

California

FY2009 Enhanced FAME Report - Corrective Action Plan Summary Sheet

Rec#	Findings	Recommendation	State Response/Corrective Action	Interim Steps with Due Dates	Documentation Required with Due Dates	Outcome Measure	Completion Date	Status (to be tracked and updated by Region)
Cal 1 (OSHA 7)	Cal/OSHA's Program Targeting System is not identifying industries where serious hazards are more likely to exist.	Re-evaluate the targeting system and the focus of enforcement resources to ensure that programmed inspections are being conducted at establishments where serious hazards are most likely to exist.	After a review of the inspection conducted during FY 2009, it is clear that many of the inspections should not have been coded as Programmed Inspections and should have been identified as an Un-programmed activity (i.e. monitoring and follow-up). For example: Cal/OSHA's programmed inspection activity for the manufacturing industry in SIC: 2011 through 3999 reflects that Cal/OSHA's scheduling system is identifying the establishments with safety and health concerns. Within the manufacturing SICs, 591 inspections were conducted in FY 2009 - 100% of the inspections in this category resulted in citations and 59.8% of the inspections were serious, repeat or FTA. The average violations cited per inspection was 5.7 with an average penalty of \$1,570.90.	Cal/OSHA is currently providing guidance to the enforcement staff on properly coding inspections to better reflect Cal/OSHA's statistics for programmed inspections.	Copy of policies and memo to Cal/OSHA staff that clarifies the proper coding for programmed (versus unprogrammed) inspections due July 1, 2011.	IMIS data will better reflect Cal/OSHA's programmed inspection activities.	Ongoing.	Awaiting confirmation that all appropriate Cal/OSHA staff have been notified and trained in coding programmed (versus unprogrammed) inspections. Subject to further Federal review and monitoring.
Cal 2 (OSHA 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 accidents reports are being evaluated and classified appropriately in order to improve accident lapse time.	These findings will be reviewed with staff to emphasize the importance of proper data entry and quality assurance reviews of data entry will be initiated.	Cal/OSHA is currently providing training to enforcement staff to ensure that the Cal/OSHA 36 reflects the correct date of notification of the fatality versus the date the fatality occurred as well as training Managers on utilizing IMIS tracking reports to ensure that data entry errors are identified and corrected when discovered.	Copy of revised policies and training curriculum in regards to date of fatality notification versus date of fatality as well as a list of all personnel trained due July 1, 2011.	FAT/CAT Tracker will more accurately reflect the status of Cal/OSHA's fatality investigations.	Ongoing.	After further review, Cal/OSHA's IMIS data supports this finding; however, the problem was primarily data entry errors. Awaiting confirmation that all appropriate Cal/OSHA staff have been notified and trained in regards to properly tracking fatality data. Subject to further Federal review and monitoring.
Cal 3 (OSHA 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 the employer response pending.	Ensure that complaint IMIS reports are updated and accurate so that they can assist with properly managing the complaint process and ensure that the Employer Response Due report and Complaint Response Log are regularly updated and cases are followed up on to ensure proper response was received.	As a corrective measure for the first issue, Cal/OSHA will give strong consideration to responding to lower priority formal complaints (i.e. those involving non-serious hazards) by conducting an investigation that does not include onsite inspection. This should reduce the onsite inspection workload, resulting in increased ability to ensure timely onsite inspection for higher priority complaints. This proposal will be vetted with stakeholders. Regarding the second issue, we will review these findings with our management staff to reiterate their responsibility and write a memorandum to district managers making it clear they are responsible to ensure it is accomplished. A file review audit procedure will be implemented to review performance.	Cal/OSHA is currently training managers on running and utilizing complaint tracking reports to manage their complaints.	Copy of revised policies and training curriculum in regards to complaint tracking reports as well as a list of all personnel trained due July 1, 2011.	The Complaint Response Log and Complaint Query will more accurately reflect the status of Cal/OSHA's complaint inspections.	Ongoing.	Cal/OSHA's policy for who can file a formal complaint is the same as Federal OSHA; however, under Cal/OSHA's policy a formal complaint does not need to be signed. Also, under Cal/OSHA's complaint policy, all formal complaints require an inspection. Cal/OSHA will review the IMIS deficiencies with their managers to ensure proper IMIS entries. Awaiting confirmation that all appropriate Cal/OSHA staff have been trained on utilizing Complaint Tracking Reports. Also, Cal/OSHA is reviewing the need to amend their current policy for complaint processing. Subject to further Federal review and monitoring.
Cal 4 (OSHA 22)	Complaint Letters G and H are not being consistently entered in the database.	Ensure that appropriate G and H notification letters are entered and being sent to all complainants.	District and Regional Offices will review IMIS reports monthly to ensure that the letters are being sent and entered in IMIS. Further, IMIS Coordinators will be instructed to provide 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.	Cal/OSHA is now entering this data into IMIS as well as providing training to Managers on available IMIS reports for tracking this information.	Copy of revised training policies and curriculum in regards to IMIS tracking reports as well as a list of all personnel trained due July 1, 2011.	Improved timely response to complainants.	Ongoing.	Awaiting confirmation that all appropriate Cal/OSHA staff have been trained on utilizing IMIS Tracking Reports. Subject to further Federal monitoring and review.

