

FY 2011 Federal Annual Monitoring and Evaluation (FAME) Report

On the

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



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Prepared by:
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I. Executive Summary

A. Summary of the Report

The Federal Annual Monitoring Evaluation (FAME) Report provides an assessment of the California Occupational Safety and Health (Cal/OSHA) activities during the federal Fiscal Year (FY) 2011. It includes an evaluation of the State Whistleblower Program, two Enforcement Offices, the Process Safety Management Unit in Concord, and responses to the FY 2010 FAME Report recommendations, including their progress towards achieving the actions specified in their Corrective Action Plan (CAP).

Cal/OSHA had three strategic goals: improve workplace safety and health for all workers through direct intervention methods, promote workplace cultures, and secure public confidence. The State OSHA Annual Report (SOAR) described the progress Cal/OSHA made towards its goals and the established performance measures. As indicated in the SOAR, Cal/OSHA met all of the performance goals, with the exception of reducing the citation lapse time to FY 2009 levels.

The evaluation identified new issues along with findings that persisted from the FY 2010 and FY 2009 Enhanced FAME. Although more than 50% of the findings and recommendations from the previous FAMEs were completed, a concerted effort is needed to resolve the remaining issues as they have continued to impact the performance of the program.

A special study was conducted of the State Whistleblower Program. The review identified 23 findings and recommendations in the State's program.

B. State Plan Introduction

During the evaluation period, the Department of Industrial Relations (DIR) administered the California Occupational Safety and Health Plan through the Division of Occupational Safety and Health (DOSH or Cal/OSHA). Ms. Christine Baker as the Director of DIR was the State Designee. Ms. Ellen Widess was the Chief of Cal/OSHA with Mr. Christopher Lee the Deputy Chief for Enforcement (Safety), Ms. Deborah Gold the Deputy Chief of Health and Technical Services, and Ms. Vicky Heza the Program Manager for Consultation Services.

The Occupational Safety and Health Standards Board (OSHSB), the Occupational Safety and Health Appeals Board (OSHAB) and the Department of Labor Standards Enforcement (DLSE) were all separate entities under the DIR. The purpose of the OSHSB was to adopt, amend, and repeal occupational safety and health standards. This board consisted of seven members appointed by the Governor of California. Support for the board was provided by the Executive Secretary, Ms. Marley Hart. The Chairman of the Board was Mr. John MacLeod.

The OSHAB consisted of three members appointed by the Governor with Mr. Art Carter serving as the Chairman. DLSE enforced allegations of discrimination and was headed by Labor Commissioner Ms. Julie Su.

Cal/OSHA had jurisdiction over safety and health issues, except in areas of Federal jurisdiction such as Federal civilian employees, private sector employers on Native American Lands, maritime activities on navigable waterways of the United States, and private contractors working on land designated as exclusive or partial legislative jurisdiction.

Federal OSHA funded this plan under grants authorized by Section 23(g) and 21(d) of the Occupational Safety and Health Act - 23(g) covered enforcement of private and public sector employees and consultation of public sector employers. The 21(d) program covered consultation of private sector employers and will be covered in a separate report.

The 23(g) program grant awarded Cal/OSHA \$73,931,800 for FY 2011. The Federal share was \$27,418,800, with the State matching \$46,513,000.

C. Data & Methodology

Information from the quarterly meetings with Cal/OSHA, DLSE, OSHSB, and the Appeals Board were used in this report. Additional information and data referenced in this report were derived from the following data sources:

1. Computerized State Activity Mandated Measures (SAMMs),
2. Public Sector Mandated Activities Report for Consultation (Public MARC),
3. California's FY 2011 State OSHA Annual Report (SOAR)
4. Bureau of Labor Statistics (BLS), Calendar Year 2010
5. FY 2011 23(g) Grant,
6. Complaints About State Program Administration (CASPs),
7. OSHA's Integrated Management Information System (IMIS) reports,
8. Case file reviews, and
9. Division of Occupational Safety and Health, Policy and Procedure (P&P) Manual, Volume II, Cal/OSHA Compliance.

On September 14, 2011, two Process Safety Management District Offices were evaluated. The District Offices in Foster City and Santa Ana were evaluated from January 30 to February 8, 2012. This evaluation consisted of reviewing complaint inquiries, complaint inspections, and fatality investigations. The case files were randomly selected to ensure a 95% statistical confidence level. A total of 268 case files were reviewed. The review was done by Compliance Safety and Health Officers and the Area Directors from Oakland and San Diego.

On February 13-24, 2012, the Regional Whistleblower Team evaluated case files and interviewed DLSE personnel. Twenty-one cases were selected for review - three were dismissed for lack of cooperation from the complainant, nine were dismissed on the merits (totaling twelve dismissals), three were found to have merit or were pursued for litigation, two were settled, and four were withdrawn by the complainant. All twenty-one cases ranged in age and were investigated by DLSE's five investigators.

Because this FAME focused on DLSE's operations in FY 2011, DLSE was reviewed against the policies and procedures outlined in the Whistleblower Investigations Manual, DIS-0.09.

However, during the last week of FY 2011, a new Whistleblower Investigations Manual was issued, CPL 02-03-003. All of the recommendations discussed in this report would be applicable under CPL 02-03-003. In addition, citations to DLSE's internal Retaliation Complaint Investigation (RCI) Manual (March 2009) were included where appropriate.

D. Findings and Recommendations

The evaluation of the program identified issues in the areas of complaints, fatalities, targeting, Federal and State Program Changes, and discrimination investigations.

A review of the complaint inquiries and inspection case files from the Enforcement Offices in Foster City and Santa Ana indicated response letters to the complainant were not consistently mailed out, complaints were not being responded to in a timely manner, diary sheets were not always used or were not updated, and employee representatives were not always involved in the opening conference. The fatality case file review noted that deaths attributed to natural causes (e.g., heart attacks) and not work-related were being entered into IMIS as work-related fatalities which impacts data locally and nationally.

Cal/OSHA's percent of serious, willful, repeat violations in programmed inspections were significantly below the National average, a trend that has continued for the past five years. The targeting system needs to be improved to ensure inspections are conducted in high hazard workplaces to eliminate serious hazards that result in injuries and illnesses to workers.

Cal/OSHA responded to seven Federal Program Changes prior to the due date, three responses were received after the due date and four Federal Program Changes were not responded to.

The OSHSB needs to resolve the issues regarding Employer Payment for Personal Protection Equipment and the Bakery Oven Standards, PCS 361. Both of these issues were identified in the previous FAME report.

The Special Study of DLSE's Whistleblower Program resulted in the identification of 23 findings and recommendations. Major findings included issues with proper screening, notification of complainants' rights to file and appeal rights, conducting adequate interviews of all relevant witnesses, proper documentation and report writing, obtaining and analyzing evidence properly and incorrect information in IMIS. Some of the findings are repeated from the FY 2010 report.

II. Major New Issues

Diesel Engine Runaway Protection: This proposed regulation was initiated by a petition to the OSHSB. The proposed regulation mandates the use of automatic shut-off devices for diesel powered engines/equipment and addresses the hazards associated with failure to control runaway diesel engines. The proposed regulation is still under consideration.

Employer duty to Pay for Personal Safety Devices and Safeguards: The proposed regulation regarding Employer duty to Pay for Personal Safety Devices and Safeguards was withdrawn.

The OSHSB directed the Board staff to convene an advisory committee. The committee met on March 22, 2012 and will be sending a letter to Federal OSHA indicating the decision reached by the Advisory Committee.

Fall Protection: Since the rescission of STD 3.01A, Cal/OSHA's Fall Protection Standards and directives are under review to determine if the differences provide equivalent safety and health protection to workers. Cal/OSHA's Fall Protection Standard differed from the Federal Standard in several areas. For example, Cal/OSHA has a trigger height of 7 ½ feet, employees are allowed to work up to 15 feet when guardrails are impractical on thrust outs or similar locations, and individuals are allowed to work up to 20 feet for roofing operations (except near perimeter, shaft-ways, and openings) without fall protection. The rationale to have a different trigger height was based on the interpretation of STD 3.01A. The Oakland Area Office is working with Cal/OSHA in resolving this issue.

Tunnel Safety Orders: On August 11, 1994, OSHA Region IX provided comments regarding the tunnel standard. The letter indicated the review of the proposed tunnel standard did not constitute final approval since the Standards Board did not yet hold a public hearing, and there was no final tunnel standard. The Standards Board used this letter to constitute final approval of the tunnel standards as indicated by their correspondence to Federal OSHA. It appears the tunnel safety orders did not receive final approval from Federal OSHA. The Standards Board needs to submit the tunnel safety orders to Federal OSHA for final approval. Cal/OSHA will be submitting the revised orders to the Standards Board in FY 2012. The Standards Board will forward the revised orders to Federal OSHA for review and approval.

III. State Response to FY 2010 FAME Recommendations

The FY 2010 FAME contained 38 findings and recommendations. Cal/OSHA completed 16 out of 30 deficiencies in FY 2011. The responsible agencies for the remaining recommendations in the FY 2010 FAME were the OSHSB, DLSE, and OSHAB. The Standards Board was responsible for two recommendations while OSHAB had to answer two items.

The OSHSB and OSHAB completed the recommendation for Finding 10-30. Federal OSHA needs to resolve the Bakery Oven Standard issue with the OSHSB. DLSE is responsible for four recommendations.

DLSE completed the recommendation for Finding 10-27. The remaining recommendations for Findings 10-24 through 10-26 were identified in FY 2011 FAME and are still not corrected. Appendix B describes the details of the status for each FY 2010 recommendation.

IV. Assessment of State Performance

A. Enforcement

1. Complaints

California Labor Code 6309, Investigations by Division, required Cal/OSHA to investigate

formal serious complaints within three working days and 14 calendar days to investigate a formal non-serious complaint. If the employer did not provide a response within 14 calendar days, Cal/OSHA would either contact the employer to ensure the complaint was received or initiate an inspection of the workplace. Cal/OSHA selects every “fifth satisfactory letter response” to receive an on-site inspection for serious complaints. For non-serious complaints, Cal/OSHA selects every “tenth satisfactory letter response” for an on-site inspection. A complaint was non-formal if the complainant was a non-employee, or a name and address can not be given. A complaint was considered formal if it was received by an employee (name and address), an employee's representative, a representative of a government agency, or from an employer of an employee directly involved in an unsafe place of employment.

In 16 out of 268 (6%) case files reviewed, an opening conference for an inspection into a serious complaint was not held within three working days or investigations into non-serious complaints were not initiated within 14 calendar days after receipt. According to the SAMM data in Table 1, it took an average of 18.7 days to initiate an inspection and 6.7 days to initiate an investigation by letter. Although the response time to initiate an inspection for complaints alleging serious hazards has improved, it is significantly higher than the goal of three days. This delay could result in workers having an increased exposure time to hazards that could cause injuries or illnesses.

Table 1

Complaints (SAMM 1,2,3)						
	<i>FY 2007</i>	<i>FY 2008</i>	<i>FY 2009</i>	<i>FY 2010</i>	<i>FY 2011</i>	<i>Goal</i>
Days to Initiate Inspection (SAMM 1)	34.35 days (97255/2831)	28.93 days (88580/3061)	24.56 days (66235/2696)	23.04 days (65162/2828)	18.65 days (57769/3097)	3 days
Days to Initiate Investigation (SAMM 2)	17.49 days (73124/4180)	14.42 days (63411/4396)	14.08 days (55440/3936)	10.59 days (39841/3760)	6.72 days (28368/4218)	14 days
Complainants Notified Timely (SAMM 3)	97.97% (2653/2708)	96.73% (2719/2811)	98.11% (2591/2641)	98.84% (2632/2663)	99.13% (2846/2871)	100%

Finding 11-01: Complaint investigations were not being initiated within three working days for serious hazards or fourteen calendar days for other-than-serious complaints in 6% of case files reviewed (10-1).

Recommendation 11-01: An opening conference shall be held within three working days for serious complaints and 14 calendar days for other-than-serious complaints.

The evaluation of the case files from Cal/OSHA’s Enforcement Offices indicated that in 37 of the 268 (13.8%) cases reviewed, a response letter was not sent to the complainants after the completion of an inspection or inquiry. It is important that complainants be informed of the result of complaint investigations or inquiries. In some cases, complainants have notified OSHA that hazards were not abated as indicated in an employer’s response and that the condition still existed. This issue was also noted in the FY 2010 report, Finding 10-02.

Finding 11-02 (10-02): In 37 of the 268 cases reviewed, a response letter was not sent to the complainant for complaint inspections or inquiries.

Recommendation 11-02: Response letters shall be sent to complainants who provide a

complete address after complaint inspections or inquiries are completed.

Sixty (60) complaint inquiry case files were reviewed in Cal/OSHA's Foster City Enforcement Office. A diary sheet was either not used or was not updated for these complaint inquiries as required by OSHA's Field Operations Manual (FOM). Diary sheets would have provided a ready record and summary of all actions relating to a case. They should reflect important activities related to the inspection, especially those not noted elsewhere in the file, and should include information such as opening conference date, closing conference date, supervisor review, telephone communications with the employer, informal conference dates, and other post-citation activities. This issue was also noted in the FY 2010 report, finding 10-13.

Finding 11-03 (10-13): A diary sheet, or an equivalent activity summary sheet, was not used or was not updated for complaint inquiries.

Recommendation 11-03: Diary sheets, or equivalent, shall be used for complaint inquiries and inspection case files.

2. Fatalities

Employers were required to report fatalities, catastrophes, or serious injuries to Cal/OSHA. These inspections were coded as fatalities when entered into the IMIS database. According to IMIS reports, there were 510 fatalities in FY 2011. Depending upon the circumstances involved, Cal/OSHA would investigate the event. When an inspection was warranted, the policy was to conduct the investigation no later than one day as required in P&P Manual, Section C-36. Fatality case files in Foster City and Santa Ana Enforcement Offices were reviewed during the on-site visit.

The Santa Ana Office fatality case file review noted that some fatalities were due to natural causes and were not work related. In many of these cases, the employer failed to notify Cal/OSHA within eight hours and citations were issued. However, the coding in IMIS was not updated to a referral or no inspection. As a result, citations, when issued, were being attributed to fatality inspections incorrectly. The data measuring response time to fatalities was also affected as many of these non work-related fatality inspections were not initiated within one day. As required by the FOM, all workplace fatalities must be reported by employers. However, once determined that the fatality was not work-related, the inspection type should be updated to reflect either a referral or no inspection.

In a fatality investigation, information in the accident summary indicated that Cal/OSHA did not have jurisdiction, but citations were issued. Upon further review of the case file, it was noted that this was a non-work related fatality and the deceased was an independent contractor. Citations were issued to the establishment where the deceased was working. That employer was under Cal/OSHA jurisdiction and was correctly cited. However, the accident summary in IMIS was not updated to reflect this. This has now been corrected.

During the data review, twelve fatality investigations were not investigated within one day. Upon further investigation into these cases, five investigations were due to data entry errors, two

investigations were accident investigations which later turned into a fatality and one was a non-work related fatality.

Finding 11-04: Data entry errors resulted in fatalities being recorded for non-work related deaths and investigations being recorded as untimely. The coding in IMIS for fatality inspections was not updated once it was determined that the fatality was not work related.

Recommendation 11-04: Ensure IMIS data is updated to reflect the correct coding for non-work related fatalities and is entered correctly to reflect timely investigations.

At the Foster City Enforcement Office, one of two case files reviewed did not have a “final letter” mailed to the next of kin after the completion of the fatality investigation. In accordance with the FOM, compliance officers were required to ensure contact was made with the victim’s family and to keep the family updated throughout the fatality investigation. The “final letter” is the correspondence which informs the family of the results of the investigation and includes copies of citations, if any were issued. This issue was also noted in the FY 2010 report, finding 10-03.

Finding 11-05 (10-03): In one of two fatality case files reviewed, a final letter indicating the results of the investigation was not mailed to the next of kin.

Recommendation 11-05: Final letters shall be sent to the next of kin after completion of the fatality investigation.

The IMIS data regarding fatalities show that the Santa Ana Enforcement Office did not initiate investigation of fatalities within one day as required by the P&P Manual, Section C-36. It is important to immediately respond to fatalities or catastrophes to ensure that appropriate information is gathered before the accident scene is cleared and to ensure timely interviews are conducted. A delayed response could impact the information gathered and affect the adequacy of the investigation. This was also noted in the FY 2010 report, Finding 10-04.

Finding 11-06 (10-04 & 10-20): Twelve fatality investigations were not initiated within one day.

Recommendation 11-06: Initiate fatality inspections within one day of being notified of a fatality which warrants an inspection.

3. Targeting and Programmed Inspections

Programmed inspections were conducted by the High Hazard Units located in Oakland and Santa Ana. The Process Safety Management Districts were included under the High Hazard Unit and were located in Concord, and Torrance. The Process Safety Management Inspectors visited employers twice per year.

The High Hazard Compliance Units were responsible under labor code section 6314.1 for the inspection of identified employer worksites in high hazard industries. The days away, job

transfer or restriction (DART) rate was used to target employers. Employers with a DART rate greater than 4.2 were targeted. Cal/OSHA was looking at specific North American Industry Classification Standard (NAICS) Codes in agriculture, construction, manufacturing, transportation and warehousing, waste management, health care, and other services (dry cleaning and laundry services).

The activities in the Process Safety Management District Office in Concord were evaluated. The case files were well documented with only minor deficiencies noted. During the evaluation of the two Enforcement Offices, it was noted that IMIS data indicated very few, if any programmed inspections were being conducted.

The percent of programmed inspections with serious, willful or repeat violations is significantly lower than the National average, and has been for the past five years. As a result of the FY 2010 and FY 2009 FAME, it was discovered that a number of programmed inspections were incorrectly coded. The affected policy regarding coding was amended and training was conducted for managers and staff. However, there was no improvement and the percentage has actually declined. Cal/OSHA is developing a project which will provide access to better data to determine improvements to their targeting strategies.

Table 2 indicates 21% of the programmed inspections were identified with a serious, willful or repeat safety violation and 6% of the programmed health inspections were identified as having a serious, willful or repeat violation.

On January 1, 2011 Assembly Bill (AB) 2774 redefined a serious violation, however Cal/OSHA needs to incorporate this definition into their policy and procedures manual.

Table 2

Percent Programmed Inspections with S/W/R Violations (SAMM 8)						
	<i>FY 2007</i>	<i>FY 2008</i>	<i>FY 2009</i>	<i>FY 2010</i>	<i>FY 2011</i>	<i>FY 2011 National Data (3 years)</i>
Safety	27.92% (854/3059)	26.48% (745/2813)	26.91% (767/2850)	25.15% (710/2823)	20.73% (480/2316)	58.5%
Health	28.41% (75/264)	22.99% (86/374)	10.09% (47/466)	9.04% (45/498)	6.21% (9/145)	51.7%

Finding 11-07 (10-07): The percent of programmed inspections with serious, willful or repeat violations is significantly lower than the National average.

Recommendation 11-07: Improve targeting of programmed inspections to reach high hazard workplaces.

Finding 11-08 (10-08): Cal/OSHA’s policy on classifying violations does not ensure violations that would be considered “Serious” under the Federal Field Operations Manual (FOM) are classified as Serious.

Recommendation 11-08: Cal/OSHA needs to incorporate the new definition of a serious violation into their policy and procedures manual.

Finding 11-09 (10-34): The rules of evidence used by Cal/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 Cal/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.

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 11-09: Cal/OSHA must take the 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.

4. Citations and Penalties

Cal/OSHA had penalty fees which could be considered the highest in the nation. According to the SAMM information, the average initial penalty for a serious violation in California is \$6,390.04 as compared to \$1,679.60 for a Federal violation (See Table 3). However, the average number of violations for serious, willful or repeat was 0.55 per inspection or one hazard found for every two inspections conducted. The average number of violations for other than serious was 2.71 per inspection (See Table 4).

Serious violations may be assessed a civil penalty of up to \$25,000 and for general and regulatory violations (other-than-serious) may be assessed up to \$7,000 for each violation. In addition, government agencies were not exempt from civil penalties. This resulted in higher average penalties per violation.

According to the SIR, the State vacated only 0.9% of violations in 2011. Violations were re-classified in only 0.8% in all cases. This indicated the violations have been properly classified and there was adequate evidence gathered during the inspection to support the case. The penalties were retained in 60% in all cases.

