenegger. This hiring freeze impacts Cal/OSHA's ability to hire personnel. Although 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/fire).

Brazilian Blowout

In October 2010, hair straightening products like Brazilian Blowout and Cadiveu Brazil Thermal Reconstruction Solution, which contain formaldehyde and are used in the hair salon industry, became a national media item for both employee and consumer safety. Marketed as "formaldehyde free", these products were found to contain formaldehyde which could be released during the application process. In response to a referral from Oregon OSHA concerning the inaccuracy of the Material Safety Data Sheet (MSDS), Cal/OSHA initiated an inspection at the U.S. distributor for the product, GIB LLC, located in North Hollywood. Multiple inspections have been conducted at hair salons and distributors located throughout the State.

On March 23, 2011, Cal/OSHA issued citations to GIB LLC totaling \$7,675.00, which specifically addressed the following hazards:

- Failing to maintain written hazard determination procedures for evaluating hazards associated with their products.
- Failing to provide downstream employers with an objective determination through the product's required labels and MSDS (that the products contained formaldehyde in solutions and did not address specific health hazards of cancer, irritation, and sensitization or acute toxicity that may occur under normal conditions of use).
- Failing to ensure that the labels stated that the products contained formaldehyde and they did not contain appropriate hazards warning of formaldehyde in the solution.
- Failing to develop and update its MSDS to reflect that the products contained formaldehyde in the solution and may release formaldehyde under conditions of use. The MSDS did not address specific health hazards of cancer, irritation, and sensitization or acute toxicity that may occur under normal conditions of use.
- Additional citations were issued for recordkeeping, written hazard communication program, written respiratory protection program, eyewash station, personal protective equipment, written injury and illness prevention program, and electrical working conditions.

Cal/OSHA continues to address this hazard with ongoing investigations of distributors and salons alike.

Hyatt

Cal/OSHA received complaints alleging unsafe working conditions for five Hyatt Hotel facilities throughout the State in November 2010. The facilities were located in San Francisco's Fisherman's Wharf, Santa Clara, Los Angeles, West Hollywood and Long Beach. The complaints primarily concentrated on the repetitive motion injuries sustained by the housekeeping staff. Cal/OSHA has initiated inspections at three of the hotels to evaluate the worksites in accordance with their Policy and Procedures C-13, which provides guidance for evaluating the repetitive motion injury (RMI) issues. The inspections are ongoing and similar complaints have been filed at multiple locations across the country. California has an ergonomic standard in place to address potential hazards articulated in the complaints.

III. Assessment of State Actions and Performance Improvements in Response to Recommendations from the FY 2009 Enhanced Federal Annual Monitoring Evaluation (E-FAME)

Finding 09-1: *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.*

Recommendation 09-1: *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.*

Completed Action 09-1: 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).

Updated to 10-1 (formerly 09-1): This item is being reviewed by the new administration and will be updated upon final determination. Cal/OSHA plans to conduct training and submit revised policies and procedures, as well as a copy of their training curriculum regarding properly processing complaints after implementation of the OSHA Information System (OIS).

Finding 09-2: *The Cal/OSHA Policy and Procedures Manual does not address elements that are required in the complaint process.*

Recommendation 09-2: *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).

Completed Action 09-2: 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.

Updated to 10-2 (formerly 09-2): This item is being reviewed by the new administration and will be updated upon final determination. Cal/OSHA is currently in discussion with stakeholders to implement revised policies for this. They will submit the revised complaint policies and procedures for review.

Finding 09-3: *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.*

Recommendation 09-3: *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.*

Completed Action 09-3: On September 27, 2010, DOSH conducted mandatory training for all compliance personnel and managers to clarify the requirement for communicating with victims' families.

Updated to 10-3 (formerly 09-3): This item is being reviewed by the new administration and will be updated upon final determination. Cal/OSHA will submit the revised policies and procedures in regards to communication with victims' families during fatality investigations.

Finding 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.*

Recommendation 09-4: *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.*

Completed Action 10-4 (formerly 09-4): Cal/OSHA has trained personnel to ensure that fatality information is appropriately entered into IMIS and documented in the case file.

Updated to 10-4 (formerly 09-4): This item is being reviewed by the new administration and will be updated upon final determination. Cal/OSHA will submit the revised policies and procedures in regards to documenting fatality investigations.

Finding 09-5: *Cal/OSHA's policies and procedures does not address elements that are required in the fatality process.*

Recommendation 09-5: *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).

Completed Action 09-5: 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.

Updated to 10-5 (formerly 09-5): This item is being reviewed by the new administration and will be updated upon final determination. Cal/OSHA will submit the revised policies and procedures in regards to the fatality process.

Finding 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.*

Recommendation 09-6: *Update ASHIP and CSHIP protocols at least annually.*

Completed Action 09-6: Cal/OSHA has updated their ASHIP and CSHIP protocols and has distributed them to Regional and District managers.

Updated to 10-6 (formerly 09-6): This item is being reviewed by the new administration and will be updated upon final determination. Cal/OSHA will submit a copy of the updated ASHIP and CSHIP protocols once they are approved by the new administration.

Finding 09-7: *Cal/OSHA's Program Targeting System is not identifying industries where serious hazards are more likely to exist.*

Recommendation 09-7: *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.*

Completed Action 09-7: Cal/OSHA has discussed providing guidance to enforcement staff on properly coding inspections to better reflect Cal/OSHA's statistics for programmed inspections.

Updated to 10-7 (formerly 09-7): This item is being reviewed by the new administration and will be updated upon final determination. Cal/OSHA will submit the revised guidance on coding once completed.

Finding 09-8: *Cal/OSHA's policy on classifying violations does not ensure violations that would be considered "Serious" under the Federal FOM are classified as Serious.*

Recommendation 09-8: *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).*

Completed Action 09-8: In January 2011, Cal/OSHA managers and compliance personnel were trained on the elements of Assembly Bill (AB) 2774, which statutorily re-defines a serious violation and prescribes standards for the investigation and resolution of these violations.

Updated to 10-8 (formerly 09-8): The new administration will review current guidance and develop and may update the guidance and/or policy. Upon final determination they will submit the revised guidance.

Finding 09-9: *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).*

Recommendation 09-9: *Consider employer history statewide when citing Repeat violations.*

Completed Action 09-9: All DOSH managers and compliance personnel have been instructed on considering employer's enforcement history statewide. Currently there is not a provision to be able to accomplish this; however they are looking into what can be done in the interim, prior to rulemaking.

Updated to 10-9 (formerly 09-9): 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 proposal will be sent for review. The projected date for promulgating this change is January 2012.

Finding 09-10: Employee representatives were not always afforded the opportunity to participate in all phases of the workplace inspection.

Recommendation 09-10: *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.*

Completed Action 09-10: Cal/OSHA has discussed and re-emphasized the requirement for giving union representatives the opportunity to participate in inspections with managers and compliance personnel.

Updated to 10-10 (formerly 09-10): This item is being reviewed by the new administration and will be updated upon final determination. Cal/OSHA will submit the revised policies and procedures, as well as a copy of their training curriculum, in regards to union participation during an inspection.

Finding 09-11: *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.*

Recommendation 09-11: *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).*

Completed Action 09-11: Cal/OSHA trained managers and compliance personnel on properly documenting employer knowledge and employee interviews in accordance with AB 2774.

Updated to 10-11 (formerly 09-11): This item is being reviewed by the new administration and will be updated upon final determination. Cal/OSHA will submit the revised policies and procedures, as well as a copy of their training curriculum, in regards to conducting employee interviews.

Finding 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.*

Recommendation 09-12: *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.*

Completed Action 09-12: Cal/OSHA has emphasized collecting 300 logs to all managers and compliance personnel and is in the process of developing guidance.

Updated to 10-12 (formerly 09-12): This item is being reviewed by the new administration and will be updated upon final determination. Cal/OSHA will submit the revised policies and procedures, as well as a copy of their curriculum, in regards to collecting 300 logs.

Finding 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, or the inspection number.*

Recommendation 09-13: *Ensure that all aspects of the injury and illness documentation are included in the IB 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.*

Completed Action 09-13: Cal/OSHA has trained all compliance personnel and managers on AB 2774, which addresses case file documentation in order to adequately identify and document the hazard and exposure.

Updated to 10-13 (formerly 09-13): This item is being reviewed by the new administration and will be updated upon final determination. They will submit the revised policies and procedures, as well as a copy of their training curriculum, in regards to properly documenting case files for legal sufficiency.

Finding 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.*

Recommendation 09-14: *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.

Completed Action 09-14: Cal/OSHA is in the process of training enforcement personnel on properly documenting case files, to include narratives and dairy sheets, to ensure legal sufficiency.

Combined and revised to 10-13: This item is being reviewed by the new administration and will be updated upon final determination. They will submit the revised policies and procedures, as well as a copy of their training curriculum, in regards to documentation and legal sufficiency.

Finding 09-15: *Exposure monitoring was not conducted prior to issuing citations to employers in four health inspections.*

Recommendation 09-15: *Ensure health inspectors conduct appropriate sampling to evaluate exposure and support violations. Ensure the information is properly entered into IMIS.*

Completed Action 09-15: Cal/OSHA has discussed monitoring requirements with managers and compliance personnel and industrial hygienists have the appropriate equipment and training to accomplish sampling. This item is considered completed and is closed, however will be monitored throughout the current year.

Finding 09-16: *There were 209 Serious/Willful/Repeat (S/W/R) violations identified in the SAMM Report that were not abated timely.*

Recommendation 09-16: *Develop a tracking system to ensure all violations are abated timely and/or ensure abatement data is accurately entered into IMIS.*

Completed Action 09-16: Cal/OSHA is currently training managers and compliance personnel on the importance of issuing citations to employers who fail to provide abatement certification.

Updated to 10-14 (formerly 09-16): This item is being reviewed by the new administration and will be updated upon final determination. Cal/OSHA will submit the revised guidelines and data to support the improvements.

Finding 09-17: *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.*

Recommendation 09-17: *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.*

Completed Action 09-17: Cal/OSHA is considering the current policy and the effect the changes would have on their workload.

Updated to 10-15 (formerly 09-17): This item is being reviewed by the new administration and will be updated upon final determination. Cal/OSHA will submit the revised guidelines in regards to Informal Conferences.

Finding 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.*

Recommendation 09-18: *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.*

Completed Action 09-18: Cal/OSHA is assessing the data to determine what needs to be done in this regard. Also, a meeting was held with the Appeals Board and they have conducted training for their Administrative Law Judges (ALJs) in an effort to improve penalty retention.

Updated to 10-16 (formerly 09-18): This item is being reviewed by the new administration and will be updated upon final determination. Cal/OSHA will submit the revised policies and procedures, in regards to pre and post-contest settlements.

Finding 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.*

Recommendation 09-19: *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.*

Completed Action 09-19: Due to the upcoming transition to the OIS system, new procedures have not been developed.

Updated to 10-17 (formerly 09-19): DIR Accounting and Cal/OSHA will develop policies and procedures for inputting penalty collection data and upon implementation of OIS they will train staff and monitor the data input. Cal/OSHA will submit the revised policies and procedures for review.