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Cal 5 (OSHA 45)	There are substantive gaps in training noted for new hires. Staff members hired as of December 2008 are not scheduled to take the Initial Compliance Course until February 2010. None of Cal/OSHA's VPP staff has attended the OTI Course #2450 Evaluation and Safety and Health Management Systems (SHMS). DLSE investigators and team leaders have not attended the Basic Whistleblower training course.	Ensure staff members receive appropriate training such as the Initial Compliance Course; OTI Course #2450 Evaluation of Safety and Health Management Systems (SHMS) as required by TED 01-00-018, Appendix C and CSP 03-01-003, pages 59-60; or equivalent; and ensure DLSE investigators and team leaders attend the Basic Whistleblower training course or equivalent.	Cal/OSHA has initiated its own training curriculum with the same subject matter as Federal OSHA. Three Accident Investigation classes have already been conducted with 4 additional classes scheduled for Jan. 2011. Three classes of Investigative Interviewing Techniques were conducted in the month of September 2010, and 2 additional classes will be scheduled in the Nov./Dec. 2010 timeframe. Inspection Techniques and Legal Aspects; the Division plans one class per quarter from Oct. 2010 through Sept. 2012. Once mandatory courses have been presented, then 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.	Cal/OSHA is currently training their compliance personnel with similar curriculum listed under the Federal Directive TED 01-00-018 Initial Training Program for OSHA Compliance Personnel.	Cal/OSHA's revised training policies and curriculum in response to the Federal Program Change entitled "TED 01-00-018 Initial Training Program for OSHA Compliance Personnel" due April 1, 2011.	Establishment of a Training Program for all new compliance personnel.	Ongoing.	Awaiting copy of revised training policies and curriculum in regards to Cal/OSHA's Training Program for Compliance Personnel. Subject to further Federal review and monitoring.
Cal 6 (OSHA 46)	Cal/OSHA has not established curriculum of core courses that all CSHOs are required to take and could not provide a complete list of courses offered as classes are not scheduled on a regular basis. A review of the courses revealed a lack of consistency and appropriate length in comparison to TED 01-00-018 Initial Training Program for OSHA Compliance Personnel.	Establish a curriculum of core courses for newly hired compliance officers that are equivalent to Federal OSHA (TED 01-00-018 Initial Training Program for OSHA Compliance Personnel). Ensure that training is scheduled on a regular and timely basis and that course curriculums are equivalent to OSHA OTI courses in quality, content, and length. Need to develop a course equivalent to OTI courses 2000 Construction Standard, 2450 Evaluation of Safety and Health Management, multi-disciplinary courses (e.g. OTI course #1280 Safety Hazard Awareness for Industrial Hygienists and #1080 Health Hazard Awareness for Safety Officers), and 8200 Incident Command System.	Cal/OSHA has initiated its own training curriculum with the same subject matter as Federal OSHA. Three Accident Investigation classes have already been conducted with 4 additional classes scheduled for Jan. 2011. Three classes of Investigative Interviewing Techniques were conducted in the month of September 2010, and 2 additional classes will be scheduled in the Nov./Dec. 2010 timeframe. Inspection Techniques and Legal Aspects; the Division plans one class per quarter from Oct. 2010 through Sept. 2012. Once mandatory courses have been presented, then 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.	Cal/OSHA is currently training their compliance personnel with similar curriculum listed under the Federal Directive TED 01-00-018 Initial Training Program for OSHA Compliance Personnel.	Cal/OSHA's revised training policies and curriculum in response to the Federal Program Change entitled "TED 01-00-018 Initial Training Program for OSHA Compliance Personnel" due April 1, 2011.	Establishment of a Training Program for all new compliance personnel.	Ongoing.	Awaiting copy of revised training policies and curriculum in regards to Cal/OSHA's Training Program for Compliance Personnel. Subject to further Federal review and monitoring.
Cal 7 (OSHA 8)	Cal/OSHA's policy on classifying violations does not ensure violations that would be considered "Serious" under the Federal FOM are classified as Serious.	Adopt Violation Classification policies and procedures equivalent to Federal OSHA regarding descriptions on Supporting "Serious" Classification (Federal FOM, page 4-10 to 4-11), supporting "Willful" violations (Federal FOM, page 4-30 to 4-32), and combining/grouping violations (Federal FOM, page 4-37 to 4-39).	California will continue to ensure its program is "at least as effective as OSHA's." California enacted AB 2774 on September 30, 2010 which statutorily re-defines a serious violation and prescribes standards for the investigation and resolution of these violations. Cal/OSHA will develop procedures to implement AB 2774 so that it will be enforced starting on the date it takes effect (January 1, 2011).	In January 2011, Managers and compliance officers were trained on the elements of AB 2774.	Cal/OSHA's revised policies that would allow AB 2774 to be enforced due July 1, 2011.	Improved supporting documentation for serious hazards.	Ongoing.	Awaiting revised policies in regards to enforcing AB 2774. Subject to further Federal review and monitoring.

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Cal 8 (OSHA 26)	Cal/OSHA's evaluation and adoption of Federal Program Changes has not been timely. Cal/OSHA has not adopted both the Employer Payment for Personal Protective Equipment, Final Rule, published November 15, 2007 and the Clarification of Employer Duty to Provide Personal Protective Equipment and Train Each Employee, published December 12, 2008. They adopted the Final Rule on Electrical Installation Requirements 29 CFR 1910 Subpart S effective February 18, 2010; they were two and a half years late adopting this rule. In addition, Cal/OSHA has not submitted a supplement in response to CPL 02-00-148 2009, Field Operations Manual.	Implement measures to ensure that new Federal Program Changes are evaluated and adopted in a timely manner as per 29 CFR 1953.4(b)(1) and (b)(3).	The DOSH Program Office will notify the Deputy Chief and Special Assistant whenever a new Federal Program Change is received. The new FPCs will be discussed at least monthly at managers meetings to determine the scope and extent of the responses. The Program office will maintain a Federal Program Change log to track activity in this area.	Cal/OSHA has developed a new tracking system for federal program changes in an attempt to ensure that they are adopted and/or responded to within the allotted timeframe. Cal/OSHA has initiated a proactive approach to adoption on new Federal standards, which initiates a regulatory adoption process before the Federal standard becomes effective.	Confirmation that Cal/OSHA staff has been assigned to track Federal Program Changes due December 1, 2011.	Cal/OSHA will respond more timely to all Federal Program Changes.	10-Nov-10	Subject to further Federal review and monitoring.
Cal 8 (OSHA 26) cont.	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.							
Cal 9 (OSHA 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.	Cal/OSHA will hire additional staff to fill vacant positions consistent with budgetary restrictions. Cal/OSHA will adjust staffing levels as appropriate within the constraints and limitations imposed by the California Legislature and Administration.	Opened a new Enforcement field office in Bakersfield, California. Due to hiring restrictions, the office is filled with current Enforcement staff and will be filled with new staff once the hiring freeze is lifted.	Updated Staffing chart to reflect current filled and vacant positions due July 1, 2011.	Increased inspection activity once new staff is hired and trained.	Ongoing.	Governor Jerry Brown has implemented a State-wide hiring freeze, 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/fire). Action is ongoing--Federal OSHA will continue to monitor hiring restrictions.
Cal 10 (OSHA 10)	Employee representatives were not always afforded the opportunity to participate in all phases of the workplace inspection.	Ensure union representatives are presented the opportunity to participate in every aspect of the inspection and keep them informed as required in the Cal/OSHA Policies and Procedures Manual. If unions choose not to participate in the inspection, ensure it is documented.	These policies are to be part of Cal/OSHA's ongoing training and refresher training. In addition, Cal/OSHA's Quality Assurance Unit will include this issue as part of its ongoing evaluation of files.	Cal/OSHA has re-emphasized this requirement, as well as outlined it in their policies and procedures, and has discussed this will all Managers and compliance officers.	Copy of Cal/OSHA's policies in regards to union participation as well as a confirmation memo that appropriate Cal/OSHA staff were notified of these policies.	N/A	Ongoing.	Awaiting confirmation that all appropriate Cal/OSHA staff were trained in regards to union participation during inspections as well as copy of Cal/OSHA's policies on union participation. Subject to further Federal review and monitoring.
Cal 11 (OSHA 16)	There were 209 Serious/Willful/Repeat (S/W/R) violations identified in the SAMM Report that were not abated timely.	Develop a tracking system to ensure all violations are abated timely and/or ensure abatement data is accurately entered into IMIS.	Cal/OSHA is conducting its own review of this issue and will report to OSHA on its' findings when complete. We will also use training and quality assurance review to emphasize the issue of verifying abatement in a timely manner and making sure IMIS data reflects this.	Cal/OSHA managers and compliance officers are currently being trained on the importance of issuing citations to employers who fail to provide abatement certification.	Complete SAMM Exceptions spreadsheet quarterly, explaining why each S/W/R violation was not abated timely.	Decrease in number of SAMM exceptions.	Ongoing.	Federal OSHA will continue to monitor SAMM Exceptions and request additional information from Cal/OSHA as appropriate.

