

Cal/OSHA’s RESPONSE TO THE EFAME

The EFAME contains a total of 46 findings and recommendations. Cal/OSHA has reordered and renumbered these as “Cal 1” through “Cal 46” according to priority, displaying the original OSHA finding numbers immediately below the Cal/OSHA number. A reference table converting the original Fed/OSHA number to the new Cal/OSHA number is located at the end of the response. The findings are divided into two groupings, “critical” and “other”.

Findings Cal 1 through Cal 10 are classified as critical by Cal/OSHA because they go to the heart of Cal/OSHA’s mission, goals, and service delivery.

All findings are categorized as “agree”, “agree in part, disagree in part.”, “data needed”, or “disagree”, with further explanation as appropriate.

CRITICAL FINDINGS

Finding		Recommendation	Response
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.	<p>Disagree.</p> <p>What the auditors have done is to lump all of Cal/OSHA’s “programmed inspections” into the category of “high-hazard” targeting, which significantly dilutes the percentage of serious, willful, or repeat (SWR) violations. Programmed inspections in California consist of both high-hazard targeting and special-emphasis targeting, the latter producing a much lower percentage of SWR violation for the reasons described below. OSHA has ignored the distinction between these two types of inspections.</p> <p>The purpose of high-hazard targeting is specifically to identify workplaces that are expected to have a higher-than-average number of identifiable serious, willful, or repeat (SWR) violations and to conduct inspections to identify and correct these violations. The purpose of special-emphasis targeting is to focus on a particular industry or type of work, usually for an extended period of time, for a number of possible reasons.</p> <p>These reasons include (1) targeting the underground economy, (2) maintaining a high level of certainty of compliance for industries like oil refining, mining, and tunneling, where non-compliance with safety requirements can cause particularly catastrophic accidents, or, (3) as has been the case with Cal/OSHA’s heat-illness prevention campaign, retaining a high</p>

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		<p>degree of enforcement presence long enough to collect the compliance data needed to confirm whether the special emphasis program has changed behavior as intended.</p> <p>Cal/OSHA does not anticipate a high percentage of SWR violations in the majority of its special emphasis inspections because this would indicate that employers remain out of compliance even after extensive work has been done to make sure they are in compliance and will continue to be in compliance.</p> <p>OSHA has failed to recognize this, and consequently, it has diluted the data for high-hazard inspections with the data from special emphasis inspections, the majority of which are showing that employers are in compliance.</p> <p>An analysis of the inspections conducted by Cal/OSHA's High Hazard Unit, which conducts the inspections for the purpose of true high-hazard targeting, shows for FY 2009 an average rate of 5.7 violations per inspection, 2.25 of which are classified as SWR. These rates exceed the national average of 3.3 violations per inspection, 2.1 of which classified as SWR.</p> <p>In addition, Cal/OSHA's HHU found SWR violations in 67.1% of its inspections versus OSHA's rate of 65.8% and the national average of 53%.</p> <p>Action: No change to be made in targeting as a result of this finding. However, Cal/OSHA will be initiating during 2011 a plan to evaluate enforcement/education effectiveness over time in targeted industry segments by looking at overall compliance impact in a fashion similar to what has been done with its heat illness prevention special emphasis program.</p>
<p>Cal 2 (OSHA 24)</p>	<p>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.</p> <p>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.</p>	<p>Disagree. Cal/OSHA reviewed the three case files and found that in each instance the inspection was initiated in a timely manner. We have been unable to determine the identities of the other four files that OSHA is referring to. The data indicating lack of timeliness were due to IMIS data entry errors.</p> <p>Action: 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.</p> <p>Completion date: January 2011</p>