Finding 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.*

Recommendation 09-20: *Ensure that the 15-day due date for all issued citations is tracked.*

Completed Action 09-20: Due to the upcoming transition to the OIS system, new procedures have not been developed.

Updated to 10-18 (formerly 09-20): Cal/OSHA will develop policies and procedures for inputting penalty collection data and upon implementation of OIS they will train staff and ensure the dates are input.

Finding 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.*

Recommendation 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.*

Completed Action 09-21: Cal/OSHA is currently training managers on running and utilizing complaint tracking reports

Combined and revised to 10-2: This item is being combined with the update to the policies and procedures manual for complaint handling. This will be reviewed by the new administration and will be updated upon final determination. Cal/OSHA will submit the revised policies and procedures in regards to complaint processing.

Finding 09-22: *Complaint Letters G and H are not being consistently entered in the database.*

Recommendation 09-22: *Ensure that appropriate G and H notification letters are entered and being sent to all complainants.*

Completed Action 09-22: Cal/OSHA is currently entering this data into IMIS and providing training to managers in regards to available IMIS tracking reports.

Combined and revised to 10-2: This item is being combined with the update to the policies and procedures manual for complaint handling. This will be reviewed by the new administration and will be updated upon final determination. Cal/OSHA will submit the revised policies and procedures in regards to inputting complaint data.

Finding 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.*

Recommendation 09-23: *Generate and review the Referral Log on a regular basis and ensure that all referrals are handled appropriately and timely.*

Completed Action 09-23: Cal/OSHA has provided guidance to all managers to ensure referrals are tracked and inspected appropriately.

Updated to 10-19 (formerly 09-23): 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.

Finding 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.*

Recommendation 09-24: *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.

Completed Action 09-24: 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.

Updated to 10-20 (formerly 09-24): This item is being reviewed by the new administration and will be updated upon final determination. They will submit the revised policies and procedures, as well as a copy of their training curriculum, in regards to tracking fatalities.

Finding 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.*

Recommendation 09-25: *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.*

Completed Action 09-25: Cal/OSHA has emphasized to managers and compliance personnel the need to complete draft forms in the IMIS and is monitoring completion of this.

Updated to 10-21 (formerly 09-25): Data Entry training is scheduled to be conducted after OIS implementation.

Finding 09-26: *Cal/OSHA's evaluation and adoption of Federal Program Changes has not been timely. Cal/OSHA has not adopted both the Employer Payment for Personal Protective Equipment, Final Rule, published November 15, 2007 and the Clarification of Employer Duty to Provide Personal Protective Equipment and Train Each Employee, published December 12, 2008. They adopted the Final Rule on Electrical Installation Requirements—29 CFR 1910 Subpart S, 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 CPL 02-00-148 2009, Field Operations Manual. 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.*

Recommendation 09-26: *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).*

Completed Action 09-26: On November 10, 2010, Cal/OSHA assigned staff to track Federal Program Changes to ensure that all are responded to in a timely manner. Cal/OSHA has responded to all Federal Program Changes, which were released after November 10, 2010, within the mandated timeframe, however all FPC have not been adopted.

Updated to 10-22 (formerly 09-26): This item is being reviewed by the new administration and will be updated upon final determination. Cal/OSHA will submit the revised policies and

procedures once completed.

Finding 09-27: *State-initiated rulemaking that promulgated a standard on Bakery Ovens that was deemed not to be at least as effective as Federal OSHA standards.*

Recommendation 09-27: *Ensure standards are at least as effective as Federal OSHA standards and initiate actions to update deficient standards.*

Completed Action 09-27: No action has been taken by Cal/OSHA at this time.

Updated to 10-23 (formerly 09-27): A review of nationally-related accidents is being conducted to determine if Cal/OSHA's standard effectively addresses hazards associated with the concerns expressed in the rule. The new administration will be updated upon final determination for possible reconsideration at that time.

Finding 09-28: *Of the 128 whistleblower (WB) investigations, 96% were not completed within the 90-day period as required.*

Recommendation 09-28: *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).*

Completed Action 09-28: A meeting was held to discuss case file processing and training for investigators in an effort to provide the skills and knowledge to process whistleblower cases more timely.

Updated to 10-24 (formerly 09-28): This issue continues to be a problem with the Division of Labor Standards Enforcement (DLSE). The new administration must review this and provide an updated corrective action plan.

Finding 09-29: *Oral complaints are not accepted and docketed in WB cases.*

Recommendation 09-29: *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) (DIS 0-0.9 Federal Whistleblower Manual, Chapter 7, Section V (A)).*

Completed Action 09-29: DLSE has implemented the acceptance of oral complaints. This item is completed and considered closed.

Finding 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.*

Recommendation 09-30: *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.*

Completed Action 09-30: A meeting was held to discuss case file processing and tracking opening and closing letters.

Updated to 10-25 (formerly 09-30): This issue continues to be a problem with the Division of Labor Standards Enforcement (DLSE). The new administration must review this and provide an updated corrective action plan.

Finding 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.*

Recommendation 09-31: *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, Chpt. 3, and DIS 0-0.9 Federal Whistleblower Manual, Chpt 3).*

Corrective Action 09-31: A meeting was held to discuss case file processing and the need to interview all relevant parties.

Updated to 10-26 (formerly 09-31): This issue continues to be a problem with the Division of Labor Standards Enforcement (DLSE). The new administration must review this and provide an updated corrective action plan.

Finding 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.*

Recommendation 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).*

Corrective Action 09-32: A meeting was held to discuss case file processing and the need to conduct closing a conference with the complainant as well as prepare a final investigative report.

Combined and revised to 10-26: This issue is revised and combined with 10-26 as this continues to be a problem. The new administration must review this and provide an updated corrective action plan.

Finding 09-33: *In settled cases, the settlement agreement is reviewed and an un-redacted copy is not maintained within the case file.*

Recommendation 09-33: *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.*

Completed Action 09-33: A meeting was held to discuss case file processing and the need to

conduct closing a conference with the complainant as well as prepare a final investigative report. DLSE was provided sample settlement agreements to ensure settlement agreements are written appropriately.

Updated to 10-27 (formerly 09-33): This issue continues to be a problem with the Division of Labor Standards Enforcement (DLSE). The new administration must review this and provide an updated corrective action plan to ensure that settlement agreements do not inappropriately waive an employee's rights.

Finding 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.*

Recommendation 09-34: *Adopt Federal OSHA's specific "disqualifying" factors (CSP 03-01-003 VPP Policies and Procedures Manual, Chapter V).*

Completed Action 09-34: Cal/OSHA submitted their revised VPP policies and procedures on February 18, 2011, which addressed "disqualifying factors" for Cal/VPP applicants. The revision was approved and this item is completed and is considered closed.

Finding 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.*

Recommendation 09-35: *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.*

Completed Action 09-35: 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. The revision was approved and this item is completed and is considered closed.

Finding 09-36: *Special Team Member (STM) qualifications are not required for participation in a Cal/VPP on-site investigation.*

Recommendation 09-36: *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).*

Completed Action 09-36: Cal/OSHA submitted their revised VPP policies and procedures on February 18, 2011, which addressed specific qualifications for STMs. The revision was approved and this item is completed and is considered closed.

Finding 09-37: *The Cal/OSHA VPP program does not require a Medical Access Order (MAO) or equivalent to review establishments' medical records.*

Recommendation 09-37: *Adopt MAO procedures and have the employer post it prior to the on-site visit.*

Completed Action 09-37: Cal/OSHA submitted their revised VPP policies and procedures on February 18, 2011, which included MAO procedures. The revision was approved and this item is completed and is considered closed.

Finding 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.*

Recommendation 09-38: *Cal/OSHA must ensure that it has sufficient on-board staff available to provide effective worker protection.*

Completed Action 09-38: No change in current policy has been made in regards to staffing on furlough days; current policies do allow for response to imminent danger and fatalities on furlough days.

Updated to 10-28 (formerly 09-38): Despite current budgetary constraints, Cal/OSHA has ensured that they will respond to emergencies in a timely manner. A review of the effectiveness of the current policy will be conducted.

Finding 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 (16.0%) for health.*

Recommendation 09-39: *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.*

Completed Action 09-39: 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 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).

Updated to 10-29 (formerly 09-39): A review of the effectiveness of the current staffing and the impact will be conducted. The new administration will be updated upon final determination.

Finding 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.*

Recommendation 09-40: *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.*

Completed Action 09-40: 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. This item is completed and considered closed.

Finding 09-41: *The Standards Board and Appeals Board could not provide actual hours,*

timesheets or employment status at any given time for all employees.

Recommendation 09-41: *Provide periodic certifications of employment status for all employees.*

Completed Action 09-41: DOSH Appeals Board and Standards Board agreed to provide periodic certifications of employment status for all employees.

Updated to 10-30 (formerly 09-41): The Appeals Board and the Standards board will provide documentation to demonstrate appropriate tracking of hours.

Finding 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.*

Recommendation 09-42: *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.*

Completed Action 09-42: DIR revised their Accounting Procedures Manual to ensure that travel costs are reimbursed with funds from the proper periods.

Updated to 10-31: Cal/OSHA's revised Accounting Manual is currently under review to ensure it will sufficiently track expenditures.

Finding 09-43: *Indirect cost rates were incorrectly applied and are not allowable costs to the grant.*

Recommendation 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.*

Completed Action 09-43: Cal/OSHA has implemented procedures to ensure that indirect costs are properly implemented.

Combined and revised to 10-31: This item has been combined with item 10-31. The revised Accounting Manual is currently under review to ensure it requires appropriate level of detail to determine accurate accounting.

Finding 09-44: *A "Program Report Narrative" that describes in detail the ARRA activity for each quarter was not submitted in a timely fashion.*

Recommendation 09-44: *Submit all required ARRA reports in a complete and timely fashion.*

Completed Action 09-44: ARRA grant has been completed so no further action is required.

Finding 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 attended the OTI Course #2450 Evaluation of Safety*

and Health Management Systems (SHMS). DLSE investigators and team leaders have not attended the Basic Whistleblower training course.

Recommendation 09-45: *Ensure staff members receive appropriate training such as the Initial Compliance course; OTI Course #2450 Evaluation of Safety and Health Management System (SHMS) 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.*

Completed Action 09-45: 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 *Initial Training Program for OSHA Compliance Personnel.*

Updated to 10-32 (formerly 09-45): This item is being reviewed by the new administration and will be updated upon final determination. Cal/OSHA will submit the revised training curriculum and documentation to show compliance staff are receiving all mandatory training.

Finding 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 Initial Training Program for OSHA Compliance Personnel.*

Recommendation 09-46: *Establish a curriculum of core courses for newly hired compliance officers that are equivalent to Federal OSHA (TED 01-00-018 Initial Training Program for OSHA Compliance Personnel). 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.*

Completed Action 09-46: Cal/OSHA has developed a revised training program which includes similar curriculum course descriptions as listed under the Federal Directive TED 01-00-018 *Initial Training Program for OSHA Compliance Personnel.*

Combined and revised to 10-32: This item is being reviewed by the new administration and will be updated upon final determination. Cal/OSHA will submit the revised training curriculum and policies and procedures for review.