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Cal 12 (OSHA 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 Conferences," 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 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.	Cal/OSHA will review policy for informal conferences with their managers.	Cal/OSHA will review their policy for informal conferences and provide a current copy to Federal OSHA for review.	Copy of Cal/OSHA's current policies in regards to informal conferences due July 1, 2011.	Increase informal conferences and decrease in appeals.	Ongoing.	Federal OSHA recognizes that this finding did not fully reflect Cal/OSHA's appeals procedures - Cal/OSHA to submit copy of their current policies for second review by Federal OSHA. Awaiting copy of Cal/OSHA's policies in regards to Informal Conferences. Subject to further Federal review and monitoring.
Cal 13 (OSHA 19)	Cal/OSHA does not receive accurate and up to date information on the status of outstanding penalties from the DIR Accounting Office. Penalties are not being effectively collected and those that are no longer collectible are not being identified and removed from the system in a timely manner.	Assure that the DIR Accounting Office is providing information on penalty payments and update the details in IMIS. Ensure that penalties are either effectively collected and identify those cases where penalties are no longer collectible in order to reduce the high number of old cases in the system.	Cal/OSHA recognizes that penalty payments are not being captured into the IMIS database. Cal/OSHA will develop a procedure with DIR Accounting to ensure this information is captured.	N/A	"Trigger" date for Debt Collection and copy of Cal/OSHA's policies that will ensure debt collection information is properly monitored and recorded due July 1, 2011.	IMIS Report, entitled "Open Inspections" tracker, will show less outstanding penalties.	Ongoing.	Upon implementation of OIS in Region 9 on May 30, 2011, Federal OSHA will work with DIR Accounting and Cal/OSHA to develop policies for inputting this data. Subject to further Federal review and monitoring.
Cal 14 (OSHA 20)	The 15-day "due date" following issuance of the citations on the Debt Collection report is not entered. This date is important for tracking appeals.	Ensure that the 15-day due date for all issued citations is tracked.	Cal/OSHA will look into whether there is any useful function to entering this information in IMIS given its current tracking system. If there is, instructions to begin entering this data into IMIS will be issued.	Cal/OSHA recognizes that this data is not being entered into the IMIS. This issue will require further discussion and development of policies to ensure citation issuance data is provided to DIR accounting so that this can be appropriately tracked.	Copy of Cal/OSHA's policies that will ensure citation issuance data is provided to DIR accounting for appropriate tracking due July 1, 2011.	N/A	Ongoing.	Upon implementation of OIS in Region 9 on May 30, 2011, Federal OSHA will work with DIR Accounting and Cal/OSHA to develop policies for inputting this data. Subject to further Federal review and monitoring.
Cal 15 (OSHA 27)	State initiated rulemaking that promulgated a standard on Bakery Ovens that was deemed not to be at least as effective as Federal OSHA standards.	Ensure standards are at least as effective as Federal OSHA standards and initiate actions to update deficient standards.	Cal/OSHA does not agree with this finding and will continue current standard.	The Area Office is in the process of sending a response letter advising the State that the Area Office's position is still that they are not ALAEA and also advising the State that if they don't agree with the Area Office position, they can appeal to the Regional Office.	N/A	N/A	Ongoing.	OSHA review is continuing.
Cal 16 (OSHA 37)	The Cal/VPP program does not require a Medical Access Order (MAO) or equivalent to review establishments' medical records.	Adopt MAO procedures and have the employer post it prior to the on-site visit.	Continue current policy.	Cal/OSHA revised their VPP policies to include requiring a MAO to review establishments' medical records.	Copy of Cal/OSHA's revised VPP policies due February 23, 2011.	N/A	Ongoing.	Federal OSHA received Cal/OSHA's revised policies on February 18, 2011 and is currently reviewing it. Concurrence and/or comments to revised policies is anticipated to be sent to Cal/OSHA on March 15, 2011.