Table 3

Average Initial Penalty Per Serious Violation (SAMM 10)						
	<i>FY 2007</i>	<i>FY 2008</i>	<i>FY 2009</i>	<i>FY 2010</i>	<i>FY 2011</i>	<i>FY 2011 National Data (3 years)</i>
	\$5936.75 (29499k/4969)	\$5811.63 (26280k/4522)	\$5503.41 (22090709/4014)	\$5712.43 (19130953/3349)	\$6390.04 (16447k/2574)	\$1679.60

Table 4

Violations per Inspection with Violations (SAMM 9)						
	<i>FY 2007</i>	<i>FY 2008</i>	<i>FY 2009</i>	<i>FY 2010</i>	<i>FY 2011</i>	<i>FY 2011 National Data (3 years)</i>
S/W/R	0.88 (5233/5919)	0.79 (4703/5893)	0.76 (4200/5520)	0.68 (3581/5199)	0.55 (2708/4858)	2.1
Other	2.60 (15403/5919)	2.58 (15257/5893)	2.63 (14554/5520)	2.61 (13616/5199)	2.71 (13169/4858)	1.2

5. Abatement

According to the SAMM information, 93% of serious, willful or repeat violations were verified abated in the private sector. Even though this percentage was high, there were 51 violations not verified abated. In the public sector, 93% of serious, willful or repeat violations were verified as abated. The goal was to have 100% of these types of violation abated (See Table 5).

Table 5

Percent S/W/R Violations Verified Abated (SAMM 6)						
	<i>FY 2007</i>	<i>FY 2008</i>	<i>FY 2009</i>	<i>FY 2010</i>	<i>FY 2011</i>	<i>Goal</i>
Private Sector	73.70% (1149/1559)	81.23% (1285/1582)	83.66% (1065/1273)	84.38% (843/999)	92.93% (670/721)	100%
Public Sector	85.37% (35/41)	95.00% (19/20)	95.83% (23/24)	100% (28/28)	93.33% (14/15)	100%

Cal/OSHA considered a case closed when the District Office received a verification of abatement letter from the employer.

Finding 11-10 (10-14): Cal/OSHA did not verify that all Serious, Willful, or Repeat violations were abated.

Recommendation 11-10: Verify all Serious, Willful, or Repeat violations are abated.

6. Employee and Union Involvement

Cal/OSHA inspections procedures allowed for Union involvement. Some of the case files reviewed did not contain a narrative and therefore it was difficult to ascertain if an employee was interviewed. In other inspection case files, employee interviews were evidenced by the hand written notes. Six of the case files did not contain information that a union representative was involved in the opening conference as required by the P&P Manual, Section C-1A. Upon further investigation, it was noted that in two of the cases, the union representative was not available. In one case an attempt was made to notify the union, but the union did not respond back. This issue was also noted in the FY 2010 report, finding 10-10.

Finding 11-11 (10-10): In three of the case files reviewed, the Union was present at the work site but was not involved in the opening conference and in three cases, union involvement was not properly documented.

Recommendation 11-11: An opening conference shall be held with the Union either jointly with the employer or separately, and properly documented.

B. Review Procedures

1. Informal Conferences

Cal/OSHA allowed 15 working days after the issuance of the citation and notification of penalty to participate in an informal conference. However, Cal/OSHA allows an informal conference to be held after an appeal is filed and anytime prior to the day of the hearing. According to the SIR information, Cal/OSHA rarely vacated or reclassified citations. Cal/OSHA had a modest penalty retention rate (See Table 6).

Table 6

Pre-Contest (SIR C7, C8, C9)						
	<i>FY 2007</i>	<i>FY 2008</i>	<i>FY 2009</i>	<i>FY 2010</i>	<i>FY 2011</i>	<i>Federal Data</i>
Violations Vacated (SIR C7)	1.9% (227/11942)	1.6% (185/11779)	1.6% (168/10308)	1.6% (158/10121)	0.9% (86/9205)	7.0%
Violations Reclassified (SIR C8)	1.6% (192/11942)	2.2% (264/11779)	2.7% (280/10308)	2.1% (214/10121)	0.8% (72/9205)	4.8%
Penalty Retention (SIR C9)	59.1% (5341k/9032k)	54.6% (5810k/1064k)	53.2% (8007k/1504k)	57.1% (7152k/1251k)	59.5% (4839k/8138k)	62.8%

Finding 11-12 (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.

Recommendation 11-12: Cal/OSHA needs to revise P&P C-20 to allow informal conferences to be held within 15 working days of the issuance of citations and penalties, and not to exceed this time frame.

Finding 11-13 (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.

Recommendation 11-13: Cal/OSHA using all available appeal resources must strongly select sufficiently strong cases for appeal that would set precedent regarding retention of penalties overall and a minimum penalty for violations of 342(a).

In 2012, legislation will be proposed to set a standard penalty for a violation of the reporting requirement which may be adjusted by the Division based on listed factors and for which a clear minimum penalty is provided. Since the proposed legislation includes factors for the Division to consider in adjusting the initial \$ 5000 penalty, it eliminates the need for the Division to amend any regulation.

2. Formal Review of Citations

An employer had 15 working days to file an appeal. If an appeal was filed after the deadline of 15 working days, the appeals board could accept the appeal only upon a showing of good cause for the late filing. Good cause generally meant circumstances beyond one's control which could not have been reasonably anticipated. It took an average of 322 days for a case to be heard in front of the Appeals Board (See Table 7). Decisions were posted on the website, which could be accessed by the public for review. OSHAB had three full time members in FY 2011.

Table 7

Contested Case Lapse Time (SAMM 12)						
	<i>FY 2007</i>	<i>FY 2008</i>	<i>FY 2009</i>	<i>FY 2010</i>	<i>FY 2011</i>	<i>FY 2011 National Data (3 years)</i>
	515.02 days (1204128/2338)	422.25 days (994399/2355)	337.66 days (755364/2237)	315.31 days (551163/1748)	321.92 days (491575/1527)	199.7 days

The Appeals Board's rate of vacating or reclassifying violations was lower than Federal OSHA. However, the Appeals Board had a lower rate of penalty retention than Federal OSHA (See Table 8).

Table 8

Post-Contest (SIR E1, E2, E3)						
	<i>FY 2007</i>	<i>FY 2008</i>	<i>FY 2009</i>	<i>FY 2010</i>	<i>FY 2011</i>	<i>Federal Data</i>
Violations	15.8% (537/3392)	16.1% (1091/6783)	13.8% (1222/8873)	11.3% (882/7835)	10.8% (572/5276)	23.5%
Vacated (SIR E1)						
Violations Reclassified (SIR E2)	7.6% (257/3392)	9.4% (639/6783)	11.2% (996/8873)	10.2% (802/7835)	8.8% (464/5276)	13.3%
Penalty Retention (SIR E3)	38.5% (3279k/8507k)	35.6% (5865k/1649k)	34.2% (7986k/2334k)	38.4% (7198k/1874k)	39.3% (4935k/1256k)	62.3%

Finding from the 2010 FAME Report relating to cases presented at hearings:

Finding 11-14 (10-36): Cal/OSHA field staff does not have sufficient legal training or background to present cases at hearings. 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 11-14: 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.

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.

C. Standards and Federal Program Changes Adoptions

1. Standard Adoptions

The OSHSB promulgated occupational safety and health standards for California. OSHSB would request an advisory opinion from Federal OSHA for comment on new or revised standards. Federal OSHA would then provide an opinion to determine if the new or revised standard was at least as effective as the Federal regulation.

OSHSB public meetings were held in Sacramento. The meeting schedule, date, time, location and agenda were posted on their website. Federal OSHA sent a representative to attend the meeting. At the meeting, Board members discussed and voted on the new or revised standard. Below are the Federal Standards which were adopted.

Table 9

Standard:	FR Notice Date:	Response Due Date:	State Response Date:	Adoption Due:	State Effective Date:
29 CFR 1910, 1926 Employer Payment for Personal Protection Equipment: Final Rule	11/05/2007	05/15/2008	12/02/2010	05/15/2008	
29 CFR 1926 (various) Cranes and Derricks in Construction—Final Rule	08/09/2010	10/10/2010	10/11/2010	02/09/2011	7/7/2011
29 CFR 1910, 1915 Working Conditions in Shipyards: Final Rule	05/02/2011	07/02/2011	06/30/2011	11/02/2011	12/13/2011
29 CFR 1910, 1915, 1918, 1919, 1926, 1928 Standards Improvement Project, Phase III	06/08/2011	08/16/2011	08/16/2011	12/08/2011	01/18/2012

The OSHSB had met all due dates with one exception - employer payment for personal protective equipment. On March 22, 2012, OHSB will convene an advisory committee to discuss this rule. This was also noted in the FY 2010 report, Finding 10-22, and the FY 2009 report, Finding 9-27.

Finding 11-15 (10-22): The Employer Payment for Personal Protection Equipment issue has not been adopted.

Recommendation 11-15: OSHSB needs to resolve the issue regarding Employer Payment for Personal Protective Equipment.

2. Federal Program/State Initiated Change

To ensure State Plans are at least as effective as Federal OSHA, Federal Program Changes, or an equivalent, should be adopted within specified time frames. Cal/OSHA has been late in responding to Federal Program Changes as indicated by the information in Table 10 below.

There are four Federal Program Changes that did not have a response. Cal/OSHA responded to six Federal Program Changes on time. Three responses were received after the due date. Cal/OSHA developed a plan to have the Program Unit respond, track, and manage the Federal Program Changes to address the timeliness issue. The issue of not responding on time was also noted in the FY 2010 report, finding 10-22.

Table 10

FPC Directive/Subject:	Date of Directive:	Response Due Date:	State Response Date:	Adoption Required:
CPI-02(10-06) SST-10	08/18/2010	12/19/2010	12/19/2010	No
CPL-02(10-07) Recordkeeping NEP-September 2010 Changes	09/28/2010	12/19/2010	02/22/2011	No
CPL 02-01-049 PPE in Shipyard Employment	11/04/2010	01/11/2011	01/11/2011	No
STD-03-002 Compliance Guidance for Residential Construction	12/16/2010	02/26/2011	02/25/2011	No
CPL-03(11-01) NEP Microwave Popcorn Processing Plant	01/18/2011	04/16/2011	03/28/2011	Yes
CPL-02-01-050 PPE in General Industry	02/10/2011	04/16/2011	04/14/2011	No
CPL 02-00-150 Revisions to Field Operations Manual - April 2011	04/22/2011	07/02/2011	In progress	Yes
CPL 03-00-013 National Emphasis Program - Primary Metals Industries	05/19/2011	08/01/2011	In progress	Yes
CPL 02-01-051 Confined Spaces in Shipyard	05/20/2011	07/24/2011	In progress	No
CPL 02-00-151 29 CFR Part 1910, Subpart T - Commercial Diving Operations	06/13/2011	08/16/2011	In progress	No
CPL 02-01-052 Enforcement Procedures for Investigating and Inspecting Incidents of Workplace Violence	09/08/2011	11/12/2011	11/28/2011	No
CPL 02-11-03 Site-Specific Targeting 2011 (SST-11)	09/09/2011	11/12/2011	01/10/2012	Yes
CPL 02-03-003 Whistleblower Investigations Manual	09/20/2011	11/22/2011	11/22/2011	Yes

Finding 11-16 (10-22): Cal/OSHA was late in responding to 6 out of 13 Federal Program Changes and did not respond to 3 out of 13 Federal Program Changes.

Recommendation 11-16: Cal/OSHA needs to respond by the due date to all Federal Program Changes.

Rulemaking on the Bakery Oven Inspections, PCS 361, was not completed. A review of the Bakery Oven standard was determined to be not as effective as the Federal Standard. A response

had been received from OSHASB at the end of the rating period. At the time of this report Federal OSHA was in the process of evaluating it. This was also reported in both the FY 2010 and FY 2009 reports as Findings 10-23 and 09-27, respectively.

Finding 11-17 (10-23): The State initiated rulemaking that promulgated a standard on Bakery Ovens was deemed not to be at least as effective as Federal OSHA standards.

Recommendation 11-17: Resolve the issues with the Bakery Oven standard to ensure they are at least as effective as Federal OSHA standards.

D. Variances

OSHSB granted or denied applications for variances from standards and responded to petitions for new or revised standards. Any employer applying for a permanent variance had to show an alternate program, method, practice, means, device, or process which provided equal or superior safety for employees.

The Standards Board considered 11 variances in FY 2011. Four variances were granted, while seven were not. These variances pertained to regulations in 1910.110, 1910.1450, 1910.134, and 1910.136, table 11. The variance process has been reviewed and has been determined to be equivalent to Federal OSHA’s process.

Table 11

State Standard	Federal Standard	Company Name	Decision
Section 475(b)	29 CFR 1910.110(d)(10)	BNSF Railway Company	Granted - The Applicant uses propane/LPG as a means of fueling generators that power signals in the event of an electric power failure. The variance allows the Applicant, subject to several conditions, most notably, the requirement of a protective barrier wall, to locate the tanks at 9 specified sites where tanks are located closer to the main track center line than the safety order allows.
Title 8, Sections 8495(c)(3) through (c)(4)(A)	29 CFR 1926.800(t)(4)(iii) through (v)	Vadonis Corporation	Not Granted - The Applicant wanted permission to lower workers into underground concrete pipes in personnel conveyances that did not have a means of emergency egress through the bonnet. The Applicant wanted these conveyances to have some other features not allowed by the safety orders, such as outwardly opening gates and sides that are not completely screened or encased. The Applicant's proposal was determined not to provide equivalent safety.
Title 8, Sections 1592(b), 3661(c), 3706(b)	29 CFR 1910.178(a)(2)	Home Depot	Not Granted - The Applicant wanted to be able to turn off warning devices while using a forklift for material handling activities. The Applicant's proposal (warning signs and some additional measures) was found not to provide equivalent safety, and the Applicant was referred to

			alternative approaches provided in one of the safety orders.
Title 8, Section 5154.1(c)(2)(B)	29 CFR 1910.1450	University of California	Granted - With conditions, the variance allows the use of nitrous oxide, in place of sulfur hexafluoride as a tracer gas for laboratory fume hoods capable of operating at a reduced flow when no employee is present in the immediate area of the fume hood opening.
Title 8, Section 5199	29 CFR 1910.134	CA Dept. of Forestry and Fire Protection	Granted - Variance granted from state aerosol transmissible disease standard to allow emergency medical response personnel to use N100 rather than P100 respirators for high risk procedures. Variance is subject to conditions and does not allow N100 use in atmospheres with aerosolized oils.
Title 8, Section 5199	29 CFR 1910.134	San Diego Medical Services	Not Granted - A public private partnership between the City of San Diego Fire Department and Rural Metro Corporation Employer wanted emergency medical personnel to be allowed to use N95 rather than P100 respirators for high risk procedures.
Title 8, Section 5199	29 CFR 1910.134	Rancho Santa Fe Fire Protection District	Not Granted - Employer wanted emergency medical personnel to be allowed to use N95 rather than P100 respirators for high risk procedures.
Title 8, Section 5199	29 CFR 1910.134	Del Mar Fire Department	Not Granted - Employer wanted emergency medical personnel to be allowed to use N95 rather than P100 respirators for high risk procedures.
Title 8, Section 5199	29 CFR 1910.134	Encinitas Fire Department	Not Granted - Employer wanted emergency medical personnel to be allowed to use N95 rather than P100 respirators for high risk procedures.
Title 8, Section 5199	29 CFR 1910.134	Solana Beach Fire Department	Not Granted - Employer wanted emergency medical personnel to be allowed to use N95 rather than P100 respirators for high risk procedures.
Title 8, Section 3385(c)	29 CFR 1910.136(a) and (b)	Pacific Gas and Electric Company	Granted - The variance allows the employer, subject to conditions, to use strap-on foot protectors. The conditions concern such things as care, employee training, and inspection. The strap-on foot protectors must meet the impact, clearance inspection and compression performance standards for Class 75 protective footwear, as set forth in certain ASME or ASTM standards.

E. Public Employee Program

Cal/OSHA's enforcement program for state and local government was identical to that in the private sector. Cal/OSHA scheduled inspections and issued citations with penalties for both in the same manner. Cal/OSHA conducted 6.85% of inspections in the public sector, exceeding the National average of 6.6% (See Table 12).

Table 12

Percent of Total Inspections in Public Sector (SAMM 11)						
	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2011 State Average (3 years)
	5.93% (542/9142)	6.23% (567/9097)	6.10% (537/8803)	6.88% (568/8250)	6.85% (558/88141)	6.6%

F. Discrimination Program Evaluation

Make-Up Of The State Program

In FY 2011, DLSE assigned five investigators (referred to as “Deputy Labor Commissioners”) to investigate occupational safety and health whistleblower retaliation complaints. These five investigators worked at five different DLSE offices, with one investigator assigned to each office: (1) San Francisco, (2) San Jose, (3) Sacramento, (4) Van Nuys, and (5) Long Beach. Four investigators primarily investigated occupational safety and health whistleblower retaliation complaints filed under California Labor Code Section 6310, Safety or Health Complaints, or Section 6311, Refusal to work in unsafe conditions. One investigator located in Southern California investigated 6310 and 6311 in addition to other cases within the jurisdiction of DLSE.¹ During FY 2011, the three investigators located in the San Francisco, San Jose, and Sacramento offices were also assigned non-6310 and 6311 enforcement work from time to time. All five investigators occasionally investigated wage and hour retaliation complaints that were attached to 6310 and 6311 complaints they were assigned to investigate. A Senior Deputy Labor Commissioner supervised the three investigators located in Northern California. Another Senior Deputy Labor Commissioner supervised the two investigators located in Southern California. The Assistant Chief of DLSE, who oversaw DLSE’s Retaliation Unit, supervised both Senior Deputy Labor Commissioners.

Methodology

DLSE reported on IMIS that it closed 68 cases in FY 2011. Based on this IMIS report, Federal OSHA Region IX originally requested that DLSE provide 15% of their cases for review, or 10 cases. The 10 cases were chosen by considering the following three factors: determination, age of the case, and investigator. Based on these three factors, Federal OSHA Region IX requested one withdrawn case, three merit/litigation cases, and six dismissed cases (as discussed in this report, some of these cases were later determined to be wrongly classified in IMIS). DLSE did not report that any cases had settled in IMIS. All ten cases ranged in the amount of days they took to close out. Of the ten cases chosen, two were investigated by each of DLSE’s five investigators involved in the discrimination program.

Subsequent to making this request, DLSE provided internal data that was not reported on IMIS showing that they actually closed 202² cases in FY 2011. Federal OSHA Region IX compared DLSE’s internal data with the data that was reported on IMIS and determined that DLSE had actually closed 210 cases in FY 2011. To ensure that an appropriate sample of FY 2011 closed cases were reviewed, the number was increased to 21 cases, or 10% of all cases closed in FY 2011. The additional 11 cases were selected by the age of the cases and ranged in the

¹ In addition to investigating 6310 and 6311 complaints, DLSE investigates approximately 35 other California Labor Code sections prohibiting employer discrimination.

² A Senior Deputy Labor Commissioner informed the FAME review team that DLSE had actually closed 238 cases in FY 2011. However, the 202 number was from an internal DLSE report, and so that figure is used in this report.

amount of days they took to close out. Unlike the data reported in IMIS, DLSE's internal data did not indicate which investigator closed the case and the case determination.

Investigative Complaint Screening

Of the 21 case files reviewed, 19% of the case files (4 of 21) were not properly screened pursuant to DIS-0.9 Chapter 2 (III) and RCI Manual 2.3. Had these complaints been properly screened, with follow-up where necessary, they could have been administratively closed prior to investigation.

In some instances, there was evidence on the face of the complaint that one or more elements of a prima facie case were missing. In one complaint, for example, the complainant alleged "use of toilet facilities" as "protected activity" which is not, by itself, "protected activity," and further alleged that the employer did not have knowledge of complainant's alleged "protected activity." DLSE should have followed-up with the complainant to confirm the "protected activity" allegation and to confirm that the employer had no knowledge of complainant's "protected activity." If the complainant confirmed that there was no employer knowledge, the complaint could have been administratively closed rather than investigated. In other instances, it was unclear from the allegations on the face of the complaint whether one or more elements of a prima facie case existed, but there was no follow-up done to confirm whether the complaint should be administratively closed.

In another example, the evidence in the case file demonstrated that DLSE did not have jurisdiction to investigate the complaint under Labor Code Section 6310 or 6311 because the complainant was not alleging that she complained about any worker or occupational safety or health issues. Instead, the complainant alleged that respondent retaliated against her for reporting safety issues related to the safety of children at respondent's child care facility, there was lack of adequate supervision of the children, and that respondent violated the required teacher to children ratio. DLSE does not have jurisdiction over these child safety issues under Labor Code Section 6310 or 6311 because the complainant did not allege that these issues related to occupational worker safety. It appears that DLSE has jurisdiction over this complaint pursuant to another statute. However, this case should not have been open, coded, and investigated as a Section 6310 or 6311 case.