IV. Assessment of State Actions and Performance Improvements in Response to Recommendations from the FY 2009 EFAME—Appeals Board Special Study

Finding 09-1: *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.

Recommendation 09-1: *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.*

Completed Action 09-1: 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.

Updated to 10-33 (formerly 09-1): 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.

Finding 09-2: *Writs of Mandate on OSHA Decisions and Decisions After Reconsiderations (DARs) that result in loss of citations, citation classifications, or penalties are not being filed by Cal/OSHA in many cases where warranted.*

Recommendation 09-2: *Cal/OSHA must select sufficiently strong cases for appeal that would set precedent to challenge OSHA 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.*

Completed Action 09-2: 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. This item is completed and is considered closed.

Finding 09-3: *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 OSHAB 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. 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. A medically qualified person is necessary to sustain violations based on exposure and “work-relatedness” under the current Appeals process.*

Recommendation 09-3: *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.*

Completed Action 09-3: Training on the passage of AB 2774 which clarifies expert testimony and compliance officer testimony has been accomplished.

Updated to 10-34 (formerly 09-3): This item is being reviewed by the new administration and guidelines or procedures will be developed. They will submit the guidelines or procedures.

Finding 09-4: *OSHAB’s reduction of penalties including those for violations of 342(a), result in Cal/OSHA having a significantly lower percentage of penalty retention rate post-contest.*

Recommendation 09-4: *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).*

Completed Action 09-4: The current understanding of 342(a) is that Cal/OSHA 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. They feel they do not have the authority to adjust this penalty at the informal conference.

Updated to 10-35 (formerly 09-4): This item must be reviewed by the new administration to determine if this can be corrected with a policy change or move to amend 342(a) to allow for size and history adjustments before issuing penalties as well as considering appropriate adjustments at the informal conference.

Finding 09-5: *Cal/OSHA field staff do not have sufficient legal training or background to present cases at hearings.*

Recommendation 09-5: *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 OSHAB.*

Completed Action 09-5: No action has been completed on this item, however Cal/OSHA has agreed to review their procedures.

Updated to 10-36 (formerly 09-5): This item must be reviewed by the new administration and guidelines or new procedures should be developed. They will submit the guidelines or procedures.

Finding 09-6: *OSHAB 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.*

Recommendation 09-6: *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.

Completed Action 09-6: OSHAB has changed the calendaring practice previously in place that allowed the backlog to be eliminated. This item is completed and is considered closed.

Finding 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.*

Recommendation 09-7: *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.*

Completed Action 09-7: OSHAB now sends out a master calendar to DOSH Headquarters as well as the Regional and District offices. This item is completed and is considered closed.

Finding 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.*

Recommendation 09-8: *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.*

Completed Action 09-8: 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. This item is completed and is considered closed.

Finding 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 issue Decisions.*

Recommendation 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.*

Completed Action 09-9: Training has been initiated 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.

Combined and revised to 10-36: This item is being reviewed by the new administration and guidelines or procedures will be developed. They will submit the guidelines or procedures.

Finding 09-10: *ALJs do not follow the OSHAB regulations (Gold Book) for amending Cal/OSHA citations.*

Recommendation 09-10: *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.*

Completed 09-10: 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. This item is completed and is considered closed.

Finding 09-11: *Witness availability has affected the outcome of appealed cases.*

Recommendation 09-11: *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.*

Completed Action 09-11: OSHAB is promoting more pre-hearing settlement conferences to more expeditiously resolve appealed cases. This item is completed and is considered closed.

Finding 09-12: *Cal/OSHA's informal conference policies do not encourage informal settlement and are not similar to the Federal Program.*

Recommendation 09-12: *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.*

Completed Action 09-12: 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. This item is completed and is considered closed.

Finding 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 of a "check-off box" form, in lieu of a written submission, for the filing process.*

Recommendation 09-13: *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 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.

Completed Action 09-13: This item is completed and is considered closed; this finding did not fully reflect Cal/OSHA’s appeals procedures and corrective action is not required.

V. FY 2010 State Enforcement

State Activity Mandated Measure (SAMM)

Cal/OSHA did not meet their goal of three days to initiate complaint inspections (Table 1). In FY 2010, Cal/OSHA averaged 23.04 days to initiate a complaint inspection as compared to 24.56 days during the previous fiscal period (SAMM 1).

The number of days to initiate complaint investigations, which did not result in inspections, averaged 10.59 days (SAMM 2).

As of September 30, 2010, Cal/OSHA had 31 out of 2,663 complaints where the complainant was not notified in a timely manner (SAMM 3). The following are reasons for the delay in notifying complainants:

- 10 low priority
- 8 letter wasn’t sent to the complainant until inspection was closed (misunderstanding of SAMM measure)
- 6 backlog of files to process
- 2 compliance officers’ oversight
- 2 unsatisfactory response or more information was needed
- 1 data entry error
- 1 compliance officer working 100% on an ARRA project at the time
- 1 special case that was sent to the Region for further review prior to complainant notification

Table 1

Complaints (SAMM 1,2,3)						
	<i>FY 2006</i>	<i>FY 2007</i>	<i>FY 2008</i>	<i>FY 2009</i>	<i>FY 2010</i>	<i>Goal</i>
Days to Initiate Inspection (SAMM 1)	31.28 days (80061/2559)	34.35 days (97255/2831)	28.93 days (88580/3061)	24.56 days (66235/2696)	23.04 days (65162/2828)	3 days
Days to Initiate Investigation (SAMM 2)	15.40 days (63836/4143)	17.49 days (73124/4180)	14.42 days (63411/4396)	14.08 days (55440/3936)	10.59 days (39841/3760)	14 days
Complainants Notified Timely (SAMM 3)	97.10% (2478/2552)	97.97% (2653/2708)	96.73% (2719/2811)	98.11% (2591/2641)	98.84% (2632/2663)	100%

Finding (Repeat of 09-1; combined with new 10-1): 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.

Recommendation 10-1: 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.

Cal/OSHA’s response time to imminent danger complaints continues to be commendable. Although SAMM data indicated that Cal/OSHA did not respond to two imminent danger complaints within one day, an investigation of this outlier revealed that in both cases the compliance officer did visit the site timely, but no employers and/or employees were on-site.

Table 2

Imminent Danger (SAMM 4)						
	<i>FY 2006</i>	<i>FY 2007</i>	<i>FY 2008</i>	<i>FY 2009</i>	<i>FY 2010</i>	<i>Goal</i>
Percent Responded to Within One Day	86.42% (210/243)	92.98% (225/242)	97.79% (221/226)	99.18% (242/244)	98.90% (179/181)	100%

Cal/OSHA had one denial of entry during FY 2010 in which Cal/OSHA did not obtain an inspection warrant from the California Division of Labor Standards Enforcement (DLSE) (SAMM 5).

SAMM data indicated 156 Serious/Willful/Repeat (S/W/R) violations in the private sector were not abated timely (Table 3).

Table 3

Percent S/W/R Violations Verified Abated (SAMM 6)						
	<i>FY 2006</i>	<i>FY 2007</i>	<i>FY 2008</i>	<i>FY 2009</i>	<i>FY 2010</i>	<i>Goal</i>
Private Sector	72.08% (1136/1576)	73.70% (1149/1559)	81.23% (1285/1582)	83.66% (1065/1273)	84.38% (843/999)	100%
Public Sector	59.09% (26/44)	85.37% (35/41)	95.00% (19/20)	95.83% (23/24)	100% (28/28)	100%

An investigation of this outlier revealed the following:

- 83 abated after reminder was sent to the employer
- 27 employer out of business
- 24 data entry errors in IMIS
- 13 lack of clerical support
- 5 employer filed appeal that was withdrawn or denied
- 2 unable to contact employer
- 2 new management at worksite or abatement extension granted

Finding (Repeat of 09-16; combined with new 10-14): 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.

Recommendation 10-14: 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.

In FY 2010, Cal/OSHA’s citation lapse time averaged 70.60 days for safety and 79.09 days for health, which is a slight decrease from last year’s results (Table 4).

Table 4

Citation Lapse Time (SAMM 7)						
	<i>FY 2006</i>	<i>FY 2007</i>	<i>FY 2008</i>	<i>FY 2009</i>	<i>FY 2010</i>	<i>FY 2010 National Data</i>
Safety	91.95 days (431533/4693)	70.58 days (341833/4843)	71.39 days (345778/4843)	73.90 days (333987/4519)	70.60 days (300855/4261)	47.3 days
Health	97.35 days (86350/887)	78.49 days (83592/1065)	78.06 days (81809/1048)	83.31 days (82394/989)	79.09 days (73555/930)	61.9 days

California's percent of programmed inspections with S/W/R violations was 25.15% for safety and 9.04% for health in FY 2010 (SAMM 8).

Table 5

Percent Programmed Inspections with S/W/R Violations (SAMM 8)						
	<i>FY 2006</i>	<i>FY 2007</i>	<i>FY 2008</i>	<i>FY 2009</i>	<i>FY 2010</i>	<i>FY 2010 National Data (3 years)</i>
Safety	29.73% (695/2338)	27.92% (854/3059)	26.48% (745/2813)	26.91% (767/2850)	25.15% (710/2823)	58.4%
Health	21.19% (32/ 151)	28.41% (75/264)	22.99% (86/374)	10.09% (47/466)	9.04% (45/498)	50.9%

The average number of violations per inspection was .68 for S/W/R violations and 2.61 for other-than-serious violations (Table 6).

Table 6

Violations per Inspection with Violations (SAMM 9)						
	<i>FY 2006</i>	<i>FY 2007</i>	<i>FY 2008</i>	<i>FY 2009</i>	<i>FY 2010</i>	<i>FY 2010 National Data (3 years)</i>
S/W/R	0.86 (4825/5580)	.88 (5233/5919)	.79 (4703/5893)	.76 (4200/5520)	.68 (3581/5199)	2.1
Other	2.54 (14185/5580)	2.60 (15403/5919)	2.58 (15257/5893)	2.63 (14554/5520)	2.61 (13616/5199)	1.2

Cal/OSHA's penalty structure remains the highest in the nation. In FY 2010, the average initial penalty for serious violations was \$5,712.43, which continued to exceed the National average of \$1,360.40 (SAMM 10).

Table 7

Average Initial Penalty Per Serious Violation (SAMM 10)						
	<i>FY 2006</i>	<i>FY 2007</i>	<i>FY 2008</i>	<i>FY 2009</i>	<i>FY 2010</i>	<i>FY 2010 National Data (3 years)</i>
	\$6272.75 (28973k/4619)	\$5936.75 (29499k/4969)	\$5811.63 (26280k/4522)	\$5503.41 (22090709/4014)	\$5712.43 (19130953/3349)	\$1360.40

Cal/OSHA's enforcement program for state and local government is identical to that in the private sector. Cal/OSHA schedules inspections and issues citations with penalties for both in the same manner. During FY 2010, 6.88% of California's inspections were conducted in the public sector, which continues to be higher than its three-year average (SAMM 11).