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Cal 17 (OSHA 38)	Budgetary constraints, including 3 days a month furloughs and hiring freezes, are potentially impacting Cal/OSHA's ability to provide effective enforcement coverage at workplaces throughout the State, during regular working hours and in response to emergencies.	Cal/OSHA must ensure that it has sufficient on-board staff available to provide effective worker protection.	Continue current policy.	Cal/OSHA general staff have three furlough days per month and Managers have one floating furlough day per month. Despite current budgetary constraints, Cal/OSHA will ensure that they respond to any and all emergencies.	N/A	N/A	Ongoing.	Federal OSHA will continue to monitor.
Cal 18 (OSHA 43)	Indirect cost rates were incorrectly applied and are not allowable costs to the grant.	Ensure that the correct indirect cost rate is properly applied to the costs associated with the appropriate period of the fiscal year. Ensure that expenditures posted to the general ledger are listed individually with as much detail as possible.	Cal/OSHA believes this issue has been resolved in discussions with Region 9 OSHA representatives.	Cal/OSHA has implemented procedures to ensure that Indirect costs are properly implemented.	N/A	Copy of Cal/OSHA's revised procedures in regards to Indirect costs due April 1, 2011.	Ongoing.	Awaiting copy of Cal/OSHA's revised procedures in regards to Indirect costs. Federal OSHA will continue to monitor expenditures.
Cal 19 (OSHA 2)	The Cal/OSHA Policy and Procedures Manual does not address elements that are required in the complaint process.	Adopt policies and procedures equivalent to Federal OSHA to include the following: E-Complaints Procedures (Federal FOM, page 9-2 and 9-5 to 9-7), the Handling/Processing of Referrals from Other Agencies (Federal FOM, page 9-2), Scheduling an Inspection of an Employer in an Exempt Industry (Federal FOM, page 9-5), Union Reference (Federal FOM, page 9-11), Complaint Questionnaire (Federal FOM, page 9-17 to 9-20), and the five-day requirement for employer to submit written results of an investigation (Federal FOM, page 9-11).	The DOSH policies and procedures C-7 addresses the Handling/Processing of Referrals from Other Agencies. However, DOSH policies and procedures C-7 will be modified to include Electronic Complaints Procedures, the Union Reference and the Five-day requirement (instead of the 14 days) in Section F.c.(2), and to insert a copy of Form 7 in that document.	Cal/OSHA held a special advisory committee meeting on February 18, 2011 where they presented Federal OSHA FOM, Chapter 9 requirements to their stakeholders. Cal/OSHA is currently in discussion with stakeholders to implement revised policies similar to Federal OSHA.	Copy of Cal/OSHA's revised policies in regards to Electronic Complaints, Union Reference and the Five-day requirement (instead of the 14 days) as well as insert a copy of Form 7 due July 1, 2011.	Decrease in number of E-complaints Cal/OSHA is alleged to have not responded to.	Ongoing.	Awaiting Cal/OSHA's revised policies in regards to E-Complaints, Union Reference, and Five-day requirement and a copy of Form 7. Subject to further Federal review and monitoring.
Cal 20 (OSHA 9)	When determining Repeat Violations, Cal/OSHA does not consider the employer's enforcement history statewide. Instead, employer history is only considered within each of the six regions (refer to Cal/OSHA's policies and procedures C-1B, page 14).	Consider employer history statewide when citing Repeat violations.	Cal/OSHA does consider the employer's enforcement history statewide for fixed employers sites. DOSH will undertake the process of engaging in rulemaking to propose modifying Title 8, Section 334(d)(1) to make repeat violation evaluation based on a statewide basis.	All DOSH Managers and compliance officers were instructed on this policy.	Copy of Cal/OSHA's revised policies in regards to considering enforcement history Statewide due July 1, 2011.	Increase in Repeat and Willful violations and/or employer compliance with State standards.	Ongoing.	Federal OSHA will continue to monitor.
Cal 21 (OSHA 18)	The percent of penalty retention during post-contest procedures has decreased since FY 2007 and the percent of violations 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 plans on amending its Policy and Procedure C-20, to emphasize the importance of holding the Informal Conference before the deadline for filing an appeal. The Division has created and will be augmenting an Internal Quality Assurance Unit that will conduct audits of District Office operations on various program and policy issues. Cases settled through Informal Conferences and post-appeal negotiations will be randomly reviewed for adherence to applicable regulations and procedures.	This item has been addressed with the Review Board, who held training for their ALJs in January 2011 in an effort to improve penalty retention.	Copy of Cal/OSHA's revised policies in regards to holding Informal Conferences before the deadline for filing an appeal due July 1, 2011.	N/A	Ongoing.	Awaiting Cal/OSHA's revised policies in regards to Informal Conferences. Subject to further Federal review and monitoring.

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Cal 22 (OSHA 34)	Applicants in the Cal/VPP are not disqualified for open enforcement investigations, contested citations, notices under appeal, or affirmed 11(c) violations that are unresolved or outstanding enforcement within the last three years.	Adopt Federal OSHA's specific "disqualifying" factors (CSP 03-01-003 VPP Policies and Procedures Manual, Chapter V).	Cal/OSHA agrees with this finding.	Cal/OSHA revised their VPP policies to include specific "disqualifying" factors.	Copy of Cal/OSHA's revised VPP policies due February 23, 2011.	N/A	Ongoing.	Federal OSHA received Cal/OSHA's revised policies on February 18, 2011 and is currently reviewing it. Concurrence and/or comments to revised policies is anticipated to be sent to Cal/OSHA on March 15, 2011.
Cal 23 (OSHA 36)	Detailed Specific Team Member qualifications are not required for participation in a Cal/VPP onsite investigation.	Adopt detailed qualifications for both the Team Leader and Special Team Member (STM) positions to ensure qualified personnel are reviewing potential VPP sites. (CSP 03-01-003, VPP Policies and Procedures Manual, Chapter VI).	Cal/OSHA did have qualifications and its personnel were qualified and trained. However, in response to this finding, Cal/OSHA has revised and adopted more detailed specifications for both the Team Leader and Special Team Member (STM) qualifications. These have been included in VPP policies and procedures D-64. We are also contemplating further specifications for level 1, 2 and 3 qualifications.	Cal/OSHA revised their VPP policies to include detailed specifications for STMs.	Copy of Cal/OSHA's revised VPP policies due February 23, 2011.	N/A	Ongoing.	Federal OSHA received Cal/OSHA's revised policies on February 18, 2011 and is currently reviewing it. Concurrence and/or comments to revised policies is anticipated to be sent to Cal/OSHA on March 15, 2011.
Cal 24 (OSHA 40)	Cal/OSHA failed to process the unpaid bills of 1,229, 548.69 before December 30. Also, after the end of the grant year closeout, DIR drew down FY 2009 funds on January 21, 2009 in the amount of \$1,201,656.98.	Ensure all bills are processed timely and closely monitor grant draw downs of funding to ensure grant funds are properly managed. Liquidate all obligations incurred under the award no later than 90 days after the end of the funding period.	Accounting policies and procedures have been revised and they will be communicated to appropriate personnel in DOSH. Accounting staff were not aware that funds also have to be withdrawn before December 30. The Accounting Procedure Manual has been revised to ensure that the final close out report is submitted and that federal funds are drawn down before December 30.	Cal/OSHA communicated to appropriate personnel to ensure all bills are processed timely and closely monitor grant draw downs of funding to ensure grant funds are properly managed. Cal/OSHA initiated steps to ensure the draw down of Federal funds by December 30 each year.	Copy of Cal/OSHA's revised accounting policies and procedures.	N/A	Ongoing.	Awaiting copy of Cal/OSHA's revised accounting policies. Subject to further Federal review and monitoring.
Cal 25 (OSHA 44)	A "Programmed Report Narrative" that describes in detail the ARRA activity for each quarter was not submitted in a timely fashion.	Submit all required ARRA reports in a complete and timely fashion.	DOSH submitted all ARRA reports as required by the ARRA grant. All have been timely with the exception of the first report.	N/A	N/A	N/A	30-Dec-10	ARRA Grant has been completed - no further action required.
Cal 26 (OSHA 5)	State 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 will review and update its policies and procedures relative to fatality cases.	Cal/OSHA is in the process of updating their policies and procedures, which was discussed at the last quarterly meeting on February 23, 2011.	Copy of Cal/OSHA's revised policies in regards to fatality cases due April 1, 2011.	N/A	Ongoing.	Awaiting copy of Cal/OSHA's revised policies in regards to fatality cases. Subject to further Federal review and monitoring.