In addition, most of the reviewed case files did not contain evidence that they had been screened. The two Senior Deputy Labor Commissioners advised the FAME review team that they each screen complaints for their respective regions before the complaint is accepted for filing and an investigator is assigned. However, the majority of the case files reviewed did not contain any documentation (i.e., a screening memo or notes) evidencing that a screening review had occurred. Also, most case files reviewed did not contain any notes of screening follow-up telephone calls to the complainant to clarify the allegation or determine jurisdiction and timeliness. Preliminary contact with the complainant may be required to obtain additional information or to explain to the complainant why the case cannot proceed to investigation. Although not required by either DIS 0.09 or RCI Manual 2.3, investigators and/or Senior Deputy Labor Commissioners should use a screening memo template when screening complaints to ensure that all jurisdictional requirements are met, the complaint is timely, and the complainant has alleged a prima facie claim of retaliation, and maintain a copy of the memo in the file.

Finding 11-18: DLSE was not properly screening all newly filed discrimination complaints.

Recommendation 11-18: As soon as possible upon receipt of the discrimination complaint, the available information shall be reviewed for appropriate jurisdictional requirements, timeliness of filing, and the presence of a *prima facie* allegation.

Lastly, DLSE did not consistently inform complainants of their right to dually file with Federal OSHA pursuant to DIS-0.09 Chapter 7 (VI)(2) and RCI Manual Addendum B & E. DLSE did not notify complainants of this right in 33% of the cases reviewed (7 out of 21). For the cases where DLSE properly informed complainants of this right, complainants were often advised too late of their right to dually file with Federal OSHA. In these cases, DLSE's opening letter notifying the complainant of the right to dually file was sent more than 30 days after the alleged adverse employment action and therefore the complainant could not timely file an 11(c) action with federal OSHA. There was no evidence in the case files reviewed that DLSE verbally informed complainants at their time of filing that they could dually file complaints with Federal OSHA.

Finding 11-19: DLSE was not properly notifying all whistleblower complainants of their right to dually file with Federal OSHA.

Recommendation 11-19: Because employers in state plan states do not use the federal OSHA poster, the states must advise whistleblower complainants of their right to file a federal complaint if they wish to maintain their rights to concurrent federal protection.

Complaint Investigation

In general, the case file review revealed a general lack of interviews with complainants, respondent witnesses, and third-party non-management witnesses, including a lack of documentation for such interviews in the case files, in contrast to the procedures specified in DIS-0.09 Chapter 7 (VI)(2) and RCI Manual Addendum B & E, DIS 0.09 Chapter 3 (IV)(D & H) and RCI Manual 3.4(D & G), DIS 0.09 Chapter 3 (IV)(E) and RCI Manual 3.4(E), and DIS 0.09 Chapter 3 (IV)(G) and RCI Manual 3.4(F). Such a record is highly desirable and useful for purposes of case review, subsequent changes in the complainant's status, possible later variations in testimony, and documentation for potential litigation. After completing the respondent's side of the investigation, the investigator should again contact the complainant to resolve discrepancies or counter allegations resulting from contact with the respondent. In some instances, the material submitted by the company may be sufficient to adequately document the company's official position. Assertions made in the respondent's position statement should not constitute evidence, and generally, the investigator should still contact the respondent to interview witnesses, review records and obtain documentary evidence, or to further test respondent's stated defense.

This is an area that needs considerable improvement. The lack of adequate investigations had a significant impact on the quality of the investigators' analysis, findings and determination. In general terms, the investigators often did not interview complainants and/or respondent witnesses and frequently relied solely on the allegations in the complainant's retaliation complaint and/or

the contentions made by the respondent in its response without probing and testing the complainant's and the respondent's contentions and credibility. In several cases, the investigator: (1) failed to analyze the evidence supporting each element of a prima facie case of retaliation (i.e., the "nexus" element according to the appropriate "contributing factor" test); and/or (2) simply accepted the respondent's contention that there was a "legitimate non-retaliatory reason" for the adverse employment action taken against the complainant without undertaking any analysis of whether evidence of "pretext" existed. The investigators' failure to conduct these interviews left many key questions unanswered and resulted in inadequate investigations and analysis.

Of the 21 case files reviewed, the investigators failed to interview the complainant in 57% of the cases (12 of 21) and failed to interview the respondent witness(es) in 81% of the cases (17 of 21). As a result, the investigators failed to interview all appropriate witnesses in 90% of the cases (19 of 21). In most cases, the investigator could have resolved many pertinent issues by conducting an interview of the complainant and the respondent manager who made the decision to terminate the employment of complainant.

Excluding cases that were withdrawn by the complainant, dismissed for lack of cooperation or settled, these percentages remained high. Of those cases that were dismissed on the merits (9 cases reviewed), the investigators failed to interview the complainant in 56% of the cases (5 of 9), failed to interview the respondent witness(es) in 67% of the cases (6 of 9), and failed to interview all appropriate witnesses in 89% of the cases (8 of 9). In the 3 merit cases reviewed, the investigators failed to interview the complainant 33% of the time (1 of 3), failed to interview the respondent witness(es) 67% of the time (2 of 3), and failed to interview all appropriate witnesses 100% of the time (3 of 3). Failure to interview witnesses, management, and third parties were noted in the FY 2010 report, finding 10-26.

Finding 11-20 (10-26): DLSE was not interviewing whistleblower complainants in all cases.

Recommendation 11-20: The investigator shall arrange to speak with the whistleblower complainant as soon as possible in order to interview and obtain a signed statement detailing the complainant's allegations.

Finding 11-21 (10-26): DLSE was not interviewing company officials in all whistleblower cases who have known direct involvement in the case to test assertions made by the company.

Recommendation 11-21: The investigator shall interview all company officials who have known direct involvement in the whistleblower discrimination case and attempt to identify other persons (witnesses) at the employer's facility who may have knowledge of the situation.

Finding 11-22 (10-26): DLSE was not conducting further interviews with relevant witnesses in all discrimination cases.

Recommendation 11-22: The investigator shall fairly pursue all appropriate investigative leads which develop during the course of the investigation, with respect to both the complainant's and

respondent's positions and contact made with all relevant witnesses with every attempt made to gather all pertinent data and materials from all available sources.

In all of the cases reviewed except one, the investigators also did not obtain signed witness statements, and in none of the cases did the investigator audio-record witness interviews. In the Findings reviewed, investigators sometimes referred to "statements" made by a party or witness. Frequently, however, there was no documentary evidence in the file to establish that an actual interview of the party or witness had occurred. It appears the investigators often relied upon "statements," or rather contentions, made by the employer in its written Response and did not obtain such "statements" as a result of an interview. Some of the case files reviewed contained signed statements by complainant and respondent manager witnesses, although these were provided by the parties, rather than obtained through DLSE interviews.

The cases reviewed that were dismissed on the merits also revealed that DLSE was not conducting closing conferences with complainants, as required under DIS 0.09 Chapter 3 (IV)(J) and RCI Manual 3.4(I)(1). Of the 9 cases reviewed, none contained any documentary evidence that the investigator had conducted a closing conference with the complainant, as required by DIS 0.09 Chapter 3(IV)(K) and RCI Manual 3.4(J). Failure to conduct a closing conference was noted in the FY 2010 report, Finding 10-26.

Finding 11-23 (10-26): DLSE was not conducting closing conferences with whistleblower complainants.

Recommendation 11-23: Upon completion of the field investigation, and after discussion of the case with the Senior Deputy Labor Commissioner and legal department as necessary, the investigator shall conduct a closing conference with the whistleblower complainant.

Investigative Report Writing

This was another area that needed improvement. Of the 21 cases reviewed, no case file contained the equivalent of a Final Investigation Report as required by DIS 0.09 Chapter 4 (III) and Chapter 5 (IV). Only 29% of the cases reviewed (6 of 21) contained an "Investigative Work Plan," which resembled a Final Investigation Report in some aspects. Like a Final Investigation Report, the Investigative Work Plans reviewed generally contained a chronology of events, jurisdiction information, and basic analysis. Unlike a Final Investigation Report, the Investigative Work Plans reviewed generally lacked important information required in the Final Investigation Report, including, but not limited to, citations to exhibits in the file, consistent organization, the names of witnesses interviewed, the complainant's allegation, the respondent's defense, and whether the complaint was timely. Moreover, the analysis section in most Investigative Work Plans reviewed was sparse and lacked detail, although this appeared to stem from DLSE's failure to interview enough witnesses in the investigation, as discussed in this report. Time spent carefully taking notes and writing memoranda to file is considered productive time and can save hours, days, and dollars later when memories fade and issues become unclear. To aid clarity, documentation should be arranged chronologically where feasible. Investigative Work Plans were not included in any case that was withdrawn, settled, or dismissed for lack of complainant's cooperation. Only 33% of the 3 merit cases reviewed (1 of 3) included an Investigative Work Plan, meaning that 67% of merit cases reviewed (2 of 3) had no final report

of any kind. Of the 9 cases dismissed on the merits, 56% (5 of 9) contained an Investigative Work Plan

While DLSE investigators did not include the equivalent of a Final Investigation Report, 33% of the cases reviewed (7 of 21) contained Findings that explained DLSE's reasoning in dismissing or finding merit to the complaint. Several of the cases reviewed also contained a one page "RCI Worksheet" that recorded important dates and other information during the investigation, such as the date the parties were notified of an investigation, the date the case closed, and the name of witnesses interviewed. However, RCI Worksheets were not included in all case files reviewed, were inconsistently filled out, and were not the equivalent of a Final Investigation Report, even when coupled with an Investigative Work Plan.

DLSE's failure to consistently require investigators to include the equivalent of a Final Investigation Report in all closed cases makes it difficult for Senior Deputy Labor Commissioners to adequately review the investigation for appropriate determinations and procedures and hampered the ability of the FAME team to conduct its review.

Finding 11-24 (10-26): DLSE was not documenting their discrimination case files to support their findings in all cases, including failing to include notes of interviews and closing conferences conducted.

Recommendation 11-24: Investigators shall document the discrimination case file to support their findings, including, but not limited to, including notes of interviews and closing conferences.

Finding 11-25: DLSE was not preparing the equivalent of a Final Investigation Report at the end of their investigations of discrimination complaints.

Recommendation 11-25: Investigators shall prepare the equivalent of the Final Investigation Report at the end of all their investigations to include at a minimum the sections proscribed in DIS 0.09 Chapter (IV)(B), and keep such report in the discrimination case file.

Case File Management

Of the 21 cases reviewed, DLSE case management varied widely, making it difficult for Senior Deputy Labor Commissioners and individuals conducting this FAME review to adequately review the cases for substantive and procedural sufficiency. There was no consistent way case files were organized among the 21 cases reviewed, as required by DIS 0.09 Chapter 4(II)(A) and 5 (III). No case file reviewed was assembled in the manner prescribed in the whistleblower investigation manual, which requires a table of contents, exhibit tabs on evidentiary materials, and splitting up evidentiary documents from written correspondence. The lack of consistent case file organization makes it difficult for Senior Deputy Labor Commissioners to adequately review the investigation for appropriate determinations and procedures and hampered the ability of the FAME team to conduct its review.

For example, in 95% of cases reviewed (20 of 21), there was no table of contents explaining the documents or exhibits in the case files. In 71% of the cases reviewed (15 of 21), evidentiary

exhibits were not tabbed. Of the 6 cases where evidentiary exhibits were tabbed, 33% (2 of 6) included exhibit tabs placed in documents by the parties rather than the DLSE investigator, 16% (1 of 6) appropriately tabbed exhibits, and 50% (3 of 6) used colored sheets or post-it notes to separate some or all documents in lieu of exhibit tabs.

No case file reviewed separated evidentiary material from non-evidentiary correspondence. Rather, 95% of cases reviewed (20 of 21) comingled evidentiary material and non-evidentiary correspondence in some fashion. 52% of the case files reviewed (11 of 21) placed the majority of documents in the file in no discernable order. Of the cases reviewed, only 27% (6 of 21) appeared to organize the case file in reverse chronological order, placing the oldest documents at the bottom of the case file and the most recent at the top. In 19% of case files reviewed (4 of 21), the investigator separated the case file into 4 sections, which typically consisted of the following sections: (1) documents sent to and from the complainant, (2) documents sent to and from the respondent, (3) confidential documents, and (4) contact information for the parties. In 23% of case files reviewed (5 of 21), the investigator separated the case file into 5 sections, which generally added a fifth section to the 4 sections described above, containing the Findings. In 5% of the files reviewed (1 of 21), the investigator organized the case in two sections: (1) documents sent to and from the complainant, and (2) documents sent to and from the respondent. DLSE investigators generally avoided duplicative documents in the case files reviewed and fastened most documents to the file.

Finding 11-26: DLSE was not organizing its discrimination case files in a consistent manner for all cases.

Recommendation 11-26: Investigators shall organize all discrimination case files consistently in a manner that satisfies at a minimum the case file organization required in DIS 0.09 Chapter 5 (III), including the separation of transmittal and other administrative materials from evidentiary material, the use of exhibit tabs separating evidentiary materials, and a table of contents identifying all evidentiary material by exhibit.

Timeliness of Investigations

According to DLSE's internal records, it took DLSE investigators an average of 333 days to close out 202 cases in FY2011. Only 5% of the cases reviewed (1 of 21) were completed within 90 days of the complainant filing the complaint. Some cases revealed several techniques DLSE investigators use to efficiently investigate cases, including requesting specific documents in their opening letter to respondents and quickly following up with complainants who did not respond to inquiries in an effort to determine if they still wished DLSE to pursue an investigation.

Appropriateness Of State Findings And Decisions

Of the 21 cases files that were reviewed, the determinations of the cases were as follows: 4 cases were withdrawals, 2 cases were settled, 12 cases were dismissals, and 3 cases resulted in merit findings. The appropriateness of the state's findings and decisions in each of these cases was reviewed and the results are summarized below.

Withdrawals

Of the 4 withdrawal cases that were reviewed, 100% of them were proper and appropriately

handled. All 4 of the withdrawal cases contained a written withdrawal request from the complainant that was submitted to the investigator after the Complaint or complainant's counsel made an oral withdrawal request. In each of the 4 files reviewed, there was no evidence that suggested that the complainant was coerced into withdrawal or that the case settled prior to the complainant seeking a withdrawal. Therefore, all of the withdrawals reviewed were proper.

Settlements

Of the 2 settled cases that were reviewed, some problems were noted. In both of the case files (100% of the settlements reviewed), the settlement agreements were not properly documented as required in DIS 0.09 Chapter 6 (IV). In the future, DLSE should ensure that investigators obtain and maintain a copy of the settlement agreement in the file. Although not required by either DIS 0.09 or RCI Manual 2.3, DLSE should follow the new guidelines for reviewing all settlement agreements required under CPL 02-03-003 Chapter 6 (III & IV), including ensuring that the case file contains documentation of all appropriate relief at the time the case has settled and relief is obtained (in other words, a copy of the complete, unredacted settlement agreement the parties agreed to), the settlement is signed by both parties, private settlement agreements are reviewed for public policy considerations outlined in CPL 02-03-003 Chapter 6(IV)(D & E), and denying withdrawal requests if the parties refuse to provide Federal OSHA with a copy of the complete private settlement agreement, as discussed in CPL 02-03-003 (IV)(D)(4).

In one settled case, the investigator noted that the respondent agreed to post notice of the complainant's whistleblower retaliation complaint in the workplace and thereafter, the complainant agreed to withdraw his retaliation complaint. However, there was no written settlement agreement in the case file that memorializes the agreement reached between the parties. This means that either the investigator failed to obtain and review a copy of the settlement agreement or the parties made a verbal agreement which would be difficult to enforce. Either way, this settlement was improper. The investigator should have obtained a copy of the settlement agreement that the parties entered into so the settlement could be reviewed for public policy concerns before closing the matter out. Federal OSHA's policies and procedures require that when parties enter into a settlement agreement, the settlement agreement should be reviewed before closure of the case to ensure that the complainant will not be prohibited from engaging in future protected activities and to ensure that the complainant is not prevented in working in his/her chosen field by agreeing to an employment waiver provision. Because the investigator failed to obtain and review a copy of the settlement agreement in this matter, it is unknown whether the settlement agreement was fair, adequate, reasonable and in the public interest.

In the other settled case reviewed, the settlement was improper because the investigator failed to obtain all proper documentation of the settlement agreement and include it in the case file. The case file contains a copy of a settlement agreement that was executed by respondent and the complainant's Union. In this settlement agreement, the respondent agreed to comply with the California Labor code, to post notice of complainant's retaliation complaint for 60 days, and to cooperate in safety training for employees. However, the agreement does not mention complainant's name and she did not sign the agreement. The agreement also does not indicate that the complainant agreed to release her claims against the respondent. Instead, the settlement agreement stated that DLSE would cease the investigation and close the matter, even though DLSE did not sign the agreement. The investigator's closing letter to the parties stated that the

complainant withdrew her claim against respondent contingent on the parties meeting obligations in the settlement agreement and that the respondent agreed to permanently transfer the complainant to work at another facility. However, the case file does not contain a copy of any agreement between the parties or any other documentation that indicates that the respondent agreed to do this, except for DLSE's closing letter. If such an agreement existed, DLSE should have obtained a copy of the settlement agreement, reviewed it to ensure that the agreement was not void of public policy, and kept a copy of the agreement in the case file. If the agreement between the complainant and respondent was solely a verbal agreement, there may be problems with enforcing the agreement.

Finding 11-27: For all discrimination cases deemed settled, DLSE was not requiring that the settlement be in writing.

Recommendation 11-27: For all discrimination cases deemed settled, DLSE shall follow the procedures required in DIS 0.09 Chapter 6 (IV), including requiring that the settlement be in writing.

Dismissals for Lack of complainant's Cooperation

Of the 3 lack of cooperation dismissals reviewed, 100% of the complaints were timely filed and DLSE had jurisdiction to investigate the complaints under Labor Code Section 6310 or 6311. Of these 3 cases, 100% of them were also appropriately handled and dismissed. In all 3 of these cases, the complainant failed to provide requested information to DLSE after investigators provided reasonable time to provide the responses. In each of these cases, investigators followed up with the complainant several times via letters and, in some instances phone calls, to obtain the requested information. The investigators also repeatedly notified the complainant that the complaint would be dismissed if the complainant failed to cooperate in the investigation. DLSE had a reasonable basis to dismiss these 3 complaints for lack of cooperation.

Dismissals on the Merits

Of the 9 cases reviewed that were dismissed on the merits, 100% were timely filed. In 89% of these cases (8 of 9), DLSE had jurisdiction to investigate the complaint. However, all 9 cases reviewed had deficiencies.

In 67% of the cases reviewed (6 of 9), all appropriate witnesses were not interviewed, which made the analysis conclusory. As a result, the determinations reached in these cases were not based on relevant evidence available and sound legal reasoning, in violation of DIS 0.09 Chapter 3 (IV)(I) and RCI Manual 3.4(I). The investigators tended to focus on the documentary evidence that was submitted by the complainant and the respondent and interviewed very few, if any, witnesses. As a result, the investigations did not yield all of the necessary and relevant information that was needed to make a determination or assess whether each of the required legal elements were met.

Finding 11-28: DLSE did not gather all relevant evidence available in the discrimination cases. As a result, the investigator could not evaluate the evidence and draw conclusions based on the evidence and the law.

Recommendation 11-28: DLSE shall gather all relevant evidence in order to evaluate the evidence and draw conclusions based on the evidence and the law, including interviewing whistleblower complainants, respondent witnesses who have known direct involvement in the case, and third party witnesses with relevant information.

In 67% of the cases reviewed (6 of 9), at least one or more of the four required legal elements needed to establish a prima facie case of whistleblower retaliation (protected activity, employer knowledge, adverse action, and nexus) was not properly investigated or analyzed in part due to the lack of sufficient witness interviews. Nexus was most commonly not analyzed or investigated properly and the investigators did not always assess whether disparate treatment, pretext, animus, or dual motive existed, as discussed in DIS 0.09 Chapter 3 (IV)(A) and RCI Manual 3.4(A)(4). In these cases, additional witness interviews and information were needed to establish whether the 4 required legal elements were established. As a result, the investigator dismissed the case based on sparse or incomplete evidence.

In 89% of the cases reviewed (8 of 9), there was poor or insufficient analysis of the prima facie elements of whistleblower retaliation (protected activity, employer knowledge, adverse action, and nexus/ pretext). In some instances, there was no formal analysis of the prima facie elements in the case file at all, which made it difficult to review the files and assess the adequacy of the analysis or determine why the investigator dismissed the case. None of the case files contained a Final Investigation Report that includes an analysis of the prima facie elements, as discussed in this report. A few of the cases contained Investigative Work Plans that had some analysis of the prima facie elements, but the analysis was still insufficient or conclusory. Most of the cases included some analysis of the prima facie elements in the determination letter that was sent to the parties but the analysis was often conclusory, incorrect, or incomplete.

Finding 11-29: DLSE did not properly investigate and analyze protected activity, employer knowledge, adverse action, and nexus (including disparate treatment, pretext, animus, and dual motive).

Recommendation 11-29: During all phases of the discrimination investigation, the investigator shall bear in mind and look for evidence dealing with protected activity, employer knowledge, adverse action, nexus (including disparate treatment, pretext, animus, and dual motive).