Table 8

Percent of Total Inspections in Public Sector (SAMM 11)						
	<i>FY 2006</i>	<i>FY 2007</i>	<i>FY 2008</i>	<i>FY 2009</i>	<i>FY 2010</i>	<i>FY 2010 State Average (3 years)</i>
	5.43% (447/8239)	5.93% (542/9142)	6.23% (567/9097)	6.10% (537/8803)	6.88% (568/8250)	6.4%

During FY 2010, the average lapse time from the date of contest to first level decision decreased from 337.66 days (FY 2009) to 315.31 days (Table 9).

Table 9

Contested Case Lapse Time (SAMM 12)						
	<i>FY 2006</i>	<i>FY 2007</i>	<i>FY 2008</i>	<i>FY 2009</i>	<i>FY 2010</i>	<i>FY 2010 National Data (3 years)</i>
	484.92 days (789461/1628)	515.02 days (1204128/2338)	422.25 days (994399/2355)	337.66 days (755364/2237)	315.31 days (551163/1748)	217.8 days

Table 10

11(c) Investigations (SAMM 13, 14, 15)						
	<i>FY 2006</i>	<i>FY 2007</i>	<i>FY 2008</i>	<i>FY 2009</i>	<i>FY 2010</i>	<i>FY 2010 National Data</i>
Total Cases Opened	2	80	70	127	106	N/A
Completed Within 90 days (SAMM 13)	0% (0/2)	7.50% (6/80)	10% (7/70)	3.94% (5/127)	1.89% (2/106)	100% (National Goal)
Merit Cases (SAMM 14)	0% (0/2)	13.75% (11/80)	15.71% (11/70)	10.24% (13/127)	6.60% (7/106)	21.2%
Merit Cases Settled (SAMM 15)	0% (0/0)	100% (11/11)	81.82% (9/11)	69.23% (9/13)	57.14% (4/7)	86%

State Indicator Report (SIR)

Table 11 shows that most violations are upheld during pre-contest procedures.

Table 11

Pre-Contest (SIR C7, C8, C9)						
	<i>FY 2006</i>	<i>FY 2007</i>	<i>FY 2008</i>	<i>FY 2009</i>	<i>FY 2010</i>	<i>Federal Data</i>
Violations Vacated (SIR C7)	1.6% (221/13458)	1.9% (227/11942)	1.6% (185/11779)	1.6% (168/10308)	1.6% (158/10121)	4.7
Violations Reclassified (SIR C8)	1.4% (189/13458)	1.6% (192/11942)	2.2% (264/11779)	2.7% (280/10308)	2.1% (214/10121)	4
Penalty Retention (SIR C9)	62.2% (8206k/13192k)	59.1% (5341k/9032k)	54.6% (5810k/1064k)	53.2% (8007k/1504k)	57.1% (7152k/1251k)	63

Table 12 shows that most violations were upheld in FY 2010 while penalty retention during post-contest procedures remains below the national average.

Table 12

Post-Contest (SIR E1, E2, E3)						
	<i>FY 2006</i>	<i>FY 2007</i>	<i>FY 2008</i>	<i>FY 2009</i>	<i>FY 2010</i>	<i>Federal Data</i>
Violations Vacated (SIR E1)	16.1% (462/2867)	15.8% (537/3392)	16.1% (1091/6783)	13.8% (1222/8873)	11.3% (882/7835)	21.9%
Violations Reclassified (SIR E2)	8.8% (253/2867)	7.6% (257/3392)	9.4% (639/6783)	11.2% (996/8873)	10.2% (802/7835)	11.7%
Penalty Retention (SIR E3)	38.3% (2623k/6856k)	38.5% (3279k/8507k)	35.6% (5865k/1649k)	34.2% (7986k/2334k)	38.4% (7198k/1874k)	58.1%

VI. Other**Federal Program Changes (FPCs)/Standards**

The following are FY 2010 Federal Program Changes (FPCs) listed on the Automated Tracking System (ATS):

FPC Directive/Subject:	Date of Directive:	Response Due Date:	State Response Date:	Adoption Required:
CPL 02 (10-07) Injury and Illness Recordkeeping National Emphasis Program (NEP)	09/28/2010	12/19/2010	12/19/2010	No.
CPL 02 (10-06) Site-Specific Targeting (SST)—10	08/18/2010	12/19/2010	12/19/2010	No.
CPL 02 (10-05) Process Safety Management (PSM) Covered Chemical Facilities NEP	07/08/2010	09/11/2010	01/19/2011	No.
CPL 02-00-149 Severe Violator Enforcement Program (SVEP)	06/18/2010	08/28/2010	11/23/2010	Yes.
CPL 02-00-048 Clarification of OSHA's Enforcement Policies Relating to Floor/Nets and Shear Connectors; Cancellation of CPL 02-01-046	04/30/2010	07/26/2010	12/08/2010	No.
CPL 02-02-076 NEP—Hexavalent Chromium	02/23/2010	05/03/2010	05/10/2010	No.
CPL 02 (10-02) Revisions to NEP on Recordkeeping	02/19/2010	05/16/2010	State never responded since CPL 02 (10-07) cancels this FPC.	Yes.
CPL 02-02-075 Enforcement Procedures for 2009 H1N1 Influenza	11/20/2009	01/26/2010	02/03/2010	No.
CPL 02-00-148 Revisions to FOM November 2009	11/09/2009	01/17/2010	04/22/2010	Yes.
CPL 03-00-011 NEP—Flavorings	10/30/2009	01/30/2010	04/22/2010	No.

During this fiscal period, there were 10 FPCs posted to the ATS, of which only two were responded to timely. There was an additional FPC that Cal/OSHA did not respond to by the due date of May 16, 2010 for CPL 02 (10-02) Injury and Illness Recordkeeping NEP however this

FPC was later cancelled on September 28, 2010 making Cal/OSHA action superfluous. Consequently, Cal/OSHA was delinquent in responding to 8 FPCs.

On November 10, 2010, Cal/OSHA assigned staff to track FPCs to ensure all are responded to in a timely manner. So far, all FPCs released after November 2010 have been responded to in a timely manner. Reminders are being sent to Cal/OSHA at least a week prior to the response due date in order to facilitate a timely response and the State is encouraged to ensure that all appropriate Cal/OSHA staff are receiving ATS e-mails that include response due dates and adoption requirements for FPCs.

The following are FY 2010 Standards listed on the Automated Tracking System:

Standard:	FR Notice Date:	Response Due Date:	State Response Date:	Adoption Due:	State Adoption Date:
29 CFR 1926 (various) Cranes and Derricks in Construction—Final Rule	08/09/2010	10/10/2010	10/11/2010	02/09/2011	
29 CFR 1926.754 Safety Standards for Steel Erection—Technical Amendment	05/17/2010	07/20/2010	06/21/2010	11/17/2010	N/A—didn't adopt since it's non-mandatory and unenforceable.
29 CFR 1910, 1926, 1915 Hexavalent Chromium—Direct Final Rule	05/14/2010	07/19/2010	06/21/2010	11/14/2010	08/19/2010
29 CFR 1910.102 Acetylene—Direct Final Rule	11/09/2009	01/11/2010	11/12/2009	05/10/2010	05/20/2010

During this fiscal period, there were 4 federal-initiated standards posted on the ATS. Of which, 1 was responded to untimely and will not be adopted within the six-month timeframe. The Acetylene—Direct Final Rule standard was adopted 10 calendar days over the adoption due date.

Variations

The Cal/OSHA Standards Board grants or denies applications for variations from standards and responds to petitions for new or revised standards. Any employer may apply for a permanent variance upon showing an alternate program, method, practice, means, device, or process which will provide equal or superior safety for employees.

During FY 2010, the Standards Board approved 5 variations involving activities subject to Federal OSHA regulations. Those variations pertained to: (1) stairway replacement, (2) foot protection, (3) point of operation guarding, and (4) employee access to shafts supporting columns for an elevated bike path. The variance process has been reviewed and has been determined to be equivalent to Federal OSHA's process.

Complaint About State Program Administration (CASPA)

There were two CASPAs received during this fiscal period. One CASPA was investigated and the other was determined not to be a valid CASPA due to a lack of available information

CASPA 10/C-01

Allegation: The complainant is alleging that Cal/OSHA did not conduct an appropriate investigation of his complaint items. In addition, the complainant is alleging DLSE has not

adequately addressed his discrimination complaint. This case involves complex industrial hygiene sampling methods for cadmium, which are being questioned by the complainant.

Status: Additional allegations were filed from the complainant as of March 31, 2011, which are currently under investigation.

CASPA 10/C-02

Allegation: The complainant/employer who employed short term labor received citations from Cal/OSHA. The complainant/employer stated in his initial complaint to Federal OSHA that he was not the controlling employer.

Status: Federal OSHA contacted the complainant and Cal/OSHA. Federal OSHA conducted an initial review of the CASPA allegations and it appeared that Cal/OSHA complied with their Policy and Procedures Manual. In an attempt to confirm this initial conclusion Federal OSHA attempted to contact the complainant/employer for additional information to possibly support his allegations on several occasions. Since the complainant/employer failed to contact Federal OSHA he was notified that the complaint would be closed.

Public Sector Consultation

California’s public sector consultation program is conducted in a manner similar to that of the private sector. Overall performance has been consistent with previous years.

California conducted 44 public sector consultation visits in FY 2010, which is an increase from 30 visits in FY 2009. Of these, 39 were initial visits to high hazard employers (Public MARC 1) and 89.74% were in smaller businesses with less than 250 employees (Public MARC 2).

Table 13

Initial Visits in High Hazard Establishments (Public MARC 1)						
	<i>FY 2006</i>	<i>FY 2007</i>	<i>FY 2008</i>	<i>FY 2009</i>	<i>FY 2010</i>	<i>Goal</i>
	93.75% (45/48)	97.62% (41/42)	94.34% (50/53)	93.33% (28/30)	92.31% (36/39)	Not less than 90%

Table 14

Initial Visits to Smaller Businesses less 250 (Public MARC 2)						
	<i>FY 2006</i>	<i>FY 2007</i>	<i>FY 2008</i>	<i>FY 2009</i>	<i>FY 2010</i>	<i>Goal</i>
	93.75% (45/48)	92.86% (39/42)	92.45% (49/53)	83.33% (25/30)	89.74% (35/39)	Not less than 90%

This fiscal period, Cal/OSHA consultants conferred with employees during 100% of the initial visits (Public MARC 3). Table 15 shows the percent of initial and follow-up visits during which the consultant conferred with employees and compared this year’s performance with that of previous years.

Table 15

Visits where Consultant Conferred with Employees (Public MARC 3)						
	<i>FY 2006</i>	<i>FY 2007</i>	<i>FY 2008</i>	<i>FY 2009</i>	<i>FY 2010</i>	<i>Goal</i>
Initial	100% (48/48)	100% (42/42)	100% (53/53)	100% (30/30)	100% (39/39)	100%
Follow-up	100% (1/1)	0% (0/0)	0% (0/0)	0% (0/0)	100% (3/3)	100%

During this evaluation period, 106 serious hazards were identified. Of these, 100% were verified corrected in a timely manner (Public MARC 4A). None of the serious hazards needed to be referred to enforcement (Public MARC 4C).