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<p>Cal 3 (OSHA 21)</p>	<p>The Complaint Response Log and Complaint Query revealed that half of all complaints inspected were not opened until after five days from receipt of the complaint. Also, the Complaint Employer Response Due standard report revealed outstanding complaints dating back to December of 2008 with employer response pending.</p>	<p>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>Agree in part, disagree in part. Cal/OSHA agrees that, in some cases, complaints are not being opened soon enough. However, OSHA's use of a 5-day metric ignores California law..</p> <p>The California Labor Code and the federally-approved Policy and Procedures Manual contain a requirement to open inspections in response to allegations of imminent danger within 24 hours, serious complaints within 3 days and non-serious complaints within 14 days.</p> <p>Cal\OSHA believes that timeliness in opening inspections in response to complaints is made unnecessarily difficult by our long-standing policy of interpreting Labor section 6309 to require an onsite inspection to all "formal" complaints regarding a workplace hazard, regardless of its seriousness, unless it appears the complaint was filed without any reasonable basis or for the purpose of willfully harassing an employer.</p> <p>Under the same statute, a complaint is formal if made by an employee, or employee representative, which is very broadly defined. This is in marked contrast to OSHA's approach, which does not consider a complaint formal unless signed, dramatically reducing the volume of complaints to which OSHA responds via onsite inspection.</p> <p>Regarding the logging of complaint responses, Cal/OSHA Policy and Procedure requires both initial and final letters go to the complainant in all cases. This OSHA finding includes no information on the identity of the files or cases it is describing, and Cal/OSHA is not aware of which case files were identified as a problematic.</p> <p>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</p>

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		<p>proposal will be vetted with stakeholders.</p> <p>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.</p> <p>Completion date: Second quarter 2011</p>
<p>Cal 4 (OSHA 22)</p>	<p>Complaint Letters G and H are not being consistently entered in the database.</p>	<p>Ensure that appropriate G and H notification letters are entered and being sent to all complainants</p> <p>Agree in part, disagree in part.</p> <p>Action: District and Regional offices will review IMIS reports monthly to ensure 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.</p> <p>Completion date: January 2011</p>
<p>Cal 5 (OSHA 45)</p>	<p>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.</p>	<p>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.</p> <p>Agree in part, disagree in part. Cal/OSHA's only disagreement is with OSHA's lack of acknowledgement that Cal/OSHA has been actively confronting the need to strengthen training for a significant period of time before the EFAME was begun.</p> <p>Cal/OSHA reorganized its Professional Development and Training Unit (PDTU) in January 2010 after making the necessary changes and additions to management to accomplish this. We have a standing committee whose purpose is to plan and implement a three year plan for training managers, field staff and administrative personnel. Improving training has been an issue under active discussion with stakeholders and will continue to be.</p> <p>Cal/OSHA applied for new federal funds from OSHA to support added staff to its Professional Development and Training Unit, and the funds have been awarded, for which Cal/OSHA thanks OSHA. Accordingly, Cal/OSHA intends to add 3 new staff members to the PDTU during 2011.</p>
<p>Cal 6 (OSHA 46)</p>	<p>Cal/OSHA has not established a curriculum</p>	<p>Establish a curriculum of core courses for newly hired compliance officers that</p> <p>With regard to mandatory courses, the Initial Compliance course was offered in February</p>

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<p>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.</p>	<p>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.</p>	<p>2010 and was attended by all new staff members.</p> <p>Action: Cal/OSHA is now following OSHA's training directive with classes planned into 2013. Three Accident Investigation classes have already been conducted with four additional classes scheduled for January 2011. Three classes of Investigative Interviewing Techniques were conducted in the month of September 2010, and two additional classes will be scheduled in the November/December 2010 timeframe.</p> <p>Inspection Techniques and Legal Aspects; the Division plans one class per quarter from October 2010 through September 2012.</p> <p>Once mandatory courses have been presented, then the Unit will arrange for technical courses including: scaffolding, excavation, crane/rigging, machine guarding, and agricultural safety.</p> <p>Additional courses may be planned and conducted as appropriate. To achieve the goal of all CSHOs taking required courses within a three year period, the Cal/OSHA will use a combination of contract trainers and qualified internal staff as instructors.</p> <p>Cal/OSHA has also requested that Federal OSHA offer several courses in California, and the OSHA Education Centers in California have been contacted to determine how a training partnership might deliver additional training.</p> <p>With regard to the Division of Labor Standards Enforcement whistleblower investigator training, a request will be submitted to Region 9 to have their Regional Supervisory Investigator present Basic Whistleblower training to DLSE investigators.</p> <p>Action Completed.</p>