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Cal 27 (OSHA 6)	Cal/OSHA has not updated its protocol 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 ASHIP and CSHIP protocols have been updated and distributed to Regional and District Managers. Regional enforcement goals have been discussed and implemented under each protocol. While there is no requirement in CA to update special emphasis protocols such as these annually, Cal/OSHA will make every effort to keep the written protocols current.	Updated ASHIP and CSHIP policies.	Copy of Cal/OSHA's updated ASHIP and CSHIP policies due July 1, 2011.	N/A	Ongoing.	Awaiting copy of Cal/OSHA's updated ASHIP and CSHIP policies. Subject to further Federal review and monitoring.
Cal 28 (OSHA 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.	N/A	Confirmation that all appropriate Cal/OSHA staff have been trained on reviewing the Referral Log on a regular basis to ensure that all referrals are handled timely.	N/A	Ongoing.	Federal OSHA will continue to monitor.
Cal 29 (OSHA 35)	Cal/VPP participants are not required to submit a new statement of commitment, signed by both management and any authorized collective bargaining agents, as appropriate within 60 days of a change.	Adopt Federal OSHA's "60-day" policy for submission of a new statement of commitment. (CSP 03-01-003, VPP Policies and Procedures Manual, page 49).	Cal/OSHA has revised and updated DOSH VPP policies and procedures D-64 to be consistent with the Federal policy referenced in this finding/recommendation. Cal/OSHA will meet the "at least as effective as" standard regarding a 60-day new statement of commitment recommendation.	Cal/OSHA revised their VPP policies regarding a 60-day new statement of commitment.	Copy of Cal/OSHA's revised VPP policies due February 23, 2011.	N/A	Ongoing.	Federal OSHA received Cal/OSHA's revised policies on February 18, 2011 and is currently reviewing it. Concurrence and/or comments to revised policies is anticipated to be sent to Cal/OSHA on March 15, 2011.
Cal 30 (OSHA 41)	The Standards Board and Appeals Board could not provide actual hours, timesheets or employment status at any given time for all employees.	Provide periodic certification of employment status for all employees.	DOSH Appeals Board and Standards Boards will provide periodic certifications of employment status for all employees.	N/A	N/A	N/A	31-Jan-11	Federal OSHA will continue to monitor.
Cal 31 (OSHA 42)	Travel costs in October 2009 (FY 2010) were paid with money from FY 2009 and some area office rent payments were erroneously charged to the current year grant funds and some funds are used improperly.	Ensure expenditures are paid with funds from that funding period and any miss-allocated expenditures should be reallocated to State matching funds or return the grant monies that were incorrectly allocated.	DIR's Accounting Procedures 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.	DIR revised Accounting Procedures Manual in regards to ensure that travel costs are reimbursed with funds from the proper periods.	Copy of revised Accounting Procedures Manual in regards to travel costs being reimbursed with funds from the proper fiscal periods due April 1, 2011.	N/A	Ongoing.	Awaiting copy of revised DIR's Accounting Procedures Manual. Federal OSHA will continue to monitor.
Cal 32 (OSHA 1)	In eleven 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, that initial notifications are made and all complainants are provided the results of their complaint in a timely manner. The DOSH policies and procedures C-7 has been updated, and all management and staff have received training in these requirements. Cal/OSHA will conduct routine quality assurance audits on an ongoing basis to ensure these requirements are regularly being met.	Cal/OSHA has emphasized to managers and compliance officers to ensure complaints are properly processed.	Copy of Cal/OSHA's policies and training curriculum in regards to utilizing tracking reports due July 1, 2011.	N/A	Ongoing.	Awaiting copy of Cal/OSHA's policies and training curriculum, as well as confirmation that all appropriate Cal/OSHA staff have been trained, in regards to utilizing IMIS tracking reports.

Rec#	Findings	Recommendation	State Response/Corrective Action	Interim Steps with Due Dates	Documentation Required with Due Dates	Outcome Measure	Completion Date	Status (to be tracked and updated by Region)
Cal 33 (OSHA 3)	Twenty-three of the 52 fatality inspections did not contain adequate information to determine whether Cal/OSHA communicated with the victim's family concerning the process and results of the investigations.	Ensure that family members of the fatality victim are contacted regarding the investigation and that all required correspondence is completed in a timely manner and documented in each case file.	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 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.	DOSH staff participated in a training session on September 27th 2010. This training was mandatory for all compliance personnel, District Managers, and Regional Managers. The requirement for communicating with victims families was made clear to all personnel during this training. A follow-up memo will be sent reminding staff of the language in our P&P regarding contact the victim's families. The same memo will outline a procedure for tracking such communication.	Copy of Cal/OSHA's policies and training curriculum in regards to contact with the victim's family as well as an outline for tracking such communication due July 1, 2011.	N/A	Ongoing.	Awaiting copy of Cal/OSHA's policies (including tracking communication) and training curriculum, as well as confirmation that all appropriate Cal/OSHA staff have been trained, in regards to tracking communication with victims' families. Subject to further Federal review and monitoring.
Cal 33 (OSHA 3) Con'td				Cal/OSHA has emphasized to managers and compliance officers to follow policies and procedures in regards to keeping family members apprised of Cal/OSHA activity during fatality investigations.				
Cal 34 (OSHA 4)	Two of the 52 fatality inspections were not initiated in a timely fashion and the reasons for the delay were not documented in the case file.	Ensure that Compliance Officers initiate fatality inspections timely after initial notification and that Compliance Officers communicate and document reasons for any delays in the case file.	Cal/OSHA 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 into the case file.	Copy of Cal/OSHA's policies and training curriculum in regards to entering fatality data into IMIS due July 1, 2011.	N/A	Ongoing.	Awaiting copy of Cal/OSHA's policies and training curriculum, as well as confirmation that all appropriate Cal/OSHA staff have been trained, in regards to properly entering fatality data into IMIS. Subject to further Federal review and monitoring.
Cal 35 (OSHA 11)	In fifty-eight 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).	Cal/OSHA will reinforce through training to ensure all personnel are clear on Cal/OSHA existing policies and procedures with regard to this item.	Cal/OSHA trained managers and compliance officers on properly documenting employer knowledge and employee interviews in accordance with AB 2774.	Copy of Cal/OSHA's revised policies and training curriculum in regards to conducting employee interviews due July 1, 2011.	Increase thoroughness of case file documentation.	Ongoing.	Awaiting copy of Cal/OSHA's policies and training curriculum, as well as confirmation that all appropriate Cal/OSHA staff have been trained, in regards to conducting employee interviews. Subject to further Federal review and monitoring.
Cal 36 (OSHA 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 cannot provide them, document it in the file and issue appropriate citations.	The DOSH P&P C-1A will be 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.	Cal/OSHA has emphasized collecting 300 logs to all Managers and compliance officers.	Copy of Cal/OSHA's revised policies and training curriculum in regards to requiring CSHOs to obtain copies of employer's 300 logs due July 1, 2011.	Increase thoroughness of case file documentation.	Ongoing.	Awaiting copy of policies and training curriculum, as well as confirmation that all managers were trained, in regards to obtaining 300 logs as well as copy of Cal/OSHA's revised policies. Subject to further Federal review and monitoring.