Table 16

Verification of Serious Hazards (Public MARC 4)						
	<i>FY 2006</i>	<i>FY 2007</i>	<i>FY 2008</i>	<i>FY 2009</i>	<i>FY 2010</i>	<i>Goal</i>
Verified Corrected within 14 days of Correction Date (MARC 4A)	100% (84/84)	100% (53/53)	100% (78/78)	100% (37/37)	100% (106/106)	100%
Not Verified Corrected within 14 days of Correction Date (MARC 4B)	0% (0/84)	0% (0/53)	0% (0/78)	0% (0/37)	0% (0/106)	0%
Referred to enforcement (MARC 4C)	0% (0/84)	0% (0/53)	0% (0/78)	0% (0/37)	0% (0/106)	0%

Cal/OSHA met the goal of correcting 65% of the serious hazards on-time or within the original timeframe by correcting 76.42% (Public MARC 4D).

In FY 2010, Cal/OSHA didn't have any uncorrected hazards for more than 90 days past due (Public MARC 5). Cal/OSHA has maintained its goal of zero uncorrected hazards for over seven consecutive years.

VII. State Progress in Achieving Annual Performance Goals

Strategic Goal 1: Improve workplace safety and health for all workers through direct intervention methods that result in fewer hazards, reduced exposures, and fewer injuries, illnesses, and fatalities.

FY 2010 Performance Goal 1.1 (Construction): *To reduce fatalities and occupational injuries and illnesses in construction. CSHIP includes, but is not limited to, the following SIC Codes: (1) 1521, 1522 and 1531—General Contractors (Residential Buildings); 1541 and 1542—General Contractors (Non-Residential Buildings); 1611 and 1622 (Heavy Construction—other than building construction); 1711 through 1799—Special Trade Contractors; and 1623, 1629 and 1794—Excavation and Trenching.*

Results: Cal/OSHA Enforcement met this goal. In FY 2010, Cal/OSHA conducted 2,157 construction industry inspections (Goal = 2,000). Of which 1,049 were programmed inspections, 1,638 were heat-related, 319 were residential construction inspections, and 292 were in small commercial construction projects (Goal = 100). Cal/OSHA also conducted 28 outreach sessions focused on heat illness prevention (Goal = 12) as well as participated and/or attended 3 Construction Employers Association (CEA) forums.

Outcome: Based on the available data from the Bureau of Labor Statistics (BLS), Cal/OSHA achieved their goal of reducing injuries, illnesses and fatalities in the construction industry¹. Although the latest BLS data trails this evaluation period, it shows that California's construction industry Total Recordable Case Rate (TRCR) continued to decrease from the CY 2005 baseline of 7.1 to 4. California's Days Away, Restricted, or Job Transferred (DART) rate also continued

¹ NOTE: CY 2009 BLS data is still preliminary.

to decrease from the baseline of 4.7 to 2.7 in CY 2009 (Chart 1). Total fatalities decreased from the State's CY 2006 baseline of 117 to 50 in CY 2009 (Chart 2).

Chart 1

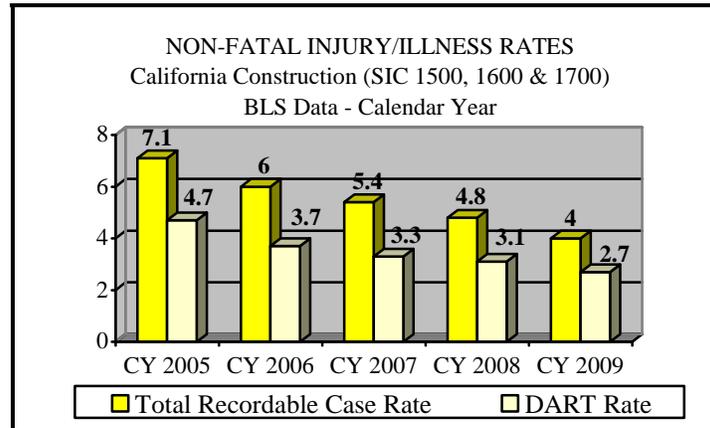
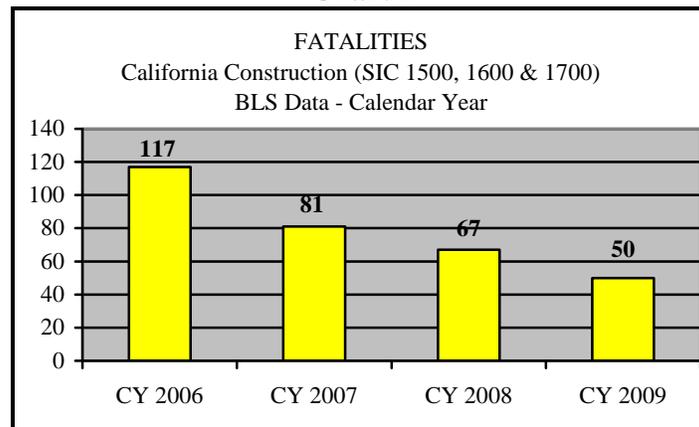


Chart 2



FY 2010 Performance Goal 1.2 (General Industry): *To reduce injuries, illnesses and fatalities in selected high hazard industries with a goal of removing the industry from the High Hazard List due to decreased injury and illness rates. Highest priority NAICS codes are the following: 3113 (Sugar and Confectionary), 3115 (Dairy Product Manufacturing), 3116 (Animal Slaughtering), 311812 (Commercial Bakeries), 312 (Beverage and Tobacco), and 33231 (Plate Work and Fabricated).*

Results: Cal/OSHA Enforcement met this goal. In FY 2010, Cal/OSHA's High Hazard Unit conducted 473 inspections, which is a decrease from the previous evaluation of 591 inspections. In addition, Cal/OSHA staff also conducted safety audits of all participating shipyards, which included the Pacific Ship Repair, BAE Systems and National Steel and Shipbuilding Company (NASSCO).

Outcome: Based on available data from the BLS, Cal/OSHA achieved their goal of reducing injuries, illnesses and fatalities in the private industry². Although the latest BLS data trails this evaluation period, it shows that California's private industry TRCR and DART rate for CY 2009 are at a five-year low at 3.7 and 2.1 respectively (Chart 3). Total fatalities decreased from 471 in

² NOTE: CY 2009 BLS data is still preliminary.

CY 2006 to 246 in CY 2009 (Chart 4).

Chart 3

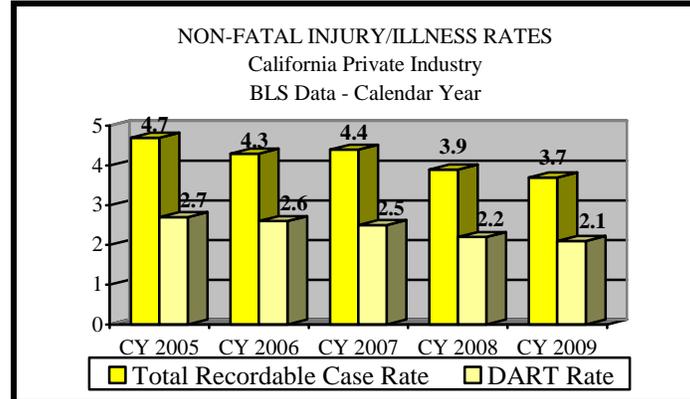
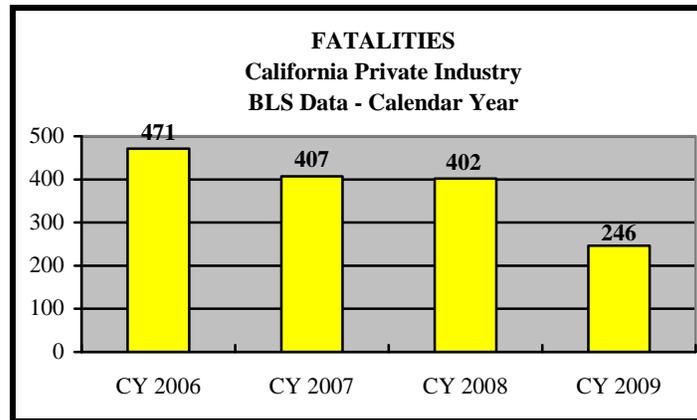


Chart 4



FY 2010 Performance Goal 1.3 (Food Processing, Food Manufacturing, and Food Flavoring): *Reduce the rate of injuries, illnesses and fatalities for companies who receive an intervention—either a compliance inspection or an intervention—from Cal/OSHA with the goal of reducing the total DART rate and fatality rate for all industries.*

Results: Cal/OSHA Enforcement met this goal. In FY 2010, they conducted a total of 67 programmed inspections in the food processing/manufacturing industries (Goal = 25).

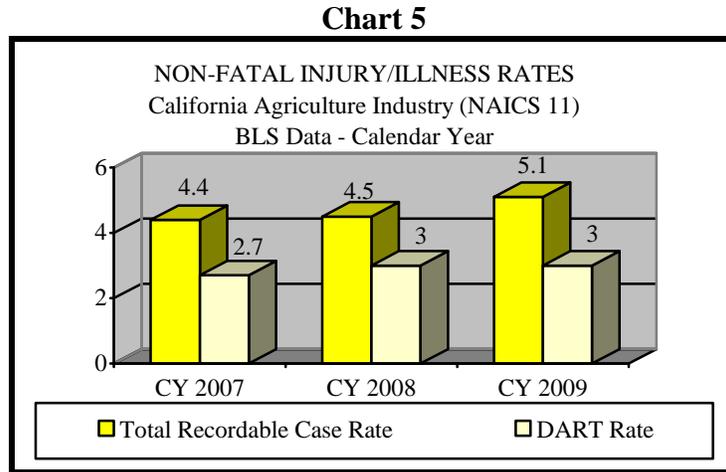
Outcome: Cal/OSHA Enforcement did not establish outcome measures for this performance goal.

FY 2010 Performance Goal 1.4 (Agriculture): *To reduce fatalities and occupational injuries and illnesses in agriculture. ASHIP includes, but is not limited to, the following NAICS Codes: (1) 111XXX (Crop Production) and 115XXX (Support Activities for Agriculture).*

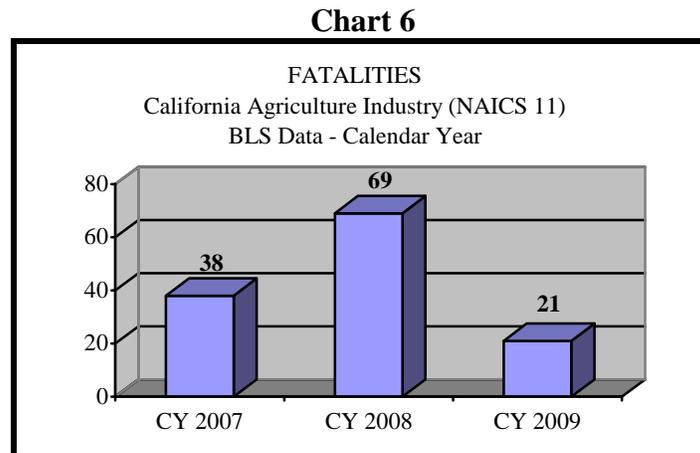
Results: Cal/OSHA Enforcement did not meet this goal. In FY 2010, Cal/OSHA conducted 910 agricultural inspections, which addressed the heat illness standard (Goal = 1,200), in which 1,270 hazards were identified and 185 were classified as S/W/R.