In 67% of the cases reviewed (6 of 9), respondent's reason for taking the adverse action was not tested adequately because all appropriate witnesses, particularly management witnesses, were often not interviewed, in violation of DIS 0.09 Chapter 3 (IV)(G & H) and RCI Manual 3.4 (F & G).

Finding 11-30: DLSE did not adequately test the respondent's reason for taking adverse action.

Recommendation 11-30: DLSE shall fairly pursue all appropriate investigative leads which develop during the course of the discrimination investigation, with respect to both the complainant's and the respondent's positions. After completing the respondent's side of the investigation, the investigator should again contact the whistleblower complainant and other

witnesses as necessary to resolve any discrepancies or counter allegations resulting from contact with the respondent.

Merit Cases³

In all three of the merit cases reviewed, the complaint was timely filed and DLSE had jurisdiction to investigate the complaints under Labor Code Section 6310 or 6311.

In each of the three merit cases reviewed, only one witness was interviewed and additional witness interviews were needed to uncover evidence to establish each of the required legal elements necessary to support a merit finding. In order to properly support a merit finding determination, the evidence uncovered during the investigation must establish protected activity, employer knowledge, adverse action, and nexus (or a causal connection between the protected activity and adverse action). The respondent's defense or reasons for taking the adverse action must also be adequately tested. In each of the three merit cases reviewed, the investigator failed to interview all appropriate witnesses and relied solely on documentary evidence submitted by the parties. As a result, each investigation did not uncover all of the relevant information needed to make a determination and the merit finding was not based on substantive evidence in the case file or sound legal reasoning. Although some of the evidence uncovered in these 3 cases did support a merit finding, the investigations did not go far enough to obtain all of the relevant information needed to make a determination because all of the necessary witnesses were not interviewed.

For example, in one case, the investigator did not properly investigate and analyze protected activity or nexus and did not adequately test the respondent's reason for taking the adverse action because no management witnesses were interviewed. The investigator only interviewed the complainant and failed to interview the two management witnesses that made the decision to terminate the complainant. As such, the investigator did not properly test the respondent's defense or assess dual motive. The investigator also failed to assess whether the complainant had a reasonable belief that she was engaging in a protected activity and was complaining about a safety issue. The investigator should have interviewed one other management witness that complainant mentioned to confirm that the complainant had a reasonable belief that the issues she raised constituted workplace safety issues.

In the two remaining cases, the investigator did not properly test respondent's reason for taking the adverse action because the investigator failed to interview two of the main managers that were involved in making the decision to terminate the complainant. As a result, the investigator did not assess the credibility of the relevant management witness or confirm that a merit finding was proper. This greatly weakened the adequacy of the investigations.

In 66% of the merit cases that were reviewed (two out of three cases), the investigators properly calculated the damages that resulted from the merit finding and documented how they calculated the damages in the case file. In only one of the three merit cases, the investigator failed to document how the damages that were awarded to the complainant were calculated and the case file did not contain any documentation that supported the investigator's damages calculations,

³ The Findings and Recommendations for merit cases are the same as those listed for non-merit cases. They are incorporated in this section.

although the types of remedies that were awarded to the Complainant appeared to be appropriate (i.e. back pay plus interest and reinstatement).

Policies And Procedures

In addition to the issues discussed in this report, in several cases reviewed, DLSE failed to promptly notify one or both parties that an investigation had commenced after the complaint had been filed, provide appeal rights to complainants whose cases had been dismissed, follow proper procedure for closing out an investigation due to the complainant's lack of cooperation, and consistently send opening and closing letters to the parties by certified mail.

In 33% of the cases reviewed (7 of 21), DLSE did not promptly notify one or both parties that DLSE had opened an investigation until several months after the initial complaint had been filed. According to DIS 0.09 Chapter 2 (III)(D) and RCI Manual 2.3(I), the complainant should be sent an opening letter when a case is opened for investigation. According to DIS 0.09 Chapter 2(III)(E), the respondent should be sent an opening letter at the time of docketing unless an inspection is pending. RCI Manual 2.3(I) similarly indicates that "in most cases, respondent should be notified at the time of docketing—but in no event later than 60 days after the complaint is received in the Division's offices." Discounting one case where DLSE took two and a half years to notify the respondent of the complaint and investigation because the respondent was difficult to locate, 6 of 21 cases revealed that DLSE waited an average of 3 and a half months after the complaint had been filed to notify either one or both parties that DLSE had opened an investigation (the longest period being 6 and a half months to notify a respondent, the shortest period being 1 and half months to notify a complainant and respondent). Of these 6 cases, the vast majority prevented the respondent from learning of the complaint until more than 60 days after the complaint had been filed with DLSE.

Finding 11-31: DLSE did not promptly notify the parties that it had opened an investigation in many discrimination cases until several months after the complaint had been filed.

Recommendation 11-31: DLSE shall promptly notify whistleblower complainants that it has opened an investigation upon receiving the complaint. DLSE shall promptly notify respondents that it has opened an investigation upon receiving the complaint, unless an inspection is pending.

In 19% of the cases reviewed (4 of 21), the DLSE investigator did not provide the parties with appeal rights after dismissing the case, as required under DIS 0.09 Chapter 7 (V)(D) and RCI Manual 4.2(C) Addendum R. 75% of these cases (3 of 4) were dismissed for the complainant's lack of cooperation, while 25% of these cases (1 of 4) were dismissed on the merits.

Finding 11-32: DLSE did not provide the parties with appeal rights in all dismissed discrimination cases.

Recommendation 11-32: DLSE shall provide the parties with appeal rights in all dismissed discrimination cases, including those where the complaint was dismissed due to the complainant's lack of cooperation.

In all three cases closed for the complainant's lack of cooperation, the DLSE investigator did not

follow Federal OSHA's policies and procedures for dismissing these types of complaints. According to DIS 0.09 Chapter 3 (IV)(III)(3) and RCI Manual 3.4(B)(4), the investigator must first try the complainant by phone at different times during normal working hours and in the evening and then follow up with a certified letter asking the complainant to contact Federal OSHA within 10 days or else Federal OSHA may dismiss the complaint for lack of cooperation. All three cases closed for lack of cooperation did not contain evidence that the investigator first attempted to locate the complainant by phone at different times of the day. In 2 cases, the investigator only made one call to try and locate the complainant after having sent a letter. In the other case, there was no evidence that the investigator ever attempted to locate the complainant by phone prior to sending the letter. Moreover, in all 3 cases, there was no evidence that the DLSE investigator sent the follow-up letter by certified mail.

In 29% of the cases reviewed (6 of 21), there was no evidence that an opening letter was sent to the complainant and/or respondent as required in DIS 0.09 Chapter 2 (III)(D & E) and RCI Manual 2.3(I). Of these cases, 83% (5 of 6) did not contain evidence that the complainant was provided an opening letter from DLSE notifying the individual that DLSE had commenced an investigation. In 1 case reviewed, there was no evidence that respondent was notified of an investigation. In 95% of the cases reviewed (20 of 21), no opening letters were sent via certified mail. In the 1 case where notice was sent via certified mail, there is only evidence that the respondent was sent notice via certified mail. In 2 other cases reviewed, respondents were notified of the investigation and complaint via email instead of certified mail. The lack of opening and closing letters were noted in the FY 2010 report, Finding 10-25.

Finding 11-33 (10-25): DLSE is not always sending an opening letter to the parties in discrimination cases.

Recommendation 11-33: DLSE shall send an opening letter to the parties in discrimination cases.

In 19% of the cases reviewed (4 of 21), there was no evidence that a closing letter was sent to the complainant and/or respondent as required in DIS 0.09 Chapter 7 and RCI Manual 4.2(C) Addendum R & T. 14% of the cases reviewed (3 of 21) included documentation that closing letters were sent via certified mail to one or both parties. In 86% of the cases reviewed (18 of 21), there was no evidence that either party was sent a closing letter via certified mail.

Finding 11-34 (10-25): DLSE is not always sending a closing letter to the parties in discrimination cases.

Recommendation 11-34: DLSE shall send a closing letter to the parties in discrimination cases.

Although Senior Deputy Labor Commissioners indicated that DLSE is accepting orally filed complaints, this was impossible to verify given that all complaints reviewed were filed in writing, rather than orally. All case files reviewed included written complaints from complainants on DLSE's standard complaint form. However, a review of DLSE's RCI Manual indicates that complainants may not file 6310 and 6311 complaints orally, by fax, or by email. The RCI Manual states, "We currently do not have procedures in place to accept complaints by

FAX or email. Complainants who attempt to lodge complaints over the telephone will be instructed to fill out a DLSE Form 205 (Retaliation Complaint) and either mail it in or drop it off at the local DLSE office.” RCI Manual 2.2. According to DIS 0.09, however, “Any applicant for employment, employee, former employee or their authorized representative is permitted to file complaints under OSHA ... either orally or in writing . . . Generally, the date a complaint is considered filed is the day the complainant visits, emails, faxes or telephones a Department of Labor Official.” Further, CPL 02-03-003 Chapter 2(II) states that “no particular form of complaint is required. A complaint under any statute may be filed orally or in writing,” and that complaints may be filed by email and fax.

Finding 11-35: The RCI Manual discourages DLSE from accepting orally filed, faxed, and emailed 6310 and 6311 discrimination complaints.

Recommendation 11-35: DLSE shall amend the RCI Manual to allow whistleblower complainants to file 6310 and 6311 complaints orally, by fax, and by email.

Program Management – Web IMIS

Of the 21 case files reviewed, IMIS was used to open 100% of the cases reviewed (21 cases). However, a review of these case files demonstrated that significant data DLSE entered into IMIS regarding these cases was incomplete and/or inaccurate.

For example, 57% of cases reviewed (12 of 21) were listed as open in IMIS even though the case had actually closed. These cases were not closed out in IMIS and therefore, the IMIS entries for these cases contain incomplete information about the case’s final determination. The IMIS entries for these cases also do not contain any appeal information, if applicable. According to interviews with staff, while an administrative staff currently opens all cases in IMIS, she only closes them in IMIS if an appeal is filed. As a result, cases remained open in IMIS if no appeal is filed.

Consequently, IMIS does not accurately reflect the number of cases that DLSE actually closed in FY 2011. Although DLSE’s internal data showed that DLSE closed out 202 cases in FY2011, IMIS shows that DLSE only closed 68 cases in FY 2011. By comparing DLSE’s internal data with what was listed in IMIS, it was determined that DLSE closed a total of 210 cases in FY 2011 and that 142 of these cases closed in FY 2011 were never closed in IMIS.

It appears that this issue has bedeviled DLSE for quite some time. A review of all cases DLSE has pending (or currently open) in IMIS as of February 22, 2012, for instance, shows that DLSE currently has open 789 cases, including a plethora of cases that were originally filed as far back as the late 1990s, the majority of which the reviewers of this FAME assume closed years ago. As a result, DLSE’s incomplete IMIS data skews national data when reviewing the total number of 11c and 11c equivalent cases pending around the country at any given time and national timeliness, dismissal, settlement, withdrawal, and merit/litigation rates (see the discussion in Timeliness, Litigation and Settlement Rates in this report). In addition, of the 10 case files reviewed that were closed in IMIS, 20% (2 of 10) of the determinations were improperly coded in IMIS. In one case, a determination that was coded in IMIS as “merit/litigation” should have been coded as “settled.” In the other case, a determination that was coded in IMIS as “withdrawn” should have been coded as “dismissed.”

The Senior Deputy Labor Commissioners do not input or review IMIS data. The Senior Deputy Labor Commissioners also do not use IMIS reports for internal quality control because they are not proficient in using IMIS. Although much of the other data reported in IMIS was accurate, there was some inaccurate and/or incomplete data entry in IMIS. For example, 52% of cases reviewed, (11 out of 21) recorded the wrong filing date in IMIS. Instead of using the date the complaint was postmarked to DLSE as required by DIS 0.09 Chapter 2 (IV)(A), these cases recorded the date the complaint was received as the filing date in IMIS.

In a few cases reviewed, there was either no contact information for either respondent's counsel or complainant's counsel listed in IMIS, or this was inaccurate. This problem was noted in 24% of the cases reviewed (5 out of 21 cases). In addition, contact information for complainants and respondents was incorrect or had not been updated in 19% of cases reviewed (4 out of 21).

In 19% of cases reviewed (4 out of 21), the wrong date was recorded in IMIS regarding when the investigator was assigned the case. For the three merit cases reviewed, two (or 66%) did not show in IMIS that the complainant had been reinstated when the DLSE ordered the company to reinstate the complainant. Further, two (or 66%) of the merit cases reviewed did not show in IMIS the monetary relief DLSE ordered the respondent to provide to complainant.

Finding 11-36: DLSE is not closing all cases in IMIS that have closed. As a result, IMIS does not reflect the number of discrimination cases DLSE actually closed in FY 2011 and hundreds of likely closed cases have remained open in IMIS for years. DLSE also improperly coded some discrimination cases that DLSE did close in IMIS, recorded the wrong filing date in several cases, and did not accurately indicate the complainant's remedies in merit cases.

Recommendation 11-36: DLSE shall properly close all closed discrimination cases, record the filing date as the date the complainant contacts DLSE, and indicate the complainant's remedies in merit cases. It is also recommended that (1) DLSE review all currently pending cases and close them out in IMIS as appropriate (2) establish a procedure to appropriately close out all discrimination cases in IMIS once DLSE issues findings or a closing letter, and (3) ensure Senior Deputy Labor Commissioners and staff are trained in IMIS entry and closure to allow Senior Deputy Labor Commissioners the ability to review DLSE's IMIS data entry for accuracy and completeness.

Although IMIS was used to open all of the cases reviewed, the total number of new cases DLSE reported it opened in FY 2011 is different in each report. In FY 2011, DLSE reported that it opened 179 cases in IMIS, while this number jumped to 225 cases in CMS. Therefore, in FY 2011, DLSE did not report that it opened 46 additional cases in IMIS. This means that IMIS did not account for 20% of all new cases actually filed in FY 2011.

Finding 11-37: DLSE is not opening all new cases in IMIS. As a result, IMIS does not reflect the number of discrimination cases DLSE actually opened in FY 2011.

Recommendation 11-37: DLSE shall open all new discrimination cases filed in IMIS.

Other Data Management Reports

The FAME review found that DLSE tracks 6310 and 6311 whistleblower retaliation complaints through a non-IMIS report called “CMS,” which stands for Case Management System. In CMS, the following information about the cases is tracked: the case name, case number, case activity, date Senior Deputy Labor Commissioner reviews and approves the determination, reason for closure, appeal information, and case referral information. CMS also contains computerized case notes that the investigators can input into the system, including summaries of correspondences, phone logs, and other notes.

Although DLSE is closing out more of their cases in the CMS database, they are still failing to close out all of their closed cases in CMS. In FY 2011, DLSE closed a total of 210 cases, based on combining records DLSE reported in CMS and IMIS. However, DLSE reported that they closed 202 cases in FY 2011. Therefore, the total number of cases that DLSE closed in FY 2011 (210 cases) is not accurately recorded in either system. In addition, the data that was entered into IMIS and CMS for identical cases does not appear to always match up. For example, it was noted that in several of the cases that were entered into both IMIS and CMS, the determination or closing date that was listed in IMIS was different than the date listed in CMS.

Appeals

Once the DLSE/Labor Commissioner issues a cause or no cause determination, a party has ten (10) days from the date of the dismissal letter to seek a review of the Labor Commissioner’s determination by filing an appeal with the Director of California’s Department of Industrial Relations (DIR). DLSE sends the case file to the Director’s Office for review. The Director’s Office has the following four options on appealed cases: (1) it can affirm the Labor Commissioner’s determination; (2) it can reverse the Labor Commissioner’s determination; (3) it can remand the case back to the DLSE/Labor Commissioner for further investigation and analysis; or (4) it can request a hearing with the parties.

The appeal must set forth the specific grounds upon which the appealing party considers the Labor Commissioner’s determination to be unjust or unlawful, and every issue to be considered by the Director. This appeal to the Director of DIR is the only appeal permitted under California’s Labor Code section 98.7. The Director’s determination on appeal is considered the Labor Commissioner’s final determination.

If the Director determines that unlawful retaliation occurred, the Labor Commissioner makes a demand on the respondent employer to remedy the retaliation (i.e., by reinstating or rehiring the employee, paying the employee back wages owed plus interest, and/or paying any other compensatory damages owed to make the employee whole). If the respondent employer fails to comply with the Labor Commissioner’s demand, the Labor Commissioner will bring an action in state Superior Court to enforce its determination in accordance with Labor Code section 98.7.

DLSE maintains an “Appeal Log,” which tracks the number of cases currently pending on appeal, but does not list the appealing party. DLSE has no current system in place to track how many appeals were brought by complainants. Instead, the files must be reviewed manually to determine which party filed the appeal.

For FY 2011, DLSE reported that there were 3 cases in which the complainant appealed the determination issued by the DLSE/Labor Commissioner. DLSE also reports that, for FY 2011, no cases were remanded back to the DLSE/Labor Commissioner following an appeal.

Administratively Closed Cases

DLSE does not have a process for administratively closing cases. Instead, the two Senior Deputy Labor Commissioners stated that they screen all retaliation complaints that are filed with DLSE within their respective regions to initially determine whether: (1) there is jurisdiction; (2) the complaint is timely (i.e. filed within 180 days of the adverse employment action); and (3) the complaint properly alleges the elements of a prima facie case of retaliation. The complaint is “screened out” by a Senior Deputy if the complaint does not allege facts supporting jurisdiction, the complaint is untimely, or the complaint fails to allege each element of a prima facie case of retaliation. At present, however, DLSE does not input, track, or document such administratively closed cases.

Finding 11-38: DLSE does not input, track, or document administratively closed discrimination cases in IMIS.

Recommendation 11-38: DLSE shall input, track, and document administratively closed discrimination cases in IMIS.

Timeliness, Litigation And Settlement Rates

It is difficult to make a true and accurate comparison between the national federal and state OSHA 11c rates for timeliness, litigation, and settlement (based on IMIS data), and DLSE 6310 and 6311 rates for timeliness, litigation and settlement (based on DLSE’s own internal data entered into CMS, as opposed to IMIS). Nonetheless, these are the objective comparisons the FAME team was able to determine:

	FY 2011 Rates For DLSE 6310 and 6311 Cases (from CMS)	FY 2011 Rates For National 11(c) and 11(c) Equivalent Cases (from IMIS⁴)
Timeliness of Investigation	<i>333 days</i> (out of 202 cases)	<i>179 days</i> (out of 2045 cases)
Litigation	<i>3%</i> (6 out of 202 cases)	<i>3%</i> (60 out of 2045 cases)
Settlement	<i>14%</i> (29 out of 202 cases)	<i>24%</i> (499 out of 2045 cases)

Finding 11-39 (10-24): Of the 128 whistleblower (WB) investigations, 96% were not completed within the 90-day period as required.

Recommendation 11-39: Ensure whistleblower investigations are completed within 90 days.

Resources: Training

None of the investigators or Senior Deputy Labor Commissioner have attended federal OSHA’s 1420 Basic Whistleblower Investigations course. There has been little to no informal training for the DLSE investigators or Senior Deputy Labor Commissioners on investigating 6310 and 6311 whistleblower complaints for the last 2½ years. The last informal training program occurred in 2009 when at least one current Senior Deputy Labor Commissioners and one current investigator attended an informal 3-day training on conducting basic whistleblower investigations provided by Federal OSHA Region IX. Prior to 2009, all investigators attended DLSE’s Staff Meetings where, in addition to many other topics, DLSE’s legal counsel would provide an update on case law pertaining to retaliation complaints. There have been no Annual Staff Meetings since 2009.

One Senior Deputy Labor Commissioner had been providing some informal on-the-job training regarding DLSE investigation procedures during monthly staff meetings with the investigators, but these meetings stopped in approximately September or October 2011, and have not resumed. When DLSE has hired a new investigator with no prior experience, the investigator typically is mentored by a Senior Deputy Labor Commissioner and shadows another investigator for a brief period of time to learn the investigation process.

4 As discussed in this report, the total number of cases closed in IMIS does not account for 142 cases DLSE closed but did not report as being closed in IMIS. Although IMIS indicates that 2045 cases were closed in FY 2011, the actual figure would be 2187. Had DLSE properly closed these 142 cases in IMIS, the total number of cases closed nationally as reflected in FY 2011 would have increased by 6.5% (2187 from 2045). By closing these additional 142 cases out in IMIS, litigation and settlement rates would also be affected, although at this point it is not known how much. If DLSE closes out most of its 789 pending cases, national data will be similarly affected going all the way back to the late 1990s.