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Cal 37 (OSHA 13)	Twenty-eight of 157 case files lacked complete injury and illness descriptions and did not clearly describe the hazard or exposure. In 91 cases, photos did not always describe the violation, exposure, specific equipment/process, location, and employee job title (if applicable), the date and time of the picture and the inspection number.	Ensure that all aspects of the injury and illness documentation are included in the 1B or equivalent form to identify the hazard in enough detail to clearly describe the hazard or exposure. Ensure that photos identify the violation, exposure, specific equipment/process, location and employee job title (if applicable) and include the date and time of picture and the inspection number.	Cal/OSHA will ensure through training that these practices are reinforced to all personnel and quality assurance reviews will be performed.	Cal/OSHA trained all compliance officers and Managers on AB 2774, which addresses this issue.	Copy of Cal/OSHA's policies and training curriculum in regards to properly documenting case files for legal sufficiency due July 1, 2011.	Increase thoroughness of case file documentation.	Ongoing.	Awaiting copy of policies and training curriculum, as well as confirmation that all appropriate Cal/OSHA staff have been trained, in regards to properly documenting case files for legal sufficiency. Subject to further Federal review and monitoring.
Cal 38 (OSHA 14)	In 50 of 157 case files, narratives were either missing or lacked important details about what occurred during the inspection. And in 60 cases, diary sheets did not reflect inspection history.	Ensure that inspection narratives adequately describe the inspection and that diary sheets adequately reflect inspection activity including, but not limited to, opening conference date, closing conference date, supervisor review, telephone communications, and informal conference dates.	This issue will be addressed in ongoing training and quality assurance reviews will be performed.	Cal/OSHA is providing training to enforcement staff on properly documenting case files for legal sufficiency.	Copy of Cal/OSHA's policies and training curriculum in regards to properly documenting case files for legal sufficiency.	Increase thoroughness of case file documentation.	Ongoing.	Awaiting copy of Cal/OSHA's policies and training curriculum, as well as confirmation that all appropriate Cal/OSHA staff have been trained, in regards to properly documenting case files for legal sufficiency. Subject to further Federal review and monitoring.
Cal 39 (OSHA 15)	Exposure monitoring not conducted prior to issuing citations to employers in four health inspections.	Ensure that health inspectors conduct appropriate sampling to evaluate exposure and support violations. Ensure the information is properly entered into IMIS.	Cal/OSHA agrees with this finding.	Cal/OSHA emphasized requirement with Managers and compliance officers.	N/A	N/A	31-Jan-11	Federal OSHA will continue to monitor.
Cal 40 (OSHA 25)	The Citations Pending Report revealed that in three of the five offices, 19 cases have citations pending that are over 180 days old and in the four offices, of the 225 citations that have not been issued, 207 show either no opening or no closing date, the Unsatisfied Activity Report identified unsatisfied activity in four of the five offices.	Generate and Review a Citations Pending Report to monitor that citations are reviewed and issued in a timely manner. Generate and review the Unsatisfied Activity Report to identify outstanding activities which need to be scheduled for inspection.	Cal/OSHA agrees with this finding.	Cal/OSHA has emphasized to Managers and compliance officers the need to complete draft forms.	N/A	N/A	31-Jan-11	Federal OSHA to continue monitoring.
Cal 41 (OSHA 29)	Oral Complaints are not accepted and docketed in WB cases.	Accept and docket orally filed and e-mailed complaints in IMIS upon receipt and do not require a Complainant to submit a complaint in writing (Form 205) (DIS 0-0.9 Federal Whistleblower Manual, Chapter 7, Section V (A)).	DLSE has complied with this recommendation.	DLSE has implemented acceptance of oral complaints.	N/A	N/A	31-Jan-11	Federal OSHA to continue to monitor.

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Cal 42 (OSHA 31)	Complainant interviews were not conducted or documented in each case file and signed statements were not always obtained feasible. Interviews with all relevant witnesses, including management and third parties are not being interviewed.	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).	DLSE has committed to comply with this recommendation.	N/A	Documentation to support implementation of this finding.	N/A	Ongoing.	Federal OSHA to meet with DLSE on March 17, 2011 to determine progress. Subject to further Federal review and monitoring.
Cal 43 (OSHA 32)	Investigators do not conduct closing conferences with Complainants but should do so as per OSHA's whistleblower manual (see DIS 0-0.9, Ch. 3, Section J) and the equivalent of OSHA's Final Investigative Report or similar summary of relevant facts is not prepared for a WB case files.	Conduct closing conferences with Complainants as per DIS 0-0.9 Federal Whistleblower Manual, Chapter 3, Section J, and prepare a summary of relevant facts for case files that are signed and dated by both the Investigator and the evaluating Team Leader. (DIS 0-0.9 Federal Whistleblower Manual, Chapter 4, Section III, and Chapter 5, Section IV).	DLSE has committed to comply with this recommendation.	N/A	Documentation to support implementation of this finding.	N/A	Ongoing.	Federal OSHA to meet with DLSE on March 17, 2011 to determine progress. Subject to further Federal review and monitoring.
Cal 44 (OSHA 33)	DLSE presently does not prepare a "Summary" of Relevant Facts" or the equivalent of OSHA's Final Investigative Reports for their case files and should adopt the identical format prescribed in OSHA's whistleblower manual (see DIS 0-0.9, Ch. 4, Section III).	Prepare a Summary of Relevant Facts, or the equivalent of OSHA's Final Investigative Reports, for case files. The reports should be signed and dated by both the Investigator and the evaluating Team Leader. DLSE should adopt the identical format prescribed in the DIS 0-0.9 Federal Whistleblower Manual Chapter 4, Section III). Case files should be reviewed for accuracy and accountability regardless of the type of determination made.	DLSE has committed to comply with this recommendation.	N/A	Documentation to support implementation of this finding.	N/A	Ongoing.	Federal OSHA to meet with DLSE on March 17, 2011 to determine progress. Subject to further Federal review and monitoring.
Cal 45 (OSHA 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 3 and 4 2, Section IVB.2 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 (Retaliation Complaint Investigation Manual, Chapter 2).	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 reiterated to staff.	N/A	Documentation to support implementation of this finding.	N/A	Ongoing.	Federal OSHA to meet with DLSE on March 17, 2011 to determine progress. Subject to further Federal review and monitoring.

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Cal 46 (OSHA 28)	Of the 128 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(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). As of June 30, 2010 DLSE already achieved a 10% decrease in the time it took to complete an investigation.	Federal OSHA will continue to monitor DLSE on their timeliness.	N/A	N/A	Ongoing.	This issue continues to be a problem with DLSE in FY 2010 and 2011, which will be further discussed during Federal OSHA's meeting with DLSE on March 17, 2011. Subject to further Federal review and monitoring.