Outcome: Available data from the BLS shows mixed results in regards to Cal/OSHA's goal of

reducing occupational injuries, illnesses and fatalities in the agriculture industry. Although the latest BLS data trails this evaluation period, it shows that the TRCR for California’s Agriculture industry increased from the baseline of 4.4 in CY 2007 to 5.1 in CY 2009³ (Chart 5). California’s DART rate also increased from the baseline of 2.7 to 3.0.



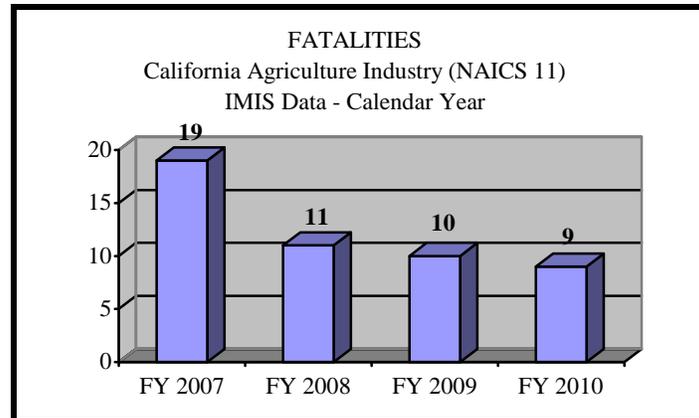
Although preliminary BLS data shows that Agriculture fatalities decreased below the baseline of 38 to 21 in CY 2009, Cal/OSHA notes that there was a significant increase in fatalities in the agriculture industry during CY 2008 (Chart 6).



IMIS data shows that Cal/OSHA’s fatality investigations in the agriculture industry have decreased since FY 2007 (Chart 7).

³ NOTE: CY 2009 BLS data is still preliminary.

Chart 7



Finding 10-37: The agricultural industry’s injury and illness rates continue to increase from the CY 2007 baseline.

Recommendation 10-37: Continue to focus on the agriculture industry with a goal of reducing injury and illness rates and fatalities below the CY 2007 baseline.

Strategic Goal 2: **Promote workplace cultures that increase employer and employee awareness of, commitment to, and involvement in safety and health.**

FY 2010 Performance Goal 2.1: *DOSH will focus heat illness prevention efforts in the construction, agriculture and other outdoor industries through enforcement of the Cal/OSHA heat illness standard, compliance assistance, training, outreach, development and promotion.*

Results: Cal/OSHA Enforcement met this goal. Cal/OSHA conducted 907 heat illness inspections in agricultural Standard Industrial Classification (SIC) codes and 36 heat illness seminars as well as partnered with the following organizations to train growers, farm labor contractors and supervisors about their responsibilities under California’s heat illness prevention standard and the consequences of not protecting outdoor workers from the heat:

- Nisei Farmers League
- Allied Grape Growers
- California Association of Winegrape Growers
- California Citrus Mutual
- California Cotton Ginners Association
- California Cotton Growers Association
- California Dairy Campaign
- California Farm Bureau Federation
- California Floral Council
- California Grape and Tree Fruit League
- Fresno County Farm Bureau
- Grower-Shipper Association of Central California
- Imperial Valley Vegetable Growers
- Raisin Bargaining Association
- San Joaquin Farm Bureau Federation
- Stanislaus County Farm Bureau

- Tulare County Farm Bureau
- Ventura County Agricultural Association
- Western Agricultural Processors Association
- Western Growers Association
- Wine Institute

Outcome: Interviews with 247 individuals, who worked in industries such as agriculture, construction and landscaping, revealed that the majority understood that water, rest and shade was essential and their right on the job. Cal/OSHA also reported an increased compliance to their heat illness standard.

FY 2010 Performance Goal 2.2: *To improve communication with and education to high-risk vulnerable Hispanic populations regarding workplace safety and health rights, responsibilities, and hazards.*

Results: Cal/OSHA Enforcement met this goal. In FY 2010, Cal/OSHA distributed over 25,000 English and 10,000 Spanish publications pertaining to heat illness prevention. The Cal/OSHA Compliance Assistance person also presented 28 bilingual outreach events while other Enforcement staff participated in an additional 70 events, including television and radio interviews.

Outcome: During the Heat Illness Campaign last summer, interviewees reported an increased understanding of Cal/OSHA's role in protecting the safety and health of workers in California.

FY 2010 Performance Goal 2.3: *To identify 88 new partnerships, renew 18, and maintain 4 existing partnerships. Partnerships include recognition, exemption, and alliance programs.*

Results: Cal/OSHA Enforcement met this goal. In FY 2010, Cal/OSHA continued to provide monthly on-site compliance assistance as well as attend partnership meetings with Cal/Trans and the prime and subcontractors. Cal/OSHA staff also participated in 3 CEA member forums and visited jobsites on 10 occasions.

Cal/OSHA's VPP staff certified 4 new companies for Cal/VPP-Construction (Goal = 2) and 11 new fixed sites for Cal/VPP STAR (Goal = 10) as well as renewed 3 Cal/VPP-Construction sites (Goal = 2) and 10 Cal/VPP STAR sites (Goal = 8).

Outcome: Annual Performance Goal 2.3 was primarily a Consultation goal and, therefore, outcome measures will be addressed in Cal/OSHA's FY 2010 Regional Annual Consultation Evaluation Report (RACER).

FY 2010 Performance Goal 2.4: *Cal/OSHA will supplement traditional compliance enforcement efforts directed at heat illness prevention in the construction, agriculture and other industries for FY 2010 through training, outreach, development of training tools, and promotion.*

Results: Cal/OSHA Enforcement met this goal. In FY 2010, Cal/OSHA conducted 3,226 outdoor heat-related inspections. In addition, 52 indoor heat-related inspections were completed. Cal/OSHA's Compliance Assistance person also developed radio ads in Spanish, Hmong and Mixteco and participated in 24 radio/television/print media interviews.

Outcome: Annual Performance Goal 2.4 was primarily a Consultation goal and, therefore, outcome measures will be addressed in the FY 2010 Regional Annual Consultation Evaluation Report (RACER).

Strategic Goal 3: Secure public confidence and maximize Cal/OSHA’s capabilities by improving the effectiveness and efficiency of Cal/OSHA’s programs and services.

FY 2010 Performance Goal 3.1: *Further reduce the time from opening conference to issuance of a citation to a statewide average of 65 days for both safety and health.*

Results: Cal/OSHA Enforcement did not meet this goal. In FY 2010, Cal/OSHA management continued to work with District Offices to further reduce citation lapse time.

Outcome: Although Cal/OSHA did not reduce citation lapse time to a statewide average of 65 days, lapse time was reduced from 73.90 days (safety) and 83.31 days (health)⁴ in FY 2009 to 70.60 days and 79.09 days respectively.

Finding 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

Recommendation 10-38: 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.

⁴ The FY 2009 data is from the SAMM dated October 23, 2009.

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	09-5 Pending

No.	Findings	Recommendations	Related FY 2009 No.
		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).	
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	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	09-12 Pending

No.	Findings	Recommendations	Related FY 2009 No.
	issued to the employer for failing to maintain the log.	not provide them, document it in the file and issue appropriate citations.	
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 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 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) 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.	09-13; 09-14 Revised
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

No.	Findings	Recommendations	Related FY 2009 No.
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 time.	09-24 Pending
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	09-28 Pending

No.	Findings	Recommendations	Related FY 2009 No.
		implementing regulation 29 CFR Part 1977.6, Section 98.7(e) of the California Labor Code establishes an even shorter timeframe—60 days).	
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, 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.	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). (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).	09-31; 09-32 Revised
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	Ensure expenditures are paid with funds from that funding period and any misallocated expenditures should be re-allocated to State	09-42; 09-43 Pending

No.	Findings	Recommendations	Related FY 2009 No.
	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.	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.	
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 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> .	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 <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.	09-45; 09-46 Revised
10-33	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.	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.	09-1 (Appeals Board Special Study) Pending
10-34	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	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.	09-3 (Appeals Board Special Study) Pending

No.	Findings	Recommendations	Related FY 2009 No.
	<p>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>		
10-35	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 appealed.	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 quarterly meetings with DOSH and OSHAB in an attempt to amend Cal/OSHA's policies and procedures manual.	09-4 (Appeals Board Special Study) Pending
10-36	Cal/OSHA field staff do not have sufficient legal training or background to present cases at hearings. (Formerly 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 issue Decisions.	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.	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

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

No.	Findings	Recommendations	Corrective Actions	Status
09-1	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.	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.	Pending
09-2	The Cal/OSHA Policy and Procedures Manual does not address elements that are required in the complaint process.	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).	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.	Pending
09-3	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.	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	Pending

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 "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	In January 2011, Cal/OSHA managers and compliance personnel were trained on the elements of AB 2774, which statutorily re-defines a serious violation and prescribes standards for the investigation	Pending

No.	Findings	Recommendations	Corrective Actions	Status
		<p>“Willful” Violations (Federal FOM, page 4-30 to 4-32), and Combining/Grouping Violations (Federal FOM, page 4-37 to 4-39).</p>	<p>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
09-12	<p>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.</p>	<p>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.</p>	<p>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</p>	Pending

No.	Findings	Recommendations	Corrective Actions	Status
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.	collecting 300 logs. 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 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	Awaiting copy of Cal/OSHA's current policies and procedures in regards to Informal Conferences.	Pending

No.	Findings	Recommendations	Corrective Actions	Status
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.	7-4) are clearly articulated. 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
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	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.	Pending

No.	Findings	Recommendations	Corrective Actions	Status
	investigated in a timely fashion, including some referrals that were deemed Serious in nature. Thirteen referrals showed no response at all.		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.	
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 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;	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).	On November 10, 2010, Cal/OSHA assigned staff to 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.	Revised

No.	Findings	Recommendations	Corrective Actions	Status
	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.			
09-27	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.	Federal OSHA is currently obtaining and reviewing nationally-related accidents to determine if Cal/OSHA's standard effectively addresses prior accidents.	Pending
09-28	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).	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.	Pending
09-29	Oral complaints are not accepted and docketed in WB cases.	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) (DIS 0-0.9 Federal Whistleblower Manual, Chapter 7, Section V (A)).	DLSE has implemented the acceptance of oral complaints—Federal OSHA-Region 9 will continue to monitor this.	Completed
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	DLSE should attempt to interview all relevant witnesses, including management and third parties.	This issue continues to be a problem with the Division of Labor Standards Enforcement	Pending

No.	Findings	Recommendations	Corrective Actions	Status
	and signed statements were not always obtained when feasible. Interviews with relevant witnesses, including management and third parties are not being determined.	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).	(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.	
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 employee's rights. Furthermore, DLSE was provided sample settlement agreements to ensure settlement agreements are written appropriately.	Pending
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

No.	Findings	Recommendations	Corrective Actions	Status
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 (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.	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 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.	Pending
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	Ensure expenditures are paid with funds from that funding period	DIR revised their Accounting Procedures Manual to ensure	Pending

No.	Findings	Recommendations	Corrective Actions	Status
	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.	and any mis-allocated expenditures should be re-allocated to State matching funds or return the grant monies that were incorrectly allocated.	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.	
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 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.	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.	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 OSHA Compliance Personnel</i> —awaiting copy of Cal/OSHA's revised training policies and procedures.	Pending
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	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

No.	Findings	Recommendations	Corrective Actions	Status
		Officers), and 8200 Incident Command System.		