Region IX provided DLSE with a copy of federal OSHA’s 2003 Basic Whistleblower Investigations Manual (DIS 0.09) previously, and has provided DLSE with the new 2012 Manual (CPL 02-03-003) as well as training materials. DLSE has not trained investigators to follow the policies and procedures of either manual. Only one investigator had seen the Federal OSHA Manual, but this investigator confirmed that she does not use the Manual and that none of the DLSE investigators have been trained on Federal OSHA’s Manual or Federal OSHA’s policies and procedures.

Finding 11-40: DLSE investigators and Senior Deputy Labor Commissioners need formal basic training for investigating 6310 and 6311 whistleblower retaliation complaints.

Recommendation 11-40: DLSE investigators and Senior Deputy Labor Commissions shall attend Federal OSHA’s 1420 Basic Whistleblower Investigations course.

Number Of Staff Resources Assigned

New 6310 and 6311 cases are generally assigned based on: (1) geography (i.e., complaints in Northern California are assigned to a Northern California investigator); and (2) the workload of the various investigators. A Senior Deputy Labor Commissioner provided us with the following data regarding staff resources for investigating 6310 and 6311 cases for fiscal year 2011:

Investigators	How Many New 6310 or 6311 Cases Were Assigned to Each Investigator in FY 2011? ⁵	How Many 6310 or 6311 Investigations Did Each Investigator Close In FY 2011? ⁶	On Average, How Many 6310 and 6311 Cases Did Each Investigator Have on Her Case Docket at any Given Time in FY 2011? ⁷	How Many 6310 and 6311 Cases are Pending (Still Open) for Each Investigator?
Northern California				
1	83	62	50	51
2	43	26	37	47
3	74	55	49	59
Southern California				
4	75	73	No data	41
5	25	22	No data	34

5 DLSE reported in IMIS that they opened 179 new cases in FY 2011. In CMS, DLSE reported that they opened 225 cases in FY 2011. Both figures vary with the estimates provided by the Senior Deputy Labor Commissioner, who indicated that 300 new cases were filed in FY 2011. The data in CMS appears to be the most reliable data on this issue.

6 As discussed in this report, according to the Senior Deputy Labor Commissioner, DLSE closed a total of 238 cases. However, based on DLSE’s CMS reports, DLSE actually closed 202 cases. Based on the data reported in CMS and IMIS, Federal OSHA calculated that DLSE actually closed 210 cases in FY 2011.

7 This figure was based on estimates by the Senior Deputy Labor Commissioner.

Some of the Findings in this FAME appear to stem from DLSE's need to quickly investigate and close 6310 and 6311 cases, given the high number of such cases filed in FY 2011(225) and the relatively small number of DLSE staff assigned to investigate these cases (five) when compared to staffing levels at Federal regions who received roughly the same number of whistleblower retaliation claims filed in FY 2011. This is particularly true in the Findings relating to certain administrative functions. Despite such apparent challenges, many of the Findings in this FAME appear to not stem from understaffing, but instead appear to arise from a lack of training, consistency, and oversight.

G. Complaint About State Program Administration (CASPA)

CASPA 2011-CA34:

Allegation: The complainant alleged Cal/OSHA did not properly inspect the workplace to assess and provide employee protection to hazardous black mold workplace exposure.

Status: The San Diego Area Office investigated these issues and concluded Cal/OSHA followed their procedures. A letter to the complainant was sent on October 18, 2011. This case has been closed.

CASPA 2011-CA 35

Allegation: The complainant alleged DLSE ignored evidence provided and protected the employer.

Status: It was determined during the CASPA review that DLSE properly followed its procedures when investigating this 11c complaint. A letter to the complainant was sent on September 9, 2011. This case has been closed.

CASPA 2011-CA 36

Allegation: The complainant contacted Federal OSHA to file against DLSE's investigation into his whistleblower discrimination complaint.

Status: This is still under investigation by the Whistleblower Program.

CASPA 2011-CA37

Allegation: The complainant had issues with the handling of the complaint by DLSE. The complainant alleged DLSE did not consider the entire evidence complainant submitted, including a CD complainant left with Cal-OSHA and emails complainant sent to DLSE; DLSE did not subpoena any evidence; DLSE neither interviewed nor requested documents from Complainant's union representatives; DLSE considered the wrong underlying Cal-OSHA complaint; DLSE was biased during the investigation; DLSE violated complainant's rights of confidentiality; DLSE should not have discussed complainant's alleged workman's compensation fraud in its report

because that issue was outside of DLSE's purview; and DLSE should not have used medical reports in its report that it obtained illegally from Complainant's former employer.

Status: This is still under investigation by the Whistleblower Program.

CASPA 2011-CA 38

Allegation: The employer failed to provide safe access to conveyor belts through the use of a fixed ladder on an elevated work platform. Access to the conveyor belts required climbing up and down steep and slippery chutes and climbing approximately 5 feet from elevated maintenance platform guardrails 15 to 20 feet above the ground level through the conveyor guardrails.

Status: An Area Office review of the Cal/OSHA Investigator's findings and case file review found that Cal/OSHA properly followed their policies and procedures and that they were as effective as OSHA's. Written notification of the findings and supporting documents were sent to the complainant. The case has been closed

CASPA 2011-CA 39 and CASPA 2011-CA 40

Allegation: Complainant claimed that DLSE didn't interview complainant's witnesses, misplaced the complainant's complaint, and didn't use its subpoena power to obtain relevant evidence.

Status: This case is still under investigation

CASPA 2011-CA 41

Allegation: A representative of a workplace fatality victim alleged that the State of CA closed out its fatality investigation without obtaining all the facts. The caller protested to the State which re-opened its inspection. The accident occurred at San Francisco Moscone Center and the victim worked for Freeman Services.

Status: The case has been closed

H. Voluntary Compliance Program

Deficiencies identified in the 2009 EFAME with Cal/OSHA's Policies and Procedures manual were corrected. Cal/OSHA provided VPP Participants an exemption from program planned inspection. There were no changes in the Policies and Procedures manual.

Although Cal/OSHA has adopted the OSHA policies on fatalities, Medical Access orders and incentive/disincentive programs, the VPP Manual had not been amended. At the time of this report, the state was currently revising under revision which will be submitted to Federal OSHA for review.

I. Public Sector On-site Consultation

Cal/OSHA's public sector consultation program was conducted in a manner similar to that of the private sector. Cal/OSHA Consultants met their goal of conducting 185 inspections in response to complaints and accident notifications. Cal/OSHA Consultants conducted 31 public sector consultation and one follow-up visit. Consultants visited 28 high hazard establishments, table 13. Small business comprised the majority of the visits, table 14.

Table 13

Initial Visits in High Hazard Establishments (Public MARC 1)						
	<i>FY 2007</i>	<i>FY 2008</i>	<i>FY 2009</i>	<i>FY 2010</i>	<i>FY 2011</i>	<i>Goal</i>
	97.62% (41/42)	94.34% (50/53)	93.33% (28/30)	92.31% (36/39)	90.32% (28/31)	Not less than 90%

Table 14

Initial Visits to Smaller Businesses less 250 (Public MARC 2)						
	<i>FY 2007</i>	<i>FY 2008</i>	<i>FY 2009</i>	<i>FY 2010</i>	<i>FY 2011</i>	<i>Goal</i>
	92.86% (39/42)	92.45% (49/53)	83.33% (25/30)	89.74% (35/39)	96.77% (30/31)	Not less than 90%

All of the serious hazards identified were corrected within 14 days of the correction date and were verified by Cal/OSHA Consultants. No establishments were referred to enforcement, table 15.

Table 15

Verification of Serious Hazards (Public MARC 4)						
	<i>FY 2007</i>	<i>FY 2008</i>	<i>FY 2009</i>	<i>FY 2010</i>	<i>FY 2011</i>	<i>Goal</i>
Verified Corrected within 14 days of Correction Date (MARC 4A)	100% (53/53)	100% (78/78)	100% (37/37)	100% (106/106)	100% (27/27)	100%
Not Verified Corrected within 14 days of Correction Date (MARC 4B)	0% (0/53)	0% (0/78)	0% (0/37)	0% (0/106)	0% (0/27)	0%
Referred to enforcement (MARC 4C)	0% (0/53)	0% (0/78)	0% (0/37)	0% (0/106)	0% (0/27)	0%

J. Program Administration

California was experiencing budget challenges due to the economic climate of the nation. The Governor prohibited State employees from traveling outside of California. This posed challenges for Cal/OSHA personnel in receiving the necessary training.

The mandatory furloughs ended for Cal/OSHA employees. In February 2012, Cal/OSHA received permission to hire new employees. At the present time, Cal/OSHA has permission to fill 68 vacant positions. These positions include Compliance Officers, clerical staff, and management positions.

In FY 2011, Cal/OSHA's field staff consisted of 6 Regional Managers, 19 District Managers, 128 Safety Compliance Officers, 74 Health Compliance Officers, 1 Compliance Assistance Specialist, and 5 Consultants (Public). The vacant positions were 4 District Managers, 18 Safety Compliance Officers, 1 Health Compliance Officer, and 4 Consultants (Public).

Cal/OSHA received \$27,418,800.00 from the Federal government. Cal/OSHA had not migrated over to OIS and used the NCR software for all reports. Cal/OSHA used the information in IMIS to track cases and their status. There is no state internal evaluation program for enforcement.

V. 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 2011 Performance Goal 1.1 (Construction): *Reduce fatalities and occupational injuries and illnesses in construction SICs.*

Results: Cal/OSHA Enforcement exceeded its goal of conducting 2000 construction inspections. Cal/OSHA reported 1,949 construction inspections were conducted. However, IMIS indicated there were 2,567 construction inspections performed in the reporting period. This was attributed to the backlog of inspections entered into IMIS. Construction inspections focused on preventing injuries and fatalities from falls and other leading causes of accidents. Inspections also included an evaluation of cement cutting for potential exposure to silica and noise. Cal/OSHA met its goal for reducing fatal injuries in construction. Fatalities in this industry continued to decline since 2006.

Outcome: The Total Recordable Case (TRC) and the Days away, Restricted, or Job Transfer (DART) rates continued to decline over the past five years, charts 1 and 2. Cal/OSHA was achieving its goals of reducing the number of fatalities and injury and illness in the construction industry.

Chart 1

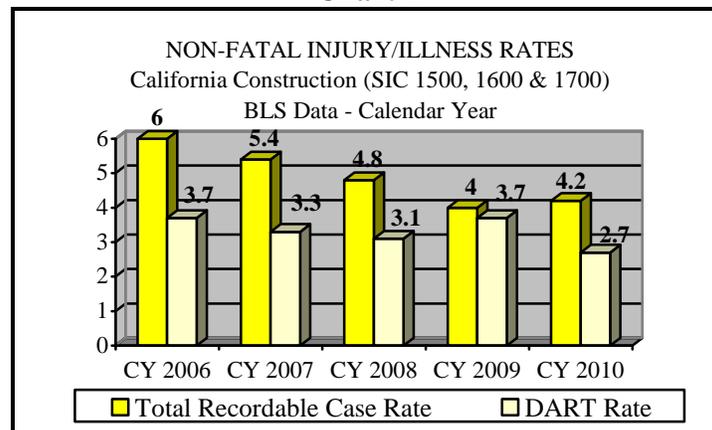
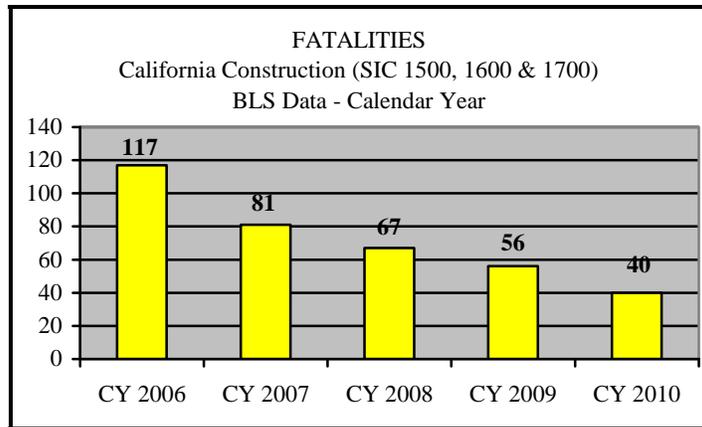


Chart 2



FY 2011 Performance Goal 1.2 (General Industry): *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.*

Results: Cal/OSHA Enforcement exceeded their goal for inspecting high hazard industries. Cal/OSHA Enforcement conducted 557 inspections, exceeding their goal of 400. Cal/OSHA Enforcement verified all serious, willful, and repeat hazards were abated.

Outcome: Fatalities increased in the private sector with an additional 13 deaths. The TRC and DART rates remained identical to the previous year (See Charts 3 and 4). Based on the BLS data, Cal/OSHA needs to continue enforcement in high hazard industries. Cal/OSHA may need to concentrate more efforts towards high hazard establishments.

Chart 3

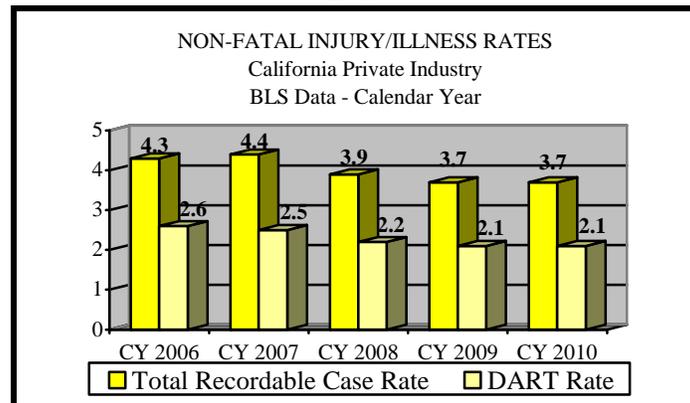
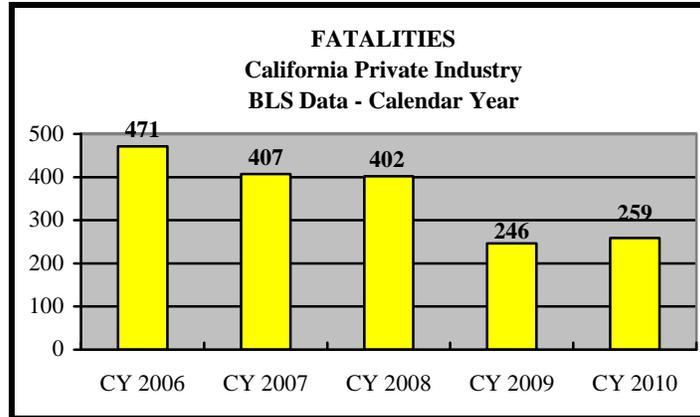


Chart 4



FY 2011 Performance Goal 1.3 (Food Processing, Food Manufacturing, and Food Flavoring): *Reduce the rate of injuries, illnesses and fatalities for companies who receive a compliance inspection- with the goal of reducing the total DART rate and fatality rate for all industries.*

Results: Cal/OSHA Enforcement exceeded their goal of conducting 25 inspections with this industry. Cal/OSHA Enforcement conducted 105 inspections in industries associated with NAICS 3115, 3116, and 3118.

Outcome: Cal/OSHA Enforcement exceeded their goal.

FY 2011 Performance Goal 1.4 (Agriculture): *To reduce fatalities and occupational injuries and illnesses in Agricultural SICs.*

Results: Cal/OSHA Enforcement exceeded their goal of conducting 900 inspections. Cal/OSHA conducted 1,152 inspections, identifying 1,473 hazards, of which 232 were classified as serious, willful, or repeat. In addition, Cal/OSHA Enforcement opened a new district office in Bakersfield.

Outcome: The TRC and DART rates were at its lowest level since 2006, chart 5. Fatalities increased by eight additional deaths over the previous year. Enforcement inspections in the agriculture industry appeared to be working as evident by the lower TRC and DART rates, and the lowering of fatalities cases, Chart 6.

Chart 5

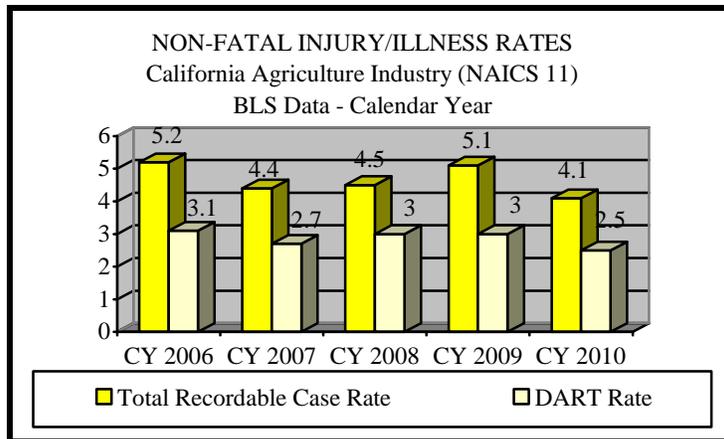
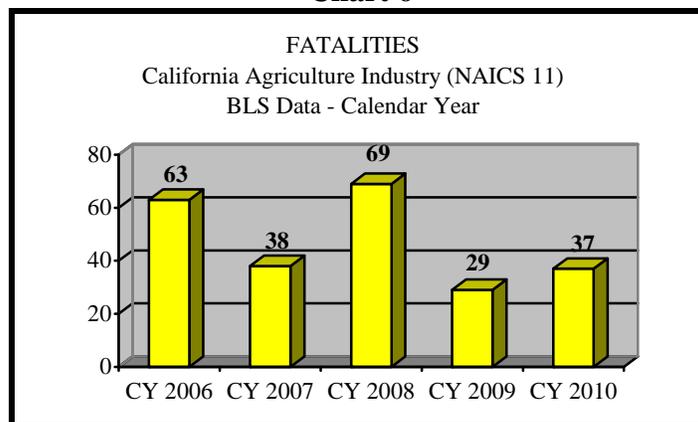


Chart 6



FY 2011 Performance Goal 1.5 (Process Safety Management): *Reduce the rate of injuries, and illnesses in PSM industries.*

Results: Cal/OSHA Enforcement conducted 95 program quality verification inspections and participated in eight outreach/compliance assistance visits. Inspections were performed at facilities which meet the trigger threshold quantities for a process safety management inspection. Outreach/compliance assistance included participating in the 3rd Annual Central Valley Chemical Safety Day and the 18th Annual Salinas Valley Ammonia Safety Day.

Outcome: Cal/OSHA Enforcement met or exceeded their goals.

FY 2011 Performance Goal 1.6 (Public Sector): *Reduce the rate of injuries, illnesses and fatalities in public sector places of employment.*

Results: Cal/OSHA Enforcement conducted 564 inspections in the public sector, exceeding their goal of 185 visits. As indicated by the SAMM information, 88% of non-contested serious, willful, or repeat violations were abated in a timely manner. Cal/OSHA Enforcement will continue to identify public sector agencies with the goal of achieving greater protection for workers in this sector.

Outcome: The TRC and DART rates decreased in the public sector over the past two years, chart 7. Fatalities have slightly increased, chart 8. Cal/OSHA Enforcement met its goals of reducing injuries, and illnesses in the public sector as evident by the TRC and DART rates. Cal/OSHA Enforcement should continue with this performance goal in trying to prevent fatalities in the public sector through enforcement and consultation visits.

Chart 7

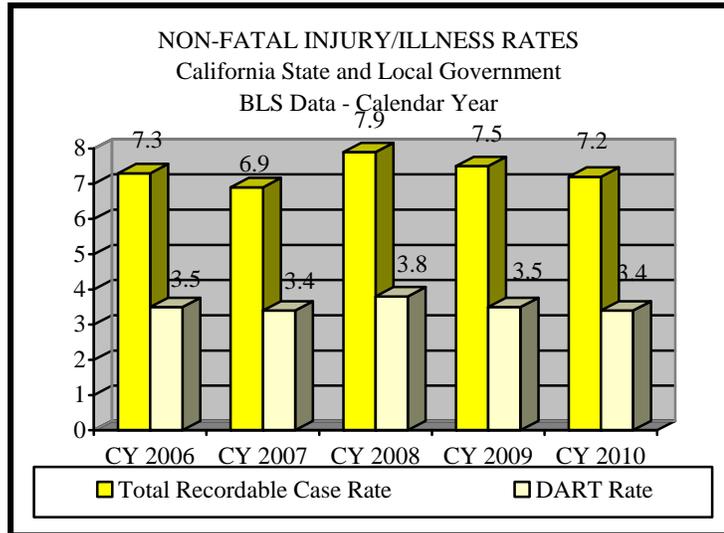
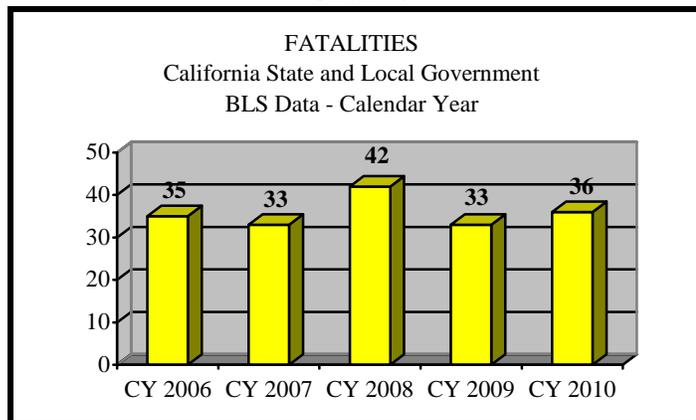


Chart 8



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

FY 2011 Performance Goal 2.1: *DOSH will focus heat illness prevention efforts in the agricultural industry through enforcement of the Cal/OSHA heat illness standard, compliance assistance, training, outreach, development and promotion.*

Results: Cal/OSHA Enforcement conducted 1,013 heat illness inspections in the agricultural industry. 28 seminars on heat illness were presented by Cal/OSSHA Compliance Assistance staff. Heat Illness presentations were given to the Nisei Farmers League and a coalition of organizations representing 90% of the industry.