Cal/OSHA Appeals Board - Special Study

FY2009 Enhanced FAME Report - Corrective Action Plan Summary Sheet

Rec#	Findings	Recommendation	State Response / Corrective Action	Interim Steps with Due Dates	Documentation Required with Due Dates	Outcome Measure	Completion Date	Status (to be tracked and updated by Region)
1	In its decisions the Occupational Safety and Health Appeals Board (OSHAB) is not defining "serious hazard" or interpreting "substantial probability" consistent with Federal OSHA interpretations, Occupational Safety and Health Review Commission (OSHRC), and Court of Appeals decisions. The "more likely than not" construct used by OSHAB is not consistent with the intent of the OSH Act or the requirements of Section 18. A State Plan must provide a program of standards and enforcement that is at least as effective as the OSHA program.	The Division of Occupational Safety and Health (DOSH) must take appropriate action – administrative, judicial, or legislative – to ensure OSHA 's interpretation of "serious hazard" is consistent with and at least as effective as the Federal definition.	California enacted AB2774 on September 30, 2010 which statutorily re-defines a serious violation and prescribes standards for the investigation and resolution of these violations. This legislation represents the culmination of a dialog with stakeholders initiated by Cal/OSHA over two years ago about how to address differences between the California approach and the federal approach.	In January 2011 the Appeals Board conducted training for all their ALJ's concerning AB 2774 in effort to ensure the ALJ's are aware of the elements to support a serious violation.	Copy of the Policy or guidance documentation regarding the issuance of Serious citations. July 1, 2011 or as soon as they are issued.			This finding will be a focused item for further review in the FY2011 and FY2012 FAMES. OSHA will continue to track AB2774's impact on Cal/OSHA's rate of serious violations through those reporting periods. The full impact of AB 2774 will not be known until the end of FY 2011. Subject to further Federal review and monitoring.
2	Writs of Mandate on OSHAB Decisions and Decision After Reconsideration (DAR) that result in loss of citations, citation classifications, or penalties are not being filed by DOSH in many cases where warranted.	DOSH must select sufficiently strong cases for appeal that would set precedent to challenge OSHAB decisions and practices regarding the classification of violations as serious in order to ensure that California meets the criteria in 29 CFR 1902.37(b)(14), which states: Wherever appropriate, the State agency has sought administrative and judicial review of adverse adjudications. This factor also addresses whether the State has taken the appropriate and necessary administrative, legislative or judicial action to correct any deficiencies in its enforcement program resulting from an adverse administrative or judicial determination.	DOSH has also taken administrative action to address issues of this nature through its stakeholder meeting process, one outgrowth of which has been AB 2774. DOSH will continue to seek legal review of matters it deems appropriate for such action and to take other administrative action as opportunities arise to make improvements.	DOSH has trained managers and CSHOs on the requirements of AB 2774. With the proper documentation of cases in accordance with AB 2774 DOSH will be in a better position to identify cases that can withstand the legal sufficiency of an appeal. DOSH will closely monitor ALJ decisions to identify cases that would be appropriate for appeal.	Copies of each ALJ decision and DAR. Within 30 days of final order.			OSHA will continue to monitor the results of appeals for cases with citations issued in accordance with these new statutory requirements. OSHA will closely monitor ALJ decisions to identify cases that would be appropriate for appeal. OSHA will include this issue as an agenda item for all quarterly meetings with DOSH and OSHAB. OSHA will request that OSHAB provide copies of every ALJ decision and DAR to the Oakland Area Office for review. Subject to further Federal review and monitoring.
3	The rules of evidence used by OSHAB 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 usually not required to establish whether a hazard is serious. In some cases, expert testimony may be needed, but the OSHAB appears to be applying a test that far exceeds well-settled law in both the OSHRC and Federal courts.	DOSH must take appropriate action – administrative, judicial, or legislative – to ensure that OSHAB's test for acceptance of compliance officers' testimony is as least as effective as the test at the federal level and results in a similar classification and retention of violations as serious.	California law has recently changed with the signing of AB2774. New Labor Code section 6432(g) provides clarifying guidance binding the OSHAB on the sufficiency of competent compliance officer testimony to establish each element of a serious violation.	DOSH is currently training all managers and CSHOs on legal sufficiency that includes rules of evidence. DOSH has initiated training to all compliance staff, to conduct enforcement inspections and develop case documentation in accordance with the requirements of AB2774.	Training is to be completed by DOSH by the end of their Fiscal Year (30-Jun-2011).			OSHA will continue to monitor the results of appealed cases with citations issued in accordance with these new statutory requirements. OSHA will follow-up on the progress of this item during all quarterly meetings. Subject to further Federal review and monitoring.

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	Cases have been identified with an extreme standard of evidence required to prove the classification of violations and the Compliance Officer's ability to identify, evaluate, and document conditions in the workplace are not considered by OSHAB.	[See recommendation #3]	See Responses 1, 2, and 3.	See Responses 1, 2, and 3.	See Responses 1, 2, and 3.			See Responses 1, 2, and 3.
	A medically qualified person is necessary to sustain violations based on exposure and "work relatedness" under the current OSHAB process.	[See recommendation #3]	See Responses 1, 2, and 3.	See Responses 1, 2, and 3.	See Responses 1, 2, and 3.			See Responses 1, 2, and 3.
4	OSHAB's reduction of penalties, including those for violations of 342(a), result in DOSH's having a significantly lower post contest penalty retention rate.	DOSH, using all available appeal resources, must select sufficiently strong cases for appeal that would set precedent regarding retention of penalties overall and establish a minimum penalty for violations of 342(a).	DOSH's interpretation of 342(a) requires the issuance of a \$5,000.00 penalty for failure to report a serious injury/accident within 8-hours. This penalty receives no adjustment, regardless of the employer's size or any other mitigating factors. In addition, DOSH interpretation is that they don't have the authority to adjust this penalty at the informal conference. OSHAB interprets the Labor Code to provide them the flexibility to adjust the proposed penalty, and does so routinely when these violations are appealed. (See also response to Rec. #2.)				Ongoing.	OSHA encourages DOSH to consider amending 342(a) to allow for size and history adjustments before being issued, as well as appropriate adjustments at the informal conference. OSHA will continue to address this with DOSH during all quarterly meetings in an effort to promote a change to 342(a). Subject to further Federal review and monitoring.
5	DOSH field staff do not have sufficient legal training or background to present cases at hearings.	DOSH must take appropriate action to assure that their enforcement actions are appropriately defended at contest. Either through attorney representation or, if necessary, through DOSH field staff that have been trained and provided with adequate access to technical and legal resources to ensure as effective presentation that occurs in hearings before an ALJ for the OSHRC.	DOSH established a new training program, which addresses these issues, in January of this year.	See Response to Finding #3.				See Status for Finding # 3.
6	OSHAB schedules multiple cases for the same DOSH staff member on the same day or in the same week without consideration for the time each party indicates is necessary to present their case.	DOSH must take appropriate action – administrative, judicial, or legislative – to address the problems associated with over scheduling of cases and assure that CSHOs or attorneys have adequate time between scheduled dates to prepare for upcoming hearings. If CSHOs are to continue to present their own cases, DOSH must provide adequate legal and administrative support to help them review the case file and prepare to testify.	OSHAB has changed the calendaring practice previously in place that allowed the backlog to be eliminated, and this finding is no longer an issue.	DOSH and OSHAB agree that this is no longer an issue.				OSHA will continue to raise this issue during quarterly meetings and discussions with the Appeals Board, to ensure these concerns have been fully addressed. Subject to further Federal review and monitoring.