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

No.	Finding	Recommendation	Corrective Action	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

No.	Finding	Recommendation	Corrective Action	Status
09-3	<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>	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.	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 follow-up on their progress towards completing this item during every quarterly meeting.	Pending
09-4	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.	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).	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.	Pending
09-5	Cal/OSHA field staff do not have sufficient legal training or background to present cases at hearings.	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	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.	Pending

No.	Finding	Recommendation	Corrective Action	Status
		adequate 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	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	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	Pending

No.	Finding	Recommendation	Corrective Action	Status
	affected the amount of time ALJs have to hear cases and issue Decisions.	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.	be completed by June 30, 2011—Federal OSHA-Region 9 will 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	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	OSHA recognizes that this finding did not fully reflect Cal/OSHA's appeals procedures.	Completed

No.	Finding	Recommendation	Corrective Action	Status
	for submission of documentation regarding the grounds for contest, and allowing the use of a “check-off box” form, in lieu of a written submission, for the filing process.	contest, informal conference, and settlement procedures more in line with statutory requirements and Federal practice would resolve 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.		

**Appendix C—FY 2010 Enforcement Comparison
California State Plan (Cal/OSHA)**

	CA	State Plan Total	Federal OSHA
Total Inspections	8,250	57,124	40,993
Safety	6,640	45,023	34,337
<i>% Safety</i>	80%	79%	84%
Health	1,610	12,101	6,656
<i>% Health</i>	20%	21%	16%
Construction	2,156	22,993	24,430
<i>% Construction</i>	26%	40%	60%
Public Sector	568	8,031	N/A
<i>% Public Sector</i>	7%	14%	N/A
Programmed	3,188	35,085	24,759
<i>% Programmed</i>	39%	61%	60%
Complaint	2,362	8,986	8,027
<i>% Complaint</i>	29%	16%	20%
*Accident	2,010	2,967	830
Insp w/ Viols Cited	4,422	34,109	29,136
<i>% Insp w/ Viols Cited (NIC)</i>	54%	60%	71%
<i>% NIC w/ Serious Violations</i>	33.7%	62.3%	88.2%
Total Violations	16,833	120,417	96,742
Serious	3,012	52,593	74,885
<i>% Serious</i>	18%	44%	77%
Willful	41	278	1,519
Repeat	67	2,054	2,758
Serious/Willful/Repeat	3,120	54,925	79,162
<i>% S/W/R</i>	19%	46%	82%
Failure to Abate	11	460	334
Other than Serious	13,702	65,031	17,244
<i>% Other</i>	81%	54%	18%
Avg # Violations/ Initial Inspection	3.3	3.4	3.2
Total Penalties	\$22,586,757	\$ 72,233,480	\$ 183,594,060
Avg Current Penalty / Serious Violation	\$ 5,060.70	\$ 870.90	\$ 1,052.80
Avg Current Penalty / Serious Viol- Private Sector Only	\$ 4,994.80	\$ 1,018.80	\$ 1,068.70
% Penalty Reduced	62.2%	47.7%	40.9%
% Insp w/ Contested Viols	39.0%	14.4%	8.0%
Avg Case Hrs/Insp- Safety	20.7	16.2	18.6
Avg Case Hrs/Insp- Health	18.7	26.1	33
Lapse Days Insp to Citation Issued- Safety	54.0	33.6	37.9
Lapse Days Insp to Citation Issued- Health	63.2	42.6	50.9
Open, Non-Contested Cases w/ Incomplete Abatement >60 days	264	1,715	2,510

* Cal/OSHA requires the employer to report all serious accidents to DOSH within 8 hours. These incidences are recorded on the Cal/OSHA-36. Therefore, a comparison between California's number of accidents compared with other States, as well as Federal, will be much higher than those that only record fatalities when 3 or more are hospitalized.

Appendix D—FY 2010 State Activity Mandated Measures (SAMM) Report

U. S. D E P A R T M E N T O F L A B O R
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
STATE ACTIVITY MANDATED MEASURES (SAMMs)

NOV 12, 2010
PAGE 1 OF 2

State: CALIFORNIA

RID: 0950600

MEASURE	From: 10/01/2009 To: 09/30/2010	CURRENT FY-TO-DATE	REFERENCE/STANDARD
1. Average number of days to initiate Complaint Inspections	65162 23.04 2828	5413 21.39 253	Negotiated fixed number for each State
2. Average number of days to initiate Complaint Investigations	39841 10.59 3760	2627 6.55 401	Negotiated fixed number for each State
3. Percent of Complaints where Complainants were notified on time	2632 98.84 2663	257 100.00 257	100%
4. Percent of Complaints and Referrals responded to within 1 day -ImmDanger	179 98.90 181	9 100.00 9	100%
5. Number of Denials where entry not obtained	1	0	0
6. Percent of S/W/R Violations verified			
Private	843 84.38 999	77 80.21 96	100%
Public	28 100.00 28	0 100% 0	100%
7. Average number of calendar days from Opening Conference to Citation Issue			
Safety	300855 70.60	28614 69.96	2624646 47.3 National Data (1 year)

	4261	409	55472	
Health	73555	7351	750805	
	79.09	82.59	61.9	National Data (1 year)
	930	89	12129	

*CA 11.12

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

U. S. D E P A R T M E N T O F L A B O R
 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
 STATE ACTIVITY MANDATED MEASURES (SAMMs)

NOV 12, 2010
 PAGE 2 OF 2

State: CALIFORNIA

RID: 0950600

MEASURE	From: 10/01/2009 To: 09/30/2010	CURRENT FY-TO-DATE	REFERENCE/STANDARD
8. Percent of Programmed Inspections with S/W/R Violations			
	710	47	93201
Safety	25.15 2823	16.04 293	58.4 159705
	45	3	10916
Health	9.04 498	9.68 31	50.9 21459
9. Average Violations per Inspection with Violations			
	3581	249	428293
S/W/R	.68 5199	.49 500	2.1 201768
	13616	1325	240266
Other	2.61 5199	2.65 500	1.2 201768
10. Average Initial Penalty per Serious Violation (Private Sector Only)	19130953 5712.43 3349	1638970 6744.73 243	509912690 1360.4 374823
11. Percent of Total Inspections in Public Sector	568 6.88 8250	46 7.71 597	1689 6.4 26303
12. Average lapse time from receipt of Contest to first level decision	551163 315.31 1748	30373 248.95 122	3826802 217.8 17571
13. Percent of 11c Investigations Completed within 90 days	2 1.89 106	0 .00 6	100%
14. Percent of 11c Complaints that are	7	1	1461

Meritorious	6.60	16.67	21.2	National Data (3 years)
	106	6	6902	
15. Percent of Meritorious 11c	4	0	1256	
Complaints that are Settled	57.14	.00	86.0	National Data (3 years)
	7	1	1461	

*CA 11.12

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

Appendix E—State Indicator Report (SIR)

Q4 SIR 06 101007 093243 PROBLEMS - CALL Yvonne Goodhall 202 693-1734

1101007

U. S. D E P A R T M E N T O F L A B O R
O C C U P A T I O N A L S A F E T Y A N D H E A L T H A D M I N I S T R A T I O N
I N T E R I M S T A T E I N D I C A T O R R E P O R T (S I R)

PAGE 1

CURRENT MONTH = SEPTEMBER 2010

STATE = CALIFORNIA

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		-----12 MONTHS-----		-----24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
C. ENFORCEMENT (PRIVATE SECTOR)								
1. PROGRAMMED INSPECTIONS (%)								
A. SAFETY	5298	829	11403	1618	21912	2705	43788	5632
	62.4	49.6	63.8	47.7	65.1	43.9	65.9	43.9
	8493	1672	17860	3391	33647	6167	66434	12835
B. HEALTH	488	156	1094	319	2232	341	4202	934
	30.6	33.3	33.7	35.4	35.0	25.1	35.1	31.1
	1597	468	3249	901	6378	1358	11960	3002
2. PROGRAMMED INSPECTIONS WITH VIOLATIONS (%)								
A. SAFETY	4663	507	9421	951	17649	1758	34350	3596
	72.7	48.6	71.2	49.9	69.1	53.4	67.1	53.7
	6413	1043	13232	1905	25525	3294	51214	6699
B. HEALTH	451	90	880	123	1756	244	3238	472
	57.8	49.7	53.9	45.4	55.4	48.4	53.4	48.4
	780	181	1632	271	3168	504	6066	976
3. SERIOUS VIOLATIONS (%)								
A. SAFETY	17341	741	33678	1399	62211	2673	117447	5354
	81.6	22.2	81.5	20.5	81.0	19.8	80.1	19.2
	21261	3331	41304	6813	76839	13471	146593	27836
B. HEALTH	3233	76	6183	121	11743	251	21554	565
	69.6	9.9	70.5	8.9	70.2	9.7	69.6	10.4
	4645	768	8776	1353	16725	2583	30947	5413
4. ABATEMENT PERIOD FOR VIOLS								
A. SAFETY PERCENT >30 DAYS	3054	34	6515	92	12732	234	25040	511
	15.0	4.6	16.3	6.6	17.2	8.8	17.7	9.5
	20398	741	39855	1399	74010	2673	141219	5354
B. HEALTH PERCENT >60 DAYS	255	0	633	0	1406	0	2977	6
	5.6	.0	7.3	.0	8.5	.0	9.6	1.1
	4548	76	8681	121	16580	251	30862	565

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2010

INTERIM STATE INDICATOR REPORT (SIR)