Outcome: Cal/OSHA has worked hard to educate non-English speaking employees in the agriculture sector on the dangers of heat stress. In this area, Cal/OSHA exceeded their goals.

FY 2011 Performance Goal 2.2: *To improve communication with and education to high-risk vulnerable Hispanic employee groups regarding workplace safety and health rights, responsibilities, and hazards.*

Results: Cal/OSHA Compliance Assistance staff distributed over 20,000 heat illness prevention, and 5,000 hard copy publications. In addition, their online publication website received over 300,000 hits.

Outcome: Cal/OSHA met its goals.

FY 2011 Performance Goal 2.3: *To identify new partnerships, renew and maintain existing partnerships. Partnerships include recognition, exemption, and alliance programs.*

Results: Cal/Voluntary Protection Program (VPP) added 4 new sites and renewed 19 establishments. In the Golden State Program, Cal/VPP added 3 new sites and 2 were renewed.

Outcome: Cal/VPP met its goal in adding new sites to the program. Cal/VPP was short one renewal to meet its goal of 20 renew sites.

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 2011 Performance Goal 3.1: *Continue efforts to reduce the time from opening conference to issuance citation.*

Results: Cal/OSHA Enforcement made a concerted effort to reduce its lapse time for safety and health cases. The citation lapse time was 76 days for safety and 81 days for health inspections.

Outcome: Cal/OSHA did not meet its goal in reducing the lapse time to FY 2009 levels (74 days for safety, 84 for health).

Finding 11-41 (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 11-41: Develop policies and 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.

Appendix A
FY 2011 California State Plan FAME Report
Findings and Recommendations

Rec #	Findings	Recommendations	FY 10#
11-01	Complaint investigations were not being initiated within three working days for serious hazards or fourteen calendar days for other-than-serious complaints in 6% of case files reviewed.	An opening conference shall be held within three working days for serious complaints and 14 calendar days for other-than-serious complaints.	10-1
11-02	In 37 of the 268 cases reviewed, a response letter was not always sent to the complainant for complaint inspections or inquiries.	Response letters shall be sent to complainants who provide a complete address after complaint inspections or inquiries are completed.	10-2
11-03	A diary sheet, or an equivalent activity summary sheet, was not used or was not updated for complaint inquiries.	Diary sheets, or equivalent, shall be used for complaint inquiries and inspections.	10-13
11-04	Data entry errors resulted in fatalities being recorded for non-work related deaths and investigations being recorded as untimely. The coding in IMIS for fatality inspections was not updated once it was determined that the fatality was not work related.	Ensure IMIS data is updated to reflect the correct coding for non-work related fatalities and is entered correctly to reflect timely investigations.	
11-05	One of two case files reviewed, a final letter, indicating the results of the investigation, was not mailed to the next of kin.	Final letters shall be sent to the next of kin after completion of the investigation.	10-3
11-06	Twelve fatality investigations were not initiated within one day.	Initiate fatality inspections within one day of being notified of a fatality which warrants an inspection.	10-4 10-20
11-07	The percent of programmed inspections with serious, willful or repeat violation is significantly lower than the National average.	Improve targeting of programmed inspections to reach high hazard workplaces.	10-7
11-08	Cal/OSHA's policy on classifying violations does not ensure violations that would be considered "Serious" under the Federal Field Operations Manual (FOM) are classified as Serious.	Cal/OSHA needs to incorporate the new definition of a serious violation into their policy and procedures manual.	10-8
11-09	<p>The rules of evidence used by Cal/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 Cal/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</p>	Cal/OSHA must take the 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.	10-34

Rec #	Findings	Recommendations	FY 10#
	violations based on exposure and “work-relatedness” under the current Appeals process.		
11-10	Cal/OSHA did not verify that all Serious, Willful, or Repeat violations were abated.	Verify all Serious, Willful, or Repeat violations are abated.	10-14
11-11	In three of the case files reviewed, the Union was present at the work site but was not involved in the opening conference and in three cases, union involvement was not properly documented.	An opening conference shall be held with the Union either jointly with the employer or separately, and properly documented.	10-10
11-12	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.	Cal/OSHA needs to revise P&P C-20 to allow informal conferences to be held within 15 working days of the issuance of citations and penalties, and not to exceed this time frame.	10-15
11-13	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.	Cal/OSHA using all available appeal resources must strongly select sufficiently strong cases for appeal that would set precedent regarding retention of penalties overall and a minimum penalty for violations of 342(a).	10-35
11-14	Cal/OSHA field staff does not have sufficient legal training or background to present cases at hearings. 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. 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.	10-36
11-15	The Employer Payment for Personal Protection Equipment issue has not been resolved.	OSHSB needs to resolve the issue regarding Employer Payment for Personal Protective Equipment.	10-22
11-16	Cal/OSHA has been late in responding to 6 out of 13 Federal Program Changes and did not respond to 3 out of 13 Federal Program Changes.	Cal/OSHA needs to respond by the due date to all Federal Program Changes.	10-22
11-17	State-initiated rulemaking that promulgated a standard on Bakery Ovens 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.	10-23
11-18	DLSE was not properly screening all newly filed discrimination complaints.	As soon as possible upon receipt of the discrimination complaint, the available information shall be reviewed for appropriate jurisdictional requirements,	

Rec #	Findings	Recommendations	FY 10#
		timeliness of filing, and the presence of a <i>prima facie</i> allegation.	
11-19	DLSE was not properly notifying all whistleblower complainants of their right to dually file with Federal OSHA.	Because employers in state plan states do not use the federal OSHA poster, the states must advise whistleblower complainants of their right to file a federal complaint if they wish to maintain their rights to concurrent federal protection.	
11-20	DLSE was not interviewing whistleblower complainants in all cases	The investigator shall arrange to meet with the whistleblower complainant as soon as possible in order to interview and obtain a signed statement detailing the complainant's allegations.	10-26
11-21	DLSE was not interviewing company officials in all whistleblower cases who have known direct involvement in the case to test assertions made by the company	The investigator shall interview all company officials who have known direct involvement in the whistleblower discrimination case and attempt to identify other persons (witnesses) at the employer's facility who may have knowledge of the situation.	10-26
11-22	DLSE was not conducting further interviews with relevant witnesses in all discrimination cases.	The investigator shall fairly pursue all appropriate investigative leads which develop during the course of the investigation, with respect to both the whistleblower complainant's and respondent's positions and contact made with all relevant witnesses with every attempt made to gather all pertinent data and materials from all available sources.	10-26
11-23	DLSE was not conducting closing conferences with whistleblower complainants.	Upon completion of the field investigation, and after discussion of the case with the Senior Deputy Labor Commissioner and legal department as necessary, the investigator shall conduct a closing conference with the whistleblower complainant.	10-26
11-24	DLSE was not documenting their discrimination case files to support their findings in all cases, including failing to include notes of interviews and closing conferences conducted.	Investigators shall document the discrimination case file to support their findings, including, but not limited to, including notes of interviews and closing conferences.	10-26
11-25	DLSE was not preparing the equivalent of a Final Investigation Report at the end of their investigations of discrimination complaints.	Investigators shall prepare the equivalent of the Final Investigation Report at the end of all their investigations to include at a minimum the sections proscribed in DIS 0.09 Chapter (IV)(B), and keep such report in the discrimination case file.	
11-26	DLSE was not organizing its discrimination case files in a consistent manner for all cases.	Investigators shall organize all discrimination case files consistently in a manner that satisfies at a minimum the case file organization required in DIS 0.09 Chapter 5 (III), including the separation of transmittal and other administrative	

Rec #	Findings	Recommendations	FY 10#
		materials from evidentiary material, the use of exhibit tabs separating evidentiary materials, and a table of contents identifying all evidentiary material by exhibit.	
11-27	For all discrimination cases deemed settled, DLSE was not requiring that the settlement be in writing	For all discrimination cases deemed settled, DLSE shall follow the procedures required in DIS 0.09 Chapter 6 (IV), including requiring that the settlement be in writing.	
11-28	DLSE did not gather all relevant evidence available in the discrimination cases. As a result, the investigator could not evaluate the evidence and draw conclusions based on the evidence and the law.	DLSE shall gather all relevant evidence in order to evaluate the evidence and draw conclusions based on the evidence and the law, including interviewing whistleblower complainants, respondent witnesses who have known direct involvement in the case, and third party witnesses with relevant information.	
11-29	DLSE did not properly investigate and analyze protected activity, employer knowledge, adverse action, and nexus (including disparate treatment, pretext, animus, and dual motive).	During all phases of the discrimination investigation, the investigator shall bear in mind and look for evidence dealing with protected activity, employer knowledge, adverse action, nexus (including disparate treatment, pretext, animus, and dual motive).	
11-30	DLSE did not adequately test the respondent's reason for taking adverse action.	DLSE shall fairly pursue all appropriate investigative leads which develop during the course of the discrimination investigation, with respect to both the complainant's and the respondent's positions. After completing the respondent's side of the investigation, the investigator should again contact the complainant and other witnesses as necessary to resolve any discrepancies or counter allegations resulting from contact with the respondent.	
11-31	DLSE did not promptly notify the parties that it had opened an investigation in many discrimination cases until several months after the complaint had been filed.	DLSE shall promptly notify whistleblower complainants that it has opened an investigation upon receiving the complaint. DLSE shall promptly notify respondents that it has opened an investigation upon receiving the complaint, unless an inspection is pending.	
11-32	DLSE did not provide the parties with appeal rights in all dismissed discrimination cases.	DLSE shall provide the parties with appeal rights in all dismissed discrimination cases, including those where the complaint was dismissed due to the complainant's lack of cooperation.	
11-33	DLSE is not always sending an opening letter to the parties in discrimination cases.	DLSE shall send an opening letter to the parties in discrimination cases.	10-25
11-34	DLSE is not always sending a closing letter to the parties in discrimination cases.	DLSE shall send a closing letter to the parties in discrimination cases.	10-25

Rec #	Findings	Recommendations	FY 10#
11-35	The RCI Manual discourages DLSE from accepting orally filed, faxed, and emailed 6310 and 6311 discrimination complaints.	DLSE shall amend the RCI Manual to allow whistleblower complainants to file 6310 and 6311 complaints orally, by fax, and by email.	
11-36	DLSE is not closing all cases in IMIS that have closed. As a result, IMIS does not reflect the number of discrimination cases DLSE actually closed in FY 2011 and hundreds of likely closed cases have remained open in IMIS for years. DLSE also improperly coded some discrimination cases that DLSE did close in IMIS, recorded the wrong filing date in several cases, and did not accurately indicate the complainant's remedies in merit cases.	DLSE shall properly close all closed discrimination cases, record the filing date as the date the complainant contacts DLSE, and indicate the complainant's remedies in merit cases. It is also recommended that (1) DLSE review all currently pending cases and close them out in IMIS as appropriate (2) establish a procedure to appropriately close out all discrimination cases in IMIS once DLSE issues findings or a closing letter, and (3) ensure Senior Deputy Labor Commissioners and staff are trained in IMIS entry and closure to allow Senior Deputy Labor Commissioners the ability to review DLSE's IMIS data entry for accuracy and completeness.	
11-37	DLSE is not opening all new cases in IMIS. As a result, IMIS does not reflect the number of discrimination cases DLSE actually opened in FY 2011.	DLSE shall open all new discrimination cases filed in IMIS.	
11-38	DLSE does not input, track, or document administratively closed discrimination cases in IMIS.	DLSE shall input, track, and document administratively closed discrimination cases in IMIS.	
11-39	Of the 128 whistleblower (WB) investigations, 96% were not completed within the 90-day period as required.	Ensure whistleblower investigations are completed within 90 days.	10-24
11-40	DLSE investigators and Senior Deputy Labor Commissioners need formal basic training for investigating 6310 and 6311 whistleblower retaliation complaints.	DLSE investigators and Senior Deputy Labor Commissions shall attend Federal OSHA's 1420 Basic Whistleblower Investigations course.	
11-41	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 and 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.	10-38

Appendix B
FY 2011 California State Plan FAME Report
Status Action Taken of FY 2010 Findings and Recommendations

Rec # No	Finding	Recommendations	Corrective Action Plan	State Action Taken	Status
10-1 (09-01)	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 will ensure that complaints are responded to in a timely fashion, and that all complainants are provided the results of their complaints in a timely manner, in accordance with DOSH P&P C-7. On June 8, 2011, all management and, at subsequent dates, staff have received training in these requirements. Cal/OSHA will run Complaint Logs and Unsatisfied Activity reports on an ongoing basis to ensure these requirements are regularly being met.	Cal/OSHA has not ensured complainants receive a response letter once the investigation has been completed.	Not Completed
10-2 (09-02; 09-21; 09-22)	The Cal/OSHA Policy and Procedures Manual do not address elements that are required in the complaint process. (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	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).	The Cal/OSHA P&P C-7 addresses the Handling/Processing of Referrals from Other Agencies, requires CSHOs to obtain from the complainants a significant part of the information contained in the Complaint Questionnaire, and addresses the equivalent of the Five-day requirement for employer to submit written results of an investigation, with the difference that it allows employers to respond within 3	10-2 -P&P C-7 outline's Cal/OSHA procedures for handling complaints. (09-21) - The labor code gives Cal/OSHA 3 working days to respond to a serious violation, and 14 calendar days to respond to a non-serious violation. In addition, Cal/OSHA has reminded managers to run and utilize the complaint tracking reports, and	Completed (09-21) Not Completed

Rec # No	Finding	Recommendations	Corrective Action Plan	State Action Taken	Status
	<p>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>(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.</p>	<p>working days for serious, and 14 calendar days for other than serious complaints, in accordance with the required response time for inspections. Cal/OSHA does not have the equivalent of the Federal Enforcement Exemptions and Limitations under the Appropriations Act, and therefore the P&P does not address Scheduling an Inspection of an Employer in an Exempt Industry. The DOSH P&P C-7 was modified to include Electronic Complaints Procedures, which are currently being processed and responded to in accordance with the existing P&P.</p> <p>(09-21) Cal/OSHA's P&P requires that complaints be responded to, in accordance with the severity of the hazards alleged: 1 day for imminent, 3 working days for serious, 14 calendar days for other than serious, rather than the 5 working days provided in the FOM for complaints. To ensure that the response time is met, and that employers' responses are properly tracked, Cal/OSHA is currently training managers on running and</p>	<p>another training segment took place on August 24, 2011.</p> <p>(09-22) - FY 2011 SAMM data indicates a 99.13% compliance rate. In addition, on June 8, 2011, all management and, at subsequent dates, staff has received training in these requirements. However, letters to the complainant are not always being sent as indicated by the FY 2011 case file review.</p>	<p>(09-22) Not Completed</p>

Rec # No	Finding	Recommendations	Corrective Action Plan	State Action Taken	Status
			<p>utilizing the complaint tracking reports.</p> <p>(09-22) District and Regional Offices are reviewing IMIS reports monthly to ensure that the letters are being sent and entered in IMIS, and training on this was provided to managers. Further, IMIS Coordinators are providing refresher training to all staff in all offices to ensure consistent data entry. The appropriate SAMMs Report will be reviewed by the IMIS Coordinators on a monthly basis with a goal of identifying and correcting outliers.</p>		
10-3 (09-03)	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.	Cal/OSHA will ensure that family members of fatality victims are contacted regarding the investigation and that all required correspondence is completed in a timely manner and documented in each case file. The DOSH P&P C-170&170A, Accident Investigation, sets forth procedures for communicating with the fatality victim's family concerning the process and results of the investigations (Section D.6.C.). To assist District Offices in achieving compliance with and tracking this requirement, the Case File	DOSHS staff participated in a training session on September 27, 2010. This training was mandatory for all compliance personnel, and managers. The requirement for communicating with victims' families was made clear to all personnel during this training. Cal/OSHA has emphasized to managers and compliance officers to follow policies and procedures in regards to keeping family members apprised of Cal/OSHA	Not Completed

Rec # No	Finding	Recommendations	Corrective Action Plan	State Action Taken	Status
			Summary Sheet (IMIS Training Manual, Office Procedures) has been revised to include check boxes and dates for initial contact with next of kin and final results of the investigation.	activity during fatality investigations.	
10-4 (09-04)	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 initiated steps to ensure fatalities are investigated in one day.	Cal/OSHA has trained personnel to ensure that this information is appropriately entered into IMIS and documented in the case file.	Not Completed
10-5 (09-05)	Cal/OSHA's policies and procedures do 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 has reviewed and updated its P&P C-170 & 170A relative to fatality cases.	P&P C-170 was updated on February 29, 2012 to conform to the Federal requirements.	Completed
10-6 (09-06)	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.	The Agricultural Safety and Health Inspection Project, and Construction Safety and Health Inspection Project, while still Performance Goals within the current Strategic Goals of Cal/OSHA's Performance plan, are no longer conducted in accordance with a separate	There are no separate protocols for ASHIP and CSHIP.	Completed

Rec # No	Finding	Recommendations	Corrective Action Plan	State Action Taken	Status
10-7 (09-08)	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.	<p>protocol.</p> <p>A review of the inspections conducted during FY 2009 determined that many of them should not have been coded as Programmed Inspections and should have been identified as Un-programmed activities (i.e., Referrals, and monitoring and follow-up). For the inspections that were correctly coded as Programmed, most of them having been conducted by the High Hazard Unit, the results show that Cal/OSHA's targeting system is effectively identifying the establishments having serious hazards. For example, all of the 591 programmed inspections (100%) conducted in FY 2009 of manufacturing establishments in SIC codes 2011 through 3999 resulted in citations and in 59.8% of the inspections willful serious, repeat or FTA citations were found. The average number of violations cited per inspection was 5.7 with an average penalty of \$1,570.90.</p> <p>Consequently, we have revised the affected policies to provide for the correct coding of inspections that were improperly coded as Programmed.</p>	<p>On June 8, 2011, all management and, at subsequent dates, staff has received training in these requirements.</p> <p>DOSH will initiate a project which will provide access to better data. By obtaining better data, DOSH can evaluate its targeting program and make changes if needed.</p> <p>The majority of inspections conducted by DOSH are unprogrammed. The High Hazard Unit and Mining and Tunneling Section conducts programmed inspections of establishments. These establishments are inspected twice per year.</p>	Not Completed

Rec # No	Finding	Recommendations	Corrective Action Plan	State Action Taken	Status
10-8 (09-08)	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).	California will continue to ensure its program is "at least as effective as" OSHA's. AB 2774, which was enacted on September 30, 2010, became effective on January 1, 2011, and it statutorily re-defines serious violations and prescribes standards for the investigation and resolution of these violations. Cal/OSHA developed procedures to implement AB 2774, which is currently enforced.	AB 2774 has redefined serious a violation; however the new definition has not been incorporated into the policies and procedures manual. Currently, awaiting copy of P&P C-1B to reflect this new definition.	Not Completed
10-9 (09-09)	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 history statewide when citing Repeat violations.	The definition of Repeat Violations, for violations other than Field Sanitation Violations, is set forth by Title 8 CCR, Regulations of the Director of Industrial Relations, Section 334(d)(1). The definition of the Repeat Violation contained in the Cal/OSHA P&P C-1B, as mentioned in this finding, is based on the aforementioned regulations.	The definition of General Repeat Violation is under 8 CCR 334(d)(1). To re-define a General Repeat Violation, Cal/OSHA must amend this regulation. State wide history is taken into account for Repeat Field Sanitation Violations. General Repeat Violations takes into account Regional Citation history of the establishment for the past three years.	Completed
10-10 (09-10)	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	Cal/OSHA's P&Ps require and encourage maximum union participation in all stages of inspections, and these policies are part of Cal/OSHA's ongoing training and refresher training.	Cal/OSHA P&P C-1A allows union representatives to participate in an inspection. In addition, Cal/OSHA has re-	Not Completed