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7	OSHAB's notification system is inaccurate and inefficient, Reconsideration Orders are unclear on the specific issue(s) being reconsidered and notifications are not always sent to the correct DOSH office.	DOSH must take appropriate action to assure that the system for hearing contested cases includes a method of notification that ensures clear, concise, accurate and timely notification to parties involved in the appeals process and is at least as effective as the OSHRC method.	OSHAB scheduled 1,823 hearings in 2009 and there were no occasions where DOSH staff missed a hearing attributable to "hearing notification issues."	OSHAB sends out a master calendar to DOSH headquarters, as well as to the regional and district offices. OSHAB is considering the development of an electronic, web-based version of the master calendar that would allow for full access to the calendar by all interested parties.				OSHA will raise this issue with DOSH/ OSHAB during quarterly meetings, to ensure that calendaring information remains available to all parties. Subject to further Federal review and monitoring.
8	Prehearing 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.	DOSH must take appropriate – administrative, judicial, or legislative – action to assure that all parties are afforded opportunity for hearings in an appropriate manner consistent with the OSH Act: including following the protocols outlined in the policies and procedures, "Gold Book"; formally documenting the Pre-hearing conferences; and developing a system which results in timely and objective ALJ hearing procedures and decisions.	OSHAB already records all pre-hearing conferences. OSHAB ALJs are bound to act impartially and fairly by numerous statutes and Board regulations, including the Administrative Adjudication Code of Ethics (Govt. Code § 11475 et.seq.), which incorporates relevant Codes of Judicial Ethics applicable to court judges, Department of Industrial Relations' "Incompatible Activities Statement," its "Conflict of Interest Regulations," and the Board's Regulations (Title 8, CCR §§ 350.1, 352, 376.1, and 385).	There are no audio recordings of pre-hearing conferences, but a record is kept of these proceedings by the ALJ. The presiding ALJ is sitting in on some pre-hearing conferences, and will note areas where ALJs need re-training on procedures. As necessary, training for ALJs on ethics, appearance of neutrality, and other issues was given in Jan-2011. OSHAB has also instituted a confidential liaison position, for anyone who would like to report concerns with an ALJ. The phone number and point of contact has been communicated to DOSH personnel.				ALJ training was completed in January 2011. Subject to further Federal review and monitoring.
9	[See Finding #8]	DOSH must determine whether the problems associated with the current system of having CSO's defend their own cases during contest can be corrected. (See Recommendation #6). If not, they should utilize DOSH attorneys during the entire appeals process including settlements as is done in the Federal Program and most other OSHA-approved State Plans.	See response to finding 5.	See Response to Finding #3.				See Status for Finding # 3.
10	ALJs do not follow the OSHAB regulations (Gold Book) for amending DOSH citations.	DOSH must take appropriate action to establish the necessary rules and/or practices with OSHAB that allow amendment of citations in a manner at least as effective as Federal case law and OSHRC procedures – including amendment for technical errors and to conform with evidence presented. DOSH should also take steps to assure that case files contain accurate information, especially regarding company name and standards cited, through staff training and improved case file review; and fully utilize all appeals processes when citations/cases are vacated for minor technical errors.	The OSHAB's practice and procedure provide for amending citations before a hearing when good cause is demonstrated and prejudice is not established during and after a hearing in order to conform to proof and to correct technical or clerical errors.	See Response to Finding #8.				See Status for Finding # 8.

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11	Witness availability has affected the outcome of appealed cases.	When an appeal does occur, DOSH should consider witnesses availability when determining whether settlement is warranted. Utilize informal conferences as a means of lowering the appeals rate and more successful retention of citations including violation classifications and appropriate penalties.	Witness availability is a crucial issue and has been the subject of much discussion in stakeholder meetings. In response, the Appeals Board has agreed to increase the number of venues it makes available for appeals, which most stakeholders believe has a direct impact on witness availability.	In consideration of witness availability OSHAB has developed a pilot project to provide an option to have witness testimony via video conferencing. OSHAB is promoting more pre-hearing settlement conferences to more expeditiously resolve appealed cases.				OSHA will continue to encourage DOSH's use of informal conferences where appropriate. Subject to further Federal review and monitoring.
12	DOSH's Informal Conference policies do not encourage informal settlement and are not commensurate with the Federal Program.	DOSH must discontinue the automatic 50% reduction of proposed penalties based on an assumption of future abatement. DOSH should adopt policies on informal conferences that are at least as effective as federal policies.	Penalty amounts and credits are set by regulation. DOSH has had extensive discussions with stakeholders regarding amending its penalty regulations and intends to address, through rulemaking, the issue of the abatement credit.					Subject to further Federal review and monitoring.
13	Through its practices OSHAB is effectively extending the 15 working day contest period established by statute by 10 days by accepting contests by phone, allowing 10 additional days for submission of documentation regarding the grounds for contest, and allowing the use of a "check-off box" form, in lieu of a written submission, for the filing process.	OSHAB must determine whether this practice is in accordance with State Law and evaluate how these practices affect their contest rate. The State should determine whether the adoption of contest, informal conference, and settlement procedures more in line with statutory requirements and Federal practice would resolve many of the issues identified in this report. Absent a determination to change these practices, the State must submit a plan change supplement for Federal review, documenting its entire appeals process with a detailed comparison to the Federal program showing how it is "at least as effective," and a legal opinion that it is in accordance with State law.	OSHAB maintains that legal review indicates the OSHAB's Notice of Contest procedure is compliant with Labor Code section 6601.	In discussion, OSHA confirmed that the 10 day filing process is analogous to the employer's response to OSHA/Sol's filing of a complaint with the OSHRC. The appeals process in California is therefore more streamlined than the federal system.				Subject to further Federal review and monitoring.