STATE = CALIFORNIA

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		-----12 MONTHS-----		-----24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
C. ENFORCEMENT (PRIVATE SECTOR)								
5. AVERAGE PENALTY								
A. SAFETY								
	587112	1219302	1106734	2460699	2038916	4889556	3500911	9911348
OTHER-THAN-SERIOUS	837.5	493.0	803.1	481.9	894.3	482.9	967.6	478.4
	701	2473	1378	5106	2280	10125	3618	20716
B. HEALTH								
	249175	220499	434447	434064	732953	803058	1039303	1739981
OTHER-THAN-SERIOUS	817.0	335.1	801.6	370.0	835.8	363.0	842.2	378.9
	305	658	542	1173	877	2212	1234	4592
6. INSPECTIONS PER 100 HOURS								
A. SAFETY								
	9778	2074	20529	4117	38849	7421	76136	15264
	5.8	3.8	5.7	3.7	5.5	3.3	5.5	3.5
	1679	545	3593	1126	7112	2227	13925	4390
B. HEALTH								
	1864	571	3844	1097	7547	1682	14276	3743
	2.1	4.2	2.0	3.9	1.9	2.9	1.8	2.7
	908	137	1940	284	3898	577	8070	1411
7. VIOLATIONS VACATED %								
	1123	38	2474	85	5103	158	10425	336
	3.7	1.2	4.3	1.5	4.7	1.6	5.0	1.7
	29962	3195	57441	5577	108213	10121	207527	20002
8. VIOLATIONS RECLASSIFIED %								
	844	29	1978	86	4276	214	9196	496
	2.8	.9	3.4	1.5	4.0	2.1	4.4	2.5
	29962	3195	57441	5577	108213	10121	207527	20002
9. PENALTY RETENTION %								
	15767907	2536850	30073309	3790830	57457651	7152034	111052615	14957766
	64.5	65.0	63.9	63.2	63.0	57.1	62.8	55.4
	24439885	3900249	47032897	6001357	91194322	12517950	176868726	26992840

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2010

INTERIM STATE INDICATOR REPORT

STATE = CALIFORNIA

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		----- 12 MONTHS-----		----- 24 MONTHS-----	
	PRIVATE	PUBLIC	PRIVATE	PUBLIC	PRIVATE	PUBLIC	PRIVATE	PUBLIC

D. ENFORCEMENT (PUBLIC SECTOR)

1. PROGRAMMED INSPECTIONS %

A. SAFETY	829	36	1618	54	2705	67	5632	94
	49.6	41.4	47.7	28.3	43.9	19.9	43.9	14.7
	1672	87	3391	191	6167	337	12835	641
B. HEALTH	156	3	319	8	341	10	934	26
	33.3	5.0	35.4	6.4	25.1	4.6	31.1	5.7
	468	60	901	125	1358	217	3002	457

2. SERIOUS VIOLATIONS (%)

A. SAFETY	741	10	1399	41	2673	76	5354	121
	22.2	14.1	20.5	22.4	19.8	21.1	19.2	16.9
	3331	71	6813	183	13471	360	27836	718
B. HEALTH	76	2	121	7	251	34	565	58
	9.9	3.2	8.9	5.8	9.7	12.3	10.4	12.0
	768	63	1353	120	2583	277	5413	483

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2010

COMPUTERIZED STATE PLAN ACTIVITY MEASURES

STATE = CALIFORNIA

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		----- 12 MONTHS-----		----- 24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
E. REVIEW PROCEDURES								
1. VIOLATIONS VACATED %	610 22.5 2709	307 11.6 2650	1134 23.2 4888	505 12.8 3958	2052 21.9 9366	882 11.3 7835	3827 23.0 16668	2055 12.6 16300
2. VIOLATIONS RECLASSIFIED %	306 11.3 2709	266 10.0 2650	585 12.0 4888	396 10.0 3958	1100 11.7 9366	802 10.2 7835	2217 13.3 16668	1764 10.8 16300
3. PENALTY RETENTION %	4940512 65.3 7563023	2705495 43.9 6166670	7526155 62.3 12074308	4067095 42.9 9487210	12856359 58.1 22143463	7198060 38.4 18744508	23378285 58.4 40052611	14660561 36.0 40688592

APPENDIX F

CALIFORNIA STATE OSHA ANNUAL REPORT (SOAR) FY 2010

(available separately/upon request)

Appendix G—FY 2010 Public Mandated Activity Report for Consultation (MARC)

CCNOMARC
DOL-OSHA-OMDS
(RSCCOVER)

U. S. D E P A R T M E N T O F L A B O R
O C C U P A T I O N A L S A F E T Y A N D H E A L T H A D M I N I S T R A T I O N

10/28/10

CONSULTATION REPORT
KEEP THIS PAGE WITH THIS REPORT.
IT CONTAINS IMPORTANT INFORMATION ABOUT
THE WAY CASES WERE SELECTED

TYPE OF REPORT: MANDATE ACTIVITIES

USER SELECTION NAME: CAPUB4Q

REQUESTOR: OSH38804

***** SELECTION CRITERIA *****

FISCAL YEAR: 2010

QUARTER: 4

OWNERSHIP: PUBLIC

REGION: 09 AREA: 906 DISTRICT:

SAFETY/HEALTH ID: BOTH

OSHA MARC REPORT @0990600@
 REPORT ENDING DATE: SEP 2010
 QUARTER: 4 FY: 2010

U. S. DEPARTMENT OF LABOR
 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
 MANDATED ACTIVITIES REPORT FOR CONSULTATION(MARC)

OCT 28, 2010
 PAGE 1 OF 2

PROJECT NAME: California PUBLIC SECTOR

MEASURE	QUARTER	FY-TO-DATE	REFERENCE/STANDARD
TOTAL VISITS	6	44	
1. Percent of Initial Visits in High Hazard Establishments			Not Less than 90%
Number High Hazard Visits	4	36	
Percent	66.67	92.31	
Number of Initial Visits	6	39	
2. Percent of Initial Visits to Smaller Businesses			Not Less than 90%
Initial Visits	6	39	
Visits <= 250 Employees in Estab Percent	6 100.00	35 89.74	
Visits <= 500 Employees CB by Empr Percent	4 66.67	31 79.49	
3. Percent of Visits where Consultant Conferred with Employees			100%
Initial			
Number with Empe Conferences	6	39	
Percent	100.00	100.00	
Number of Initial Visits	6	39	
Follow-Up			
Number with Empe Conferences	0	3	
Percent	0	100.00	
Number of Follow-Up Visits		3	
Training & Assistance Visits with Compliance Assistance ONLY			
Number with Empe Conferences	0	0	
Percent			
Number of T&A Visits	0	0	

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

OSHA MARC REPORT @0990600@
 REPORT ENDING DATE: SEP 2010
 QUARTER: 4 FY: 2010

U. S. D E P A R T M E N T O F L A B O R
 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
 MANDATED ACTIVITIES REPORT FOR CONSULTATION(MARC)

OCT 28, 2010
 PAGE 2 OF 2

PROJECT NAME: California PUBLIC SECTOR

MEASURE	QUARTER	FY-TO-DATE	REFERENCE/STANDARD
4A Thru 4D based on Closed Cases ONLY			
4A. Percent of Serious Hazards Verified Corrected in a Timely Manner (<=14 Days of Latest Correction Due Date)			100%
Number Verified Timely	3	106	
Percent	100.00	100.00	
Total Serious Hazards	3	106	
Number of Serious Hazards Verified Corrected:	3	106	
On-Site	0	4	
Within Original Time Frame	3	77	
Within Extension Time Frame	0	14	
Within 14 Days of Latest Correction Due Date	0	11	
4B. Percent of Serious Hazards NOT Verified Corrected in a Timely Manner (> 14 days after Latest Correction Due Date)			
Number NOT Verified Timely	0	0	
Percent	.00	.00	
Total Serious Hazards	3	106	
4C. Percent of Serious Hazards Referred to Enforcement			
Number Referred to Enforcement	0	0	
Percent	.00	.00	
Total Serious Hazards	3	106	
4D. PERCENT OF SERIOUS HAZARDS VERIFIED CORRECTED (IN ORIGINAL TIME OR ONSITE)			65%
NUMBER VERIFIED	3	81	
Percent	100.00	76.42	
Total Serious Hazards	3	106	

Number of Serious Hazards Verified CORRECTED (IN ORIGINAL TIME OR ONSITE)	3	81	
On-Site	0	4	
Within Original Time Frame	3	77	
5. Number of Uncorrected Serious Hazards with Correction Date > 90 Days Past Due (Open Cases for Last 3 Years, excluding Current Quarter)			0

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

009906000

TOTAL VISITS FOR CURRENT QUARTER (OPEN VISIT DATE)

PAGE 1

REPORT-ID	OWNER	REQUEST-NR	VISIT-NR	OPEN VISIT	VTYPE	CORR-DATE	VERIFY-DATE	ITEM-NR	CONSULT-ID	JOB-TITLE
0990613	PUB	804746485	505701227	20100712	I				S4965	S
0990613	PUB	804749240	505701243	20100712	I	00000000	00000000	000	T8458	S
0990613	PUB	804749414	505701250	20100712	I	00000000	00000000	000	S4965	S
0990614	PUB	804365997	505687566	20100805	I	00000000	00000000	000	X7927	H
0990614	PUB	804366433	505687590	20100812	I	00000000	00000000	000	X7927	H
0990615	PUB	804505600	504852476	20100920	I	00000000	00000000	000	S1421	S

*****TOTAL ***** 6

Appendix H—Acronyms

AB – Assembly Bill

ACGIH – American Conference of Governmental Industrial Hygienists

ALJ – Administrative Law Judge

ANSI – American National Standard Institute

ARRA – American Recovery Reinvestment Act (ARRA)

ASHIP – Agricultural Safety and Health Inspection Project

ASTM – American Society of Testing Materials

ATD – Aerosol Transmissible Disease

BLS – Bureau of Labor Statistics

Caltrans – California Department of Transportation

CDPH – California Department of Public Health

CDU – Crude Distillation Process Unit

CEA – Construction Employers Association

CEP – California Emphasis Program

CFOI – Census of Fatal Occupational Injuries

CGA – Compressed Gas Association

CSHIP – Construction Safety and Health Inspection Project

CSO – Construction Safety Order

CY – Calendar Year (January 1 to December 31)

DAR – Decision After Reconsideration

DART – Days Away, Restricted, or Job Transferred

DIR – Department of Industrial Relations

DLSE – Division of Labor Standards Enforcement

DOSH – Division of Occupational Safety and Health (a.k.a. Cal/OSHA)

DOT – Department of Transportation

EFAME – Enhanced Federal Annual Monitoring Evaluation

FISHEP – Flavor Industry Safety and Health Evaluation Program

FOM – Field Operations Manual

FY – Fiscal Year (October 1 to September 30)

GISO – General Industry Safety Order

GPRA – Government Performance and Results Act (GPRA)

LVL – Laminated Veneer Lumber

MCD – Momentary Contact Device

MSDS – Material Safety Data Sheet

NFPA – National Fire Protection Association

NHT – Naphtha Hydrotreater Process Unit

NAICS – Northern American Industry Classification System

NEP – National Emphasis Program

OIS – OSHA Information System

OSHA – Occupational Safety and Health Administration

OSHAB – Occupational Safety and Health Appeals Board

OSHRC – Occupational Safety and Health Review Commission

OSHSB – Occupational Safety and Health Standards Board

PQV – Program Quality Verification

PSM – Process Safety Management

RACER – Regional Annual Consultation Evaluation Report

SIC – Standard Industrial Classification

SOAR – State OSHA Annual Report

TLV – Threshold Limit Value

TRC – Total Recordable Case

TRCR – Total Recordable Case Rate

UCLA-LOSH – UCLA—Labor Occupational Safety and Health

UFW – United Farm Workers

YTD – Year-to-Date