Rec # No	Finding	Recommendations	Corrective Action Plan	State Action Taken	Status
		participate in the inspection, ensure it is documented.		emphasized this requirement, which is outlined in its policies and procedures, and has discussed this with all Managers and compliance officers.	
10-11 (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.	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).	Establishment of employer knowledge is not required for other than serious violations. For serious violations, although California Labor Code makes it the employer's responsibility to prove that it did not, and could not with the exercise of reasonable diligence, know of the presence of the violation, the Cal/OSHA P&P C-1B requires that CSHO's gather evidence of employer knowledge of the violative condition before classifying the violation as Serious in several ways, including through employee interviews. The Cal/OSHA P&P C-1B also addresses establishing employee exposure to hazards through statements from exposed employees, and P&P C-1A requires that CSHO's record the names, job titles, addresses, phone numbers and union affiliations of the employees they interview, and to determine the employers' full legal name.	Cal/OSHA P&P C-1B allows written or oral statements from employees to document exposure. P&P C-1A requires Compliance Officers to obtain name, job title, address, and telephone number of employees interviewed. In addition, Cal/OSHA trained managers and compliance officers on properly documenting employer knowledge and employee interviews in accordance with the existing policies and procedures, and AB 2774.	Completed

Rec # No	Finding	Recommendations	Corrective Action Plan	State Action Taken	Status
			Cal/OSHA trained managers and compliance staff on “Investigative Interviewing Techniques” and on “Inspection Techniques and Legal Aspects” which cover the existing policies and procedures with regard to this item.		
10-12 (09-12)	Sixty-three of 157 case files were missing copies of the OSHA 300 and did not indicate if information had been entered into the IMIS system. Citations were not issued to the employer for failing to maintain the log.	Ensure that compliance officers request and include copies of the 300 in the case file for each inspection for the last three years and enter the data into IMIS. If the employer can not provide them, document it in the file and issue appropriate citations.	The DOSH P&P C-1A was modified to require that, during every inspection of establishments which are required to keep records of occupational injuries and illnesses, CSHOs must obtain copies of the employer's Log 300 for the previous three years. These logs will be retained in the physical Case File for each inspection.	DOSH P&P C-1A requires CSHO to obtain the OSHA 300 log for the current and prior three years.	Completed
10-13 (09-13; 09-14)	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.	(09-13) 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	The Cal/OSHA P&P C-1B requires all of the information regarding the injury, illness, hazard description and exposure, but that training and compliance with P&P requirement was inadequate. The “Inspection Techniques and Legal Sufficiency” training course given to managers and compliance staff includes a module on Case File Documentation, including the proper completion of the 1B, to adequately identify and document the hazard and	(09-13) – Need documentation regarding Status Action Taken of training course (on-going, completed, etc.) (09-14) – The Cal/OSHA 1BX Field Documentation Worksheet allows note taking by the Compliance Officer.	Not Completed (09-14) Not Completed

Rec # No	Finding	Recommendations	Corrective Action Plan	State Action Taken	Status
		review, telephone communications, and informal conference dates.	<p>exposure. The Cal/OSHA P&P C-1B also provides that “photos taken by compliance personnel may be mounted on the Photo Mounting Worksheet” and references OSHA 89 which contains the required information. (09-14) The Cal/OSHA P&P C-1A requires that the CSHO provide in the file the information contained in the narrative. Also, the Cal/OSHA procedure requires the CSHO to provide inspection history up to the Closing Conference on the Form 1 and within the Case File. After that, the Office Support Staff maintains a Summary Log Sheet in the Case File, which is a chronological history of all the subsequent mailings, communications and case actions, same as the diary sheet. Cal/OSHA is providing training to enforcement staff on properly documenting case files for legal sufficiency.</p>		
10-14 (09-16)	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	Develop a tracking system to ensure all violations are abated timely and/or ensure abatement data is accurately entered into IMIS.	In response to this finding, a tracking system has been developed, namely running the Select Violations Abatement Report monthly by HQ staff, and providing it to Regional and District Managers, who then	On June 8, 2011, all management and, at subsequent dates, staff have received training in these requirements.	Not Completed

Rec # No	Finding	Recommendations	Corrective Action Plan	State Action Taken	Status
	letters, phone calls and, in some cases, a follow-up inspection.		provide quarterly reports to the HQ regarding outstanding unabated violations. Managers were trained to ensure that abatement of S/W/R violations is timely achieved, including the assignment of follow up inspections when necessary, in accordance with the existing P&P, and that IMIS data reflects timely verification of abatement.		
10-15 (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 7-4) are clearly articulated.	Due to the significant qualitative differences between the Cal/OSHA's appeal process and the Fed/OSHA contest process, Cal/OSHA believes that its Informal Conference practices as "at least as effective as" Fed/OSHA's. Cal/OSHA's P&P C-20 contains specific guidelines for the conduct of Informal Conferences in harmony with the appeals process.	Cal/OSHA P&P C-20 allows an informal conference to be held after an appeal is filed up to anytime prior to the day of the hearing.	Not Completed
10-16 (09-18)	The percent of penalty retention during post-contest procedures has decreased since FY 2007 and the percent of violations reclassified continues to increase.	Assess pre-contest procedures to ensure violations and penalties are being appropriately reclassified and decreased respectively and develop procedures to increase the percentage of penalties being retained during the post-contest	To enhance the pre-contest citations and penalties review procedures, the Division amended its P&P C-20, to emphasize the importance of holding the Informal Conference before the deadline for filing an appeal, and on June 8, 2011, all managers were trained in this requirement.	Proposed significant post-contest reduction in penalties by Cal/OSHA as result of settlement will be reviewed by HQ and/or Chief Legal Counsel.	Completed

Rec # No	Finding	Recommendations	Corrective Action Plan	State Action Taken	Status
10-17 (09-19)	Cal/OSHA does not receive accurate and up-to-date information on the Status Action Taken 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.	At the present time, Cal/OSHA and DIR Accounting closely cooperate and make every effort to ensure that penalty payment data in IMIS is current and accurate. For collection of penalties, DIR and Cal/OSHA have a contract with the State Franchise Tax Board, and is in the process of establishing a contract with EDD.	DIR Accounting or the State Franchise Board is collecting penalties for Cal/OSHA. Once penalties are collected, the case file audit review document is generated to indicate the penalty has been collected. Cal/OSHA staff will print out this document.	Completed
10-18 (09-20)	The 15-day "due 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.	Due to Cal/OSHA's penalty tacking and collection system, there isn't any useful function to entering this information in IMIS. DIR Accounting tracks penalty due dates by having direct IMIS access to citations issuance dates, and tracking of the final appeal dates is done by the Appeals Board.		Completed
10-19 (09-23)	The Referral Log identified that the five offices had referrals that had not been appropriately inspected or investigated in a timely fashion, including some referrals that were deemed Serious in nature. Thirteen referrals showed no response at all.	Generate and review the Referral Log on a regular basis and ensure that all referrals are handled appropriately and timely.	Cal/OSHA has provided guidance to all Managers to ensure referrals are tracked and inspected appropriately.	Refresher training provided to Managers on June 8, 2011.	Completed
10-20 (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's policy is to open fatality investigations within 1 day of being notified of the fatal incident, and in all of the 7 identified fatal cases special circumstances occurred that could be explained, including data entry errors.		Not Completed

Rec # No	Finding	Recommendations	Corrective Action Plan	State Action Taken	Status
			Managers and IMIS coordinators were reminded to run quarterly Fatality Logs for each of the District Offices to identify data entry errors, and correct them in timely fashion. With respect to non-fatalities/catastrophes, California Labor Code requires that all serious accidents (not only fatal) be reported to and investigated by Cal/OSHA, without imposing a timeframe for the opening of the investigation.		
10-21 (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.	Regarding citations pending, Cal/OSHA agrees with this finding. Managers and IMIS coordinators were reminded to run and review the Citation Pending Report monthly and make corrections as necessary and issue citations in a timely manner. Regarding unsatisfied activities, Managers and IMIS coordinators were reminded to run and review the Unsatisfied Activity Report monthly, and schedule for inspection the activities that truly are outstanding, depending on the type and classification of the activity.	Cal/OSHA will generate and review a Citations Pending Report to monitor those 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
10-22 (09-26)	Cal/OSHA's evaluation and adoption of Federal Program Changes has not	Implement measures to ensure that new Federal Program Changes are evaluated	Regarding the Federal Program Changes involving the adoption	Cal/OSHA has not responded in a timely	Not Completed

Rec # No	Finding	Recommendations	Corrective Action Plan	State Action Taken	Status
	<p>been timely. Cal/OSHA has not adopted both the <i>Employer Payment for Personal Protective Equipment, Final Rule</i>, published November 15, 2007 and the <i>Clarification of Employer Duty to Provide Personal Protective Equipment and Train Each Employee</i>, published December 12, 2008. They adopted the <i>Final Rule on Electrical Installation Requirements—29 CFR 1910 Subpart S</i>, effective February 18, 2010; they were two-and-a-half years late adopting this rule. In addition, California has not submitted a supplement in response to <i>CPL 02-00-148 2009, Field Operations Manual</i>. Many of the procedural issues discussed in this report relate to items not covered in the State’s current policies and procedures manual which should be addressed in the response to the Federal FOM.</p>	<p>and adopted in a timely manner as per 29 CFR 1953.4(b)(1) and (b)(3).</p>	<p>of new health and safety standards, Cal/OSHA is now tracking new federal standards before they are promulgated and begins formulating necessary changes before the official standard is announced. Also, for the other Federal Program Changes, in November 2010 Cal/OSHA assigned staff to track them by creating and maintaining an FPC Log, and to notify the Deputy Chief whenever a new Federal Program Change is received, to ensure that all are responded in a timely manner. The new FPCs will be discussed at least monthly at managers meetings to determine the scope and extent of the responses.</p>	<p>manner regarding Federal Program Changes.</p> <p>Cal/OSHA is developing the Program Unit. This Unit will consist of three employees, who will track Federal Program Changes to maintain the log. This was discussed in the November 2011 Quarterly Meeting.</p>	
<p>10-23 (09-27)</p>	<p>State-initiated rulemaking that promulgated a standard on Bakery Ovens that was deemed not to be at least as effective as Federal OSHA standards.</p>	<p>Ensure standards are at least as effective as Federal OSHA standards and initiate actions to update deficient standards.</p>	<p>The Standards Board has not received any notification, except for this finding, that the state standard on Bakery Ovens was not “at least as effective as” Federal OSHA standards. Such notification should have been made in response to Standard Board’s May 7, 2009 submittal of Plan Change Supplement to Fed/OSHA.</p>	<p>Bakery Ovens, Section 4530, General Industry Orders became effective on May 31, 2009. This standard is “at least as effective” as the Federal OSHA standard.</p> <p>After the standard was modified, Federal OSHA sent a letter to the Standards Board</p>	<p>Not Completed Further discussions to be held.</p>

Rec # No	Finding	Recommendations	Corrective Action Plan	State Action Taken	Status
				indicating the Bakery Oven Regulation was not as least as effective as the Federal Standard. The Standards Board sent a reply indicating the Bakery Oven Section 4530 was at least as effective as the Federal Standard.	
10-24 (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 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.)	DLSE will ensure that investigations are completed within the 90-day period (Section 11© 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). As of June 30, 2010 DLSE already achieved a 10% decrease in the time it took to complete an investigation.	DLSE will make every effort to complete investigations within 90 days. Forty (40) have been completed within 90 days. There are other case files which have been completed beyond the 90 days time frame. Federal OSHA will continue to monitor.	Not Completed
10-25 (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.	DLSE will ensure that it consistently maintains and tracks opening and closing letters and phone calls in the case file. DLSE's existing policy is that all contacts and correspondence dates are input into the Case Management System (CMS), and that these pages are printed and placed in the file. The importance of maintaining accurate and chronological file notes will be	Opening and closing letters are not being sent to the Complainant as indicated by the FY 2011 case file review.	Not Completed

Rec # No	Finding	Recommendations	Corrective Action Plan	State Action Taken	Status
			reiterated to staff.		
10-26 (09-31; 09-32)	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.	(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, 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) DLSE has committed to comply with this recommendation. (09-32) DLSE has committed to comply with this recommendation	(09-31) - DLSE is not interviewing witnesses. (09-32) - DLSE appears not to be conducting closing conferences.	(09-31) Not Completed (09-32) Not Completed
10-27 (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.	DLSE has committed to comply with this recommendation.	Whenever possible, DLSE obtains un-redacted copies of the settlement agreements. However, if parties settle and do not provide copies and request file closure, DLSE complies with the request.	Completed
10-28 (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,	Cal/OSHA must ensure that it has sufficient on-board staff available to provide effective worker protection.	During the FY 2009 evaluation period, despite the budgetary constraints, Cal/OSHA succeeded, through extraordinary efforts and judicious implementation of its	As of February 2012, Cal/OSHA has the authority to fill 68 positions	Completed

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	during regular working hours and in response to emergencies.		policies, to provide adequate enforcement coverage of workplaces. The three furlough days per month ended as of November 1, 2010 for Managers, and April 1, 2011, for field staff, although the gubernatorial Executive Order prohibiting hiring of new staff is still in effect.		
10-29 (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). Cal/OSHA will adjust staffing levels as appropriate within the constraints and limitations imposed by the California Legislature and Administration.	As of February 2012, Cal/OSHA has the authority to fill 68 positions	Completed
10-30 (09-41)	The Standards Board and Appeals Board could not provide actual hours, timesheets or employment Status Action Taken at any given time for all employees.	Provide periodic certifications of employment Status Action Taken for all employees.	DOSH Appeals Board and Standards Board will provide periodic certifications of employment Status Action Taken for all employees. Federal OSHA will continue to monitor this issue.	The Appeals Board has indicated 100% of staff time is dedicated to the appeals process. The Standards Board has sent a document indicating employees charge their time to 23(g) funds.	Completed
10-31	Travel costs in October 2009 (FY	Ensure expenditures are paid with funds	DIR's Accounting Procedures		Completed

Rec # No	Finding	Recommendations	Corrective Action Plan	State Action Taken	Status
(09-42; 09-43)	2010) were paid with money from FY 2009 and some Area Office rent payments were erroneously charged to the current year grant funds and some funds are used improperly. (Formerly 09-43) Indirect cost rates were incorrectly applied and are not allowable costs to the grant.	<p>from that funding period and any mis-allocated expenditures should be re-allocated to State matching funds or return the grant monies that were incorrectly allocated.</p> <p>(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.</p>	<p>Manual has been revised to ensure that travel costs are reimbursed with funds from the proper periods. Accounting Procedures Manual has been revised to ensure that rental costs are recorded in the proper periods.</p> <p>(09-43) Cal/OSHA has implemented procedures to ensure that Indirect costs are properly implemented.</p>		
10-32 (09-45; 09-46)	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</i>	<p>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.</p> <p>(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,</p>	<p>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. Once mandatory courses have been presented, the Unit will arrange for technical courses. With regard to the DLSE whistleblower investigator training, a request was submitted to Region 9 to have their Regional Supervisory Investigator present Basic Whistleblower training to DLSE investigators.</p> <p>(09-46) Cal/OSHA has developed a revised training</p>	<p>Cal/OSHA P&P C-12 describes Compliance Officer Training Courses within the first three years.</p> <p>(09-46) – Cal/OSHA P&P C-12 describes Compliance Officer Training Courses within the first three years which is equivalent to TED 01-00-018.</p>	<p>Completed</p> <p>(09-46) Completed</p>

Rec # No	Finding	Recommendations	Corrective Action Plan	State Action Taken	Status
	<i>Compliance Personnel.</i>	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.	program which includes similar curriculum course description as listed under the Federal Directive TED 01-00-018 Initial Training Program for OSHA Compliance Personnel.		
10-33 (09-1 Appeals Bd Special Study)	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.	Obtain copy of OSHAB’s updated policies and procedures manual.	When a citation alleging a violation classified as serious comes before the Appeals Board, the revised definition and proof requirements of AB 2774 will be applied by each Administrative Law Judge.	Completed
10-34 (09-3 Appeals Bd Special Study)	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	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.	This item is being reviewed by the new administration and guidelines or procedures will be developed. They will submit the guidelines or procedures.	The legal standard for a violation classified as “Serious” has been changed by AB 2774, which substantially changed Labor Code 6432. The effect is to remove the application of California Evidence code sections 800, et seq in many cases. These are the rules of evidence that	Not completed

Rec # No	Finding	Recommendations	Corrective Action Plan	State Action Taken	Status
	<p>in both the Occupational Safety and Health Review Commission (OSHRC) and Federal courts.</p> <p>Cases have been identified showing an extreme standard of evidence to prove classification of violations where the compliance officer's ability to identify, evaluate, and document conditions in the workplace are not considered.</p> <p>A medically qualified person is necessary to sustain violations based on exposure and "work-relatedness" under the current Appeals process.</p>			<p>allow for and require the qualification of expert testimony for factual determinations that are beyond the common knowledge of the average person, or here, the average ALJ fact finder. Specifically, under the new rule, if the Division undertakes certain steps in its pre-citation operations, a presumption will arise that the violation is properly classified as serious. With the presumption, evidence need not be presented. The Employer may challenge the presumption by producing admissible, qualified evidence showing the violation was in fact non-serious, that is, lacked a reasonable possibility of causing serious harm, as defined. The guidelines regarding the appropriate pre-citation activities which give rise to the presumption must be developed by the Division, and the Appeals Board has no jurisdiction until a citation is issued and then</p>	

Rec # No	Finding	Recommendations	Corrective Action Plan	State Action Taken	Status
				<p>appealed. While the rules of evidence still apply insofar as they protect the rights of parties against whom evidence is presented, they may be relaxed as needed to achieve the administrative purpose of the tribunal. Such has always been the law in California. The Appeals Board is not undertaking the promulgation of regulations to implement AB 2774, but will be called on to apply the regulations so promulgated by the Division.</p> <p>It is our understanding that the Division of Occupational Safety and Health has developed guidelines for its inspectors for the purpose of classifying hazards as serious. Although the Appeals Board does not have a copy of these guidelines I am confident that the Division of Occupational Safety and Health would be able to provide them to you upon</p>	

Rec # No	Finding	Recommendations	Corrective Action Plan	State Action Taken	Status
				request.	
10-35 (09-04 Appeals Bd Special Study)	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.	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).	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.	Not Accepted – Federal OSHA has requested an update on this finding from Cal/OSHA. Federal OSHA will monitor.	Not Completed
10-36 (09-05; 09-09 Appeals Bd Special Study)	Cal/OSHA field staff does 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. (09-09 special study) 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.	Cal/OSHA has been training all managers and compliance staff on "Inspection Techniques and Legal Aspects" which cover part of the knowledge and expertise required for effectively presenting cases at the hearing. Also, almost all of the managers and field staff who present cases in front of Appeals Board received a five-day training course on Appeals. Cal/OSHA's intent is to identify a select group of managers, seniors and CSHOs who will present all of the cases for which attorney representation will not be available, and to provide to them Advanced Appeals training. Moreover, Cal/OSHA is on track to hire several more attorneys in this Legal Unit as soon as hiring will be permitted	Cal/OSHA is working on this issue. Federal OSHA Oakland Office will follow-up on these issues with Cal/OSHA.	Not Completed

Rec # No	Finding	Recommendations	Corrective Action Plan	State Action Taken	Status
			by the Governor. (09-09 special study) With respect to the issue of non-attorney staff presenting cases in front of the Appeals Board.		
10-37 (new)	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	Cal/OSHA enforcement and Consultation are concentrating on the agriculture industry to reduce the injury and illness rates and fatalities below the CY 2007 baseline.	Cal/OSHA has, reduced the injury and illness rates and fatalities in the agricultural industry.	Completed
10-38 (new)	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.	Cal/OSHA is addressing this issue	Cal/OSHA lapse time is above the National average according to the FY 2011 SAMM data.	Not Completed

Appendix C—Enforcement Comparison

California State Plan FY 2011 Enforcement Activity

	CA	State Plan Total	Federal	OSHA
Total Inspections	8,141	52,056	36,109	
Safety	6,313	40,681	29,671	
% Safety	78%	78%	82%	
Health	1,828	11,375	6,438	
% Health	22%	22%	18%	
Construction	1,942	20,674	20,111	
% Construction	24%	40%	56%	
Public Sector	558	7,682	N/A	
% Public Sector	7%	15%	N/A	
Programmed	2,237	29,985	20,908	
% Programmed	27%	58%	58%	
Complaint	2,575	8,876	7,523	
% Complaint	32%	17%	21%	
Accident	2,105	2,932	762	
Insp w/ Viols Cited	4,120	31,181	25,796	
% Insp w/ Viols Cited (NIC)	51%	60%	71%	
% NIC w/ Serious Violations	29.0%	63.7%	85.9%	
Total Violations	15,647	113,579	82,098	
Serious	2,413	50,036	59,856	
% Serious	15%	44%	73%	
Willful	34	295	585	
Repeat	26	2,014	3,061	
Serious/Willful/Repeat	2,473	52,345	63,502	
% S/W/R	16%	46%	77%	
Failure to Abate	19	333	268	
Other than Serious	13,155	60,896	18,326	
% Other	84%	54%	22%	
Avg # Violations/ Initial Inspection	3.3	3.4	2.9	
Total Penalties	\$21,343,084	\$ 75,271,600	\$ 181,829,999	
Avg Current Penalty / Serious Violation	\$ 5,761.20	\$ 963.40	\$ 2,132.60	
% Penalty Reduced	54.8%	46.6%	43.6%	
% Insp w/ Contested Viols	37.5%	14.8%	10.7%	
Avg Case Hrs/Insp- Safety	21.6	17.1	19.8	
Avg Case Hrs/Insp- Health	19.9	26.8	33.1	
Lapse Days Insp to Citation Issued- Safety	59.2	35.6	43.2	
Lapse Days Insp to Citation Issued- Health	64.3	43.6	54.8	
Open, Non-Contested Cases w/ Incomplete Abatement >60 days	164	1,387	2,436	

Note: Federal OSHA does not include OIS data. The total number of inspections for Federal OSHA is 40,684.

Appendix D—FY 2011 State Activity Mandated Measures (SAMM) Report

NOV 08, 2011

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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)
 State: CALIFORNIA

RID: 0950600

MEASURE	From: 10/01/2010 To: 09/30/2011	CURRENT FY-TO-DATE	REFERENCE/STANDARD	
1. Average number of days to initiate Complaint Inspections	57769 18.65 3097	3207 16.61 193	Negotiated fixed number for each State	
2. Average number of days to initiate Complaint Investigations	28368 6.72 4218	3374 7.44 453	Negotiated fixed number for each State	
3. Percent of Complaints where Complainants were notified on time	2846 99.13 2871	209 100.00 209	100%	
4. Percent of Complaints and Referrals responded to within 1 day -ImmDanger	186 100.00 186	12 100.00 12	100%	
5. Number of Denials where entry not obtained	1	0	0	
6. Percent of S/W/R Violations verified				
Private	670 92.93 721	34 75.56 45	100%	
Public	14 93.33 15	0 0	100%	
7. Average number of calendar days from Opening Conference to Citation Issue				
Safety	300513 76.15 3946	27466 88.03 312	2631708 51.9 50662	National Data (1 year)
Health	73429 80.77 909	7094 92.12 77	767959 64.8 11844	National Data (1 year)

*CA FY11

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

NOV 08, 2011

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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)

State: CALIFORNIA

RID: 0950600

MEASURE	From: 10/01/2010 To: 09/30/2011	CURRENT FY-TO-DATE	REFERENCE/STANDARD
8. Percent of Programmed Inspections with S/W/R Violations	480	23	90405
Safety	20.73 2316	19.33 119	58.5 154606
Health	9 6.21 145	2 14.29 14	10916 51.7 21098
National Data (3 years)			
9. Average Violations per Inspection with Violations			
S/W/R	2708 .55 4858	216 .54 393	419386 2.1 198933
Other	13169 2.71 4858	1011 2.57 393	236745 1.2 198933
National Data (3 years)			
10. Average Initial Penalty per Serious Violation (Private Sector Only)	16447974 6390.04 2574	1371290 6592.74 208	611105829 1679.6 363838
National Data (3 years)			
11. Percent of Total Inspections in Public Sector	558 6.85 8141	28 5.25 533	1676 6.6 25296
Data for this State (3 years)			
12. Average lapse time from receipt of Contest to first level decision	491575 321.92 1527	36313 394.70 92	3533348 199.7 17693
National Data (3 years)			
13. Percent of 11c Investigations Completed within 90 days	0 .00 68	0 .00 6	100%
14. Percent of 11c Complaints that are Meritorious	4 5.88 68	2 33.33 6	1517 23.0 6591
National Data (3 years)			
15. Percent of Meritorious 11c Complaints that are Settled	0 .00 4	0 .00 2	1327 87.5 1517
National Data (3 years)			

*CA FY11

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

MEASURE NUMBER: 3

EXCEPTION LISTING (COMPLAINTS)

PAGE 1

REPORT-ID	COMPL-NR	COMPL-HDATE	OPEN-CONF	CLOSE-CONF	ISSU-DATE
09506	0	207368242	20110120	20100903	20101216
09506	0	207471277	20110816	20110412	20110420
09506	0	207531088	20110523	20101019	20110419
09506	0	207531153	20110531	20101019	20110419
09506	0	207759416	20101119	20100831	20101006
09506	0	207759432	20101119	20100831	20101006
09506	0	207789074	20110110	20101013	20101102
09506	0	207881350	20110124	20101118	20101130
09506	0	207936642	20110603	20110127	20110602
09506	0	207937624	20110726	20110517	20110625
09506	0	207973249	20110131	20101220	20110131
09506	0	208022319	20110124	20101118	20101130
09506	0	208022566	20110506	20110209	20110303
09506	0	208022665	20110531	20101019	20110419
09506	0	208022673	20110531	20101019	20110419
09506	0	208026591	20110317	20101210	20101217
09506	0	208027862	20110328	20110121	20110125
09506	0	208082743	20110531	20101019	20110419
09506	0	208176172	20110819	20110614	20110614
09506	0	208256909	20111014	20110505	20110909
09506	0	208284802	20110715	20110421	20110421
09506	0	208285668	20110729	20110613	20110613
09506	0	208286591	20111014	20110712	20110712
09506	0	208287557	20111031	20110804	20110804
09506	0	208439075	20110913	20110727	20110727

*****TOTAL ***** 25

MEASURE NUMBER: 5

DENIALS >> ENTRY NOT OBTAINED

PAGE 1

REPORT-ID	INSP-NR	DENIAL-DATE
09506	0	313512238

*****TOTAL ***** 1

MEASURE NUMBER: 6

CITATION LISTING

PAGE 1

OWNER	REPORT-ID	INSP-NR	ABATE-DATE	VERIFY-DATE	CITATION-NR	ITEM-NR
PRI	09506	0	119956662	20071003	20110610	03
PRI	09506	0	119956662	20071003	20110610	05
PRI	09506	0	119956662	20071003	20110613	02
PRI	09506	0	120251384	20110613	20110922	02
PRI	09506	0	120340823	20100812	20110112	02
PRI	09506	0	125882878	20060313	20110331	03
PRI	09506	0	125943407	20070724	20110215	01
PRI	09506	0	300753324	20110929	00000000	02
PRI	09506	0	300753324	20110929	00000000	03
PRI	09506	0	310598917	20071210	20110121	02
PRI	09506	0	310598917	20071210	20110119	03
PRI	09506	0	310605670	20091129	20110519	02
PRI	09506	0	310605670	20091129	20110519	03
PRI	09506	0	310605894	20090330	20110322	03
PRI	09506	0	312578206	20100705	20110211	01
PUB	09506	0	312662646	20100712	20101116	01
PRI	09506	0	312748858	20100605	20110113	02
PRI	09506	0	312749500	20100716	20101119	02
PRI	09506	0	312917404	20101206	20110106	02
PRI	09506	0	313165557	20101021	20110214	02
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PRI	09506	0	313380024	20100322	20101006	03
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PRI	09506	0	313383044	20110328	20110525	02	001
PRI	09506	0	313384075	20110822	20110927	02	001
PRI	09506	0	313507634	20100511	20101216	02	001
PRI	09506	0	313507931	20100804	20110511	02	001
PRI	09506	0	313508053	20100827	20110131	02	001
PRI	09506	0	313509010	20101108	20110310	02	001
PRI	09506	0	313509655	20101227	00000000	02	001
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PRI	09506	0	314547498	20110711	20110922	02	001
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PRI	09506	0	314547704	20110527	20110714	02	001

*****TOTAL ***** 52

MEASURE NUMBER: 13

MEASURE 13

PAGE 1

REPORT-ID	ACT-NR	DISP-DATE	DISP-CODE	DISP-LEVEL
0950600	001752054	20101101	D	R
0950600	001753789	20101103	D	R
0950600	001753797	20101025	D	R
0950600	001752260	20101104	D	R
0950600	001641216	20101109	D	R
0950600	001686443	20101029	L	R
0950600	001763952	20101112	D	R
0950600	001637727	20101117	D	R
0950600	001723592	20101201	D	R
0950600	001733070	20101201	D	R
0950600	001688613	20101213	D	R
0950600	001561414	20101220	D	R
0950600	001763960	20101220	D	R
0950600	001764877	20101220	D	R
0950600	001562453	20101101	D	R
0950600	001596485	20101224	D	R
0950600	001763846	20101223	D	R
0950600	001561380	20101230	D	R
0950600	001564541	20101230	D	R
0950600	001721745	20101230	D	R
0950600	001741222	20101230	D	R
0950600	001711605	20101122	D	R
0950600	001580836	20110107	D	R
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0950600	001738590	20110124	D	R
0950600	001703669	20101103	D	R
0950600	001741644	20101230	D	R
0950600	001751155	20110214	D	R
0950600	001770940	20110214	D	R
0950600	001760743	20110225	D	R
0950600	022582258	20101230	D	R
0950600	001750165	20110124	D	R
0950600	001770916	20110318	D	R
0950600	022565436	20110318	D	R
0950600	022592299	20110222	D	R
0950600	022582175	20110401	D	R
0950600	001770858	20110302	D	R
0950600	022563639	20110302	D	R
0950600	022580666	20110503	W	R

0950600	022563647	20110318	D	R
0950600	001770833	20110608	L	R
0950600	001757871	20110613	D	R
0950600	001716125	20110309	D	R
0950600	001725506	20110622	D	R
0950600	001726702	20110624	D	R
0950600	001762616	20110624	D	R
0950600	001770825	20110309	D	R
0950600	022578819	20110622	D	R
0950600	022563571	20110709	D	R
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0950600	001709880	20110709	L	R
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0950600	022596530	20110726	D	R
0950600	001767177	20110608	D	R

MEASURE NUMBER: 13 MEASURE 13

PAGE 2

REPORT-ID	ACT-NR	DISP-DATE	DISP-CODE	DISP-LEVEL
0950600	001756527	20110622	D	R
0950600	022578801	20110902	D	R
0950600	001763838	20110912	D	R
0950600	001770890	20110707	D	R
0950600	022591432	20110912	D	R
0950600	001672559	20110916	D	R
0950600	022591408	20110919	D	R
0950600	022591382	20110926	D	R
0950600	022592471	20110919	D	R
0950600	022596522	20110926	D	R
0950600	022563597	20110721	D	R
0950600	022599153	20110726	D	R

*****TOTAL ***** 68

MEASURE NUMBER: 14 MEASURE 14

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REPORT-ID	ACT-NR	DISP-DATE	DISP-CODE	DISP-LEVEL
0950600	001752054	20101101	D	R
0950600	001753789	20101103	D	R
0950600	001753797	20101025	D	R
0950600	001752260	20101104	D	R
0950600	001641216	20101109	D	R
0950600	001686443	20101029	L	R
0950600	001763952	20101112	D	R
0950600	001637727	20101117	D	R
0950600	001723592	20101201	D	R
0950600	001733070	20101201	D	R
0950600	001688613	20101213	D	R
0950600	001561414	20101220	D	R
0950600	001763960	20101220	D	R
0950600	001764877	20101220	D	R
0950600	001562453	20101101	D	R
0950600	001596485	20101224	D	R
0950600	001763846	20101223	D	R
0950600	001561380	20101230	D	R
0950600	001564541	20101230	D	R
0950600	001721745	20101230	D	R
0950600	001741222	20101230	D	R
0950600	001711605	20101122	D	R
0950600	001580836	20110107	D	R
0950600	001762632	20101220	D	R
0950600	001738590	20110124	D	R
0950600	001703669	20101103	D	R
0950600	001741644	20101230	D	R
0950600	001751155	20110214	D	R
0950600	001770940	20110214	D	R
0950600	001760743	20110225	D	R
0950600	022582258	20101230	D	R

0950600	001750165	20110124	D	R
0950600	001770916	20110318	D	R
0950600	022565436	20110318	D	R
0950600	022592299	20110222	D	R
0950600	022582175	20110401	D	R
0950600	001770858	20110302	D	R
0950600	022563639	20110302	D	R
0950600	022580666	20110503	W	R
0950600	022563647	20110318	D	R
0950600	001770833	20110608	L	R
0950600	001757871	20110613	D	R
0950600	001716125	20110309	D	R
0950600	001725506	20110622	D	R
0950600	001726702	20110624	D	R
0950600	001762616	20110624	D	R
0950600	001770825	20110309	D	R
0950600	022578819	20110622	D	R
0950600	022563571	20110709	D	R
0950600	022578405	20110504	D	R
0950600	001755586	20110718	L	R
0950600	022582209	20110718	D	R
0950600	001709880	20110709	L	R
0950600	001724988	20110726	D	R
0950600	022596530	20110726	D	R
0950600	001767177	20110608	D	R

MEASURE NUMBER: 14

MEASURE 14

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REPORT-ID	ACT-NR	DISP-DATE	DISP-CODE	DISP-LEVEL
0950600	001756527	20110622	D	R
0950600	022578801	20110902	D	R
0950600	001763838	20110912	D	R
0950600	001770890	20110707	D	R
0950600	022591432	20110912	D	R
0950600	001672559	20110916	D	R
0950600	022591408	20110919	D	R
0950600	022591382	20110926	D	R
0950600	022592471	20110919	D	R
0950600	022596522	20110926	D	R
0950600	022563597	20110721	D	R
0950600	022599153	20110726	D	R
	000000000	000000000		

*****TOTAL ***** 69

MEASURE NUMBER: 15

MEASURE 15

PAGE 1

REPORT-ID	ACT-NR	DISP-DATE	DISP-CODE	DISP-LEVEL
0950600	001686443	20101029	L	R
0950600	001770833	20110608	L	R
0950600	001755586	20110718	L	R
0950600	001709880	20110709	L	R

*****TOTAL ***** 4

\$\$EOF SPXREC

Appendix E—2011 State Indicator Report (SIR)

QQQQ Q SIR Q4SIR06 SIR06 111011 111829 PROBLEMS - CALL H 202 693-1734

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OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2011

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)								
1. PROGRAMMED INSPECTIONS (%)								
A. SAFETY	3694	401	8169	1030	18137	2085	40070	4833
	61.3	27.2	61.4	33.4	62.5	35.2	63.7	39.5
	6026	1475	13312	3084	29042	5920	62876	12237
B. HEALTH	480	46	1020	83	2126	100	4357	447
	39.7	7.1	36.4	8.2	34.6	6.6	34.7	15.4
	1208	645	2806	1017	6150	1507	12569	2897
2. PROGRAMMED INSPECTIONS WITH VIOLATIONS (%)								
A. SAFETY	3378	300	7266	742	14959	1495	32614	3263
	73.7	51.0	72.4	53.1	70.1	54.1	69.1	53.5
	4583	588	10036	1398	21330	2765	47196	6102
B. HEALTH	456	31	890	43	1723	92	3487	336
	57.0	64.6	57.2	64.2	56.2	58.6	55.3	50.6
	800	48	1555	67	3068	157	6309	664
3. SERIOUS VIOLATIONS (%)								
A. SAFETY	11703	547	23768	1104	48704	2125	109064	4485
	79.6	20.4	77.4	18.5	76.7	17.3	78.4	17.6
	14698	2679	30703	5982	63528	12260	139117	25528
B. HEALTH	2634	38	5290	79	10266	207	21598	429
	66.6	4.8	64.7	5.9	64.4	7.8	66.7	8.2
	3957	798	8180	1329	15930	2646	32380	5209

4. ABATEMENT PERIOD FOR VIOLS

	2394	29	4978	60	10776	148	23693	358
A. SAFETY PERCENT >30 DAYS	16.6	5.3	16.8	5.4	17.9	7.0	17.9	8.0
	14465	547	29573	1104	60243	2125	132414	4485
	259	0	711	0	1451	1	3159	1
B. HEALTH PERCENT >60 DAYS	6.5	.0	8.6	.0	9.4	.5	10.0	.2
	4006	38	8234	79	15507	207	31619	429

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OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2011

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

	505479	1022981	1258835	2214343	2803637	4603058	5086228	9287449
OTHER-THAN-SERIOUS	1181.0	500.2	1195.5	472.2	1126.9	477.0	1055.2	473.3
	428	2045	1053	4689	2488	9650	4820	19624

B. HEALTH

	219203	258840	441915	405060	853346	788455	1667151	1569658
OTHER-THAN-SERIOUS	1184.9	347.9	1077.8	333.4	980.9	333.7	958.7	344.1
	185	744	410	1215	870	2363	1739	4562

6. INSPECTIONS PER 100 HOURS

	6874	1715	15417	3659	33850	6971	73070	14584
A. SAFETY	6.0	2.9	5.6	3.1	5.5	3.0	5.4	3.2
	1138	586	2730	1182	6145	2288	13476	4570
	1458	794	3330	1281	7311	1935	14958	3676
B. HEALTH	2.4	5.2	2.2	4.2	2.2	3.3	2.0	3.1
	615	153	1501	307	3390	590	7404	1180

7. VIOLATIONS VACATED %	1270	23	3026	47	6577	86	12352	271
	5.6	.9	6.6	1.0	7.0	.9	6.2	1.5
	22608	2543	46128	4805	93448	9205	200310	18488
8. VIOLATIONS RECLASSIFIED %	737	10	1997	30	4456	72	9147	300
	3.3	.4	4.3	.6	4.8	.8	4.6	1.6
	22608	2543	46128	4805	93448	9205	200310	18488
9. PENALTY RETENTION %	19478404	1213684	40012395	2298399	77322520	4839845	134938244	10579792
	61.0	62.0	61.6	60.7	62.8	59.5	62.8	57.4
	31918969	1959022	65001782	3788450	123124542	8138205	214845679	18424963

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OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2011

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	401	10	1030	19	2085	33	4833	100
	27.2	15.6	33.4	12.9	35.2	10.9	39.5	15.5
	1475	64	3084	147	5920	303	12237	644
B. HEALTH	46	1	83	1	100	4	447	15
	7.1	1.9	8.2	.8	6.6	1.6	15.4	3.2
	645	54	1017	126	1507	244	2897	476
2. SERIOUS VIOLATIONS (%)								
A. SAFETY	547	22	1104	31	2125	42	4485	103
	20.4	19.1	18.5	11.8	17.3	10.0	17.6	13.7
	2679	115	5982	262	12260	420	25528	753
B. HEALTH	38	3	79	13	207	31	429	61
	4.8	7.7	5.9	15.5	7.8	15.4	8.2	12.9
	798	39	1329	84	2646	201	5209	473

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2011

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 %	579	116	1131	266	2220	572	4270	1347
	22.8	9.7	23.4	10.8	23.5	10.8	23.0	11.4
	2542	1197	4834	2456	9442	5276	18586	11815
2. VIOLATIONS RECLASSIFIED %	328	90	620	206	1259	464	2360	1164
	12.9	7.5	12.8	8.4	13.3	8.8	12.7	9.9
	2542	1197	4834	2456	9442	5276	18586	11815
3. PENALTY RETENTION %	3616720	1028785	9500018	2258123	16062961	4935379	28079915	10754300
	56.1	42.5	62.4	39.8	62.3	39.3	60.6	39.1
	6443756	2420251	15212620	5672199	25766759	12562101	46371522	27487850

Appendix F—FY 2011 State OSHA Annual Report (SOAR)

(Available Separately)

**Appendix G
California State Plan
FY 2011 23(g) Consultation Activity**

	CA Public Sector	Total State Plan Public Sector
Requests	42	1,328
<i>Safety</i>	22	576
<i>Health</i>	15	560
<i>Both</i>	5	192
Backlog	8	123
<i>Safety</i>	2	51
<i>Health</i>	4	58
<i>Both</i>	2	14
Visits	37	1,632
<i>Initial</i>	36	1,336
<i>Training and Assistance</i>	-	175
<i>Follow-up</i>	1	121
<i>Percent of Program Assistance</i>	94%	67%
<i>Percent of Initial Visits with Employee Participation</i>	100%	96%
Employees Trained	92	5,030
<i>Initial</i>	92	2,144
<i>Training and Assistance</i>	-	2,886
Hazards	162	6,063
<i>Imminent Danger</i>	-	3
<i>Serious</i>	29	4,804
<i>Other than Serious</i>	117	1,171
<i>Regulatory</i>	16	85
<i>Referrals to Enforcement</i>	-	6
Workers Removed from Risk	7,567	171,075
<i>Imminent Danger</i>	-	55
<i>Serious</i>	1,424	136,884
<i>Other than Serious</i>	5,486	26,046
<i>Regulatory</i>	657	8,090

Source: DOL-OSHA. 23(g) Public & Private Consultation Reports, 11.29.2011.