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<p>Cal 7 (OSHA 8)</p>	<p>Cal/OSHA's policy on classifying violations does not ensure violations that would be considered "Serious" under the Federal FOM are classified as Serious.</p>	<p>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).</p>	<p>Agree in part, disagree in part.</p> <p>Action: California will continue to ensure its program is "at least as effective as OSHA's. 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. 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.</p> <p>Completion date: January 2011</p>
<p>Cal 8 (OSHA 26)</p>	<p>Cal/OSHA's evaluation and adoption of Federal Program Changes has not been timely. Cal/OSHA has not adopted both the Employer Payment for Personal Protective Equipment, Final Rule, published November 15 2007 and the Clarification of Employer Duty to Provide Personal Protective Equipment and Train Each Employee, published December 12, 2008. They adopted the Final Rule on Electrical Installation Requirements -29 CFR 1910 Subpart S effective February 18, 2010; they were two and a half years late adopting this rule. In addition, California has not submitted a supplement in response to CPL-02-00-148 2009, Field Operations Manual. Many of the procedural issues discussed in this report relate to items not covered in the State's current Policies and Procedures Manual which should be addressed in the response to the Federal FOM.</p>	<p>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).</p>	<p>Agree in part, disagree in part.</p> <p>In addition to engaging to a significant degree in adopting standards for which OSHA has no counterpart, the Occupational Safety and Health Standards Board (OSHSB) has been diligent in responding in a timely fashion to OSHA rulemaking.</p> <p>In the case of personal protective equipment, OSHA's finding is in error. California already has and has had for more than two decades solid law requiring employers to pay for personal protective equipment. See <i>Bendix Forest Products v. Division of Occupational Safety and Health</i> (1979) 25 Cal. 3d 465.</p> <p>What we have discovered on reviewing the history of OSHA rulemaking on PPE is that when OSHA amended 29 CFR part 1910.132 in 1994 to require employers to implement a PPE program, Cal/OSHA never responded. Cal/OSHA and OSHSB have therefore agreed to initiate rulemaking to adopt these requirements, and in so doing will reiterate the law requiring employers to pay for PPE.</p> <p>The state was not 2-1/2 years late in adopting the federal standard. The auditor apparently mistook a separate, "clean-up" rulemaking as part of the adoption of the federal standard. The clean-up rulemaking, was not related to the federal adoption; it merely dealt with existing California standards that were identified during the federal adoption as being ambiguous, obsolete, overlapping, conflicting, or no longer necessary.</p>

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			<p>The State strives to meet its obligation set forth in the Labor Code 142.3 (a)(2) to promulgate standards within 6 months of the promulgation date of the federal Standards to every extent possible and will continue to do so in the future to adopt federal standards in a manner that will ensure Title 8 provides equal or superior safety for California workers.</p> <p>Action: 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 response by California. The Program office will maintain a Federal Program Change log to track activity in this area.</p> <p>Completion date: January 2011</p>
<p>Cal 9 (OSHA 39)</p>	<p>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.</p>	<p>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.</p>	<p>Agree in part, disagree in part. The Department of Industrial Relations and Cal/OSHA have been operating under various hiring restrictions due to fiscal restraints in the state. Although Governor Schwarzenegger signed an appropriations bill for State Fiscal Year 2011, there has been no indication yet that the hiring freeze will be partially or completely lifted by the current administration.</p> <p>Action: 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.</p> <p>Completion date: Ongoing.</p>
<p>Cal 10 (OSHA 10)</p>	<p>Employee representatives were not always afforded the opportunity to participate in all phases of the workplace inspection.</p>	<p>Ensure union representatives are presented the opportunity to participate in every aspect of the inspection and keep them informed as required in the Cal/OSHA Policies and Procedures Manual. If unions choose not to participate in the inspection, ensure it is documented.</p>	<p>Data needed. Cal/OSHA agrees with the importance of ensuring that employee representatives are afforded the opportunity to participate in all aspects of inspections. We have specific Policy and Procedure requirements that provide for such opportunities (P&P C-1A – Inspection Procedures) and documentation of such activity during the inspection (P&P C-1A – Forms Completion).</p> <p>However, we cannot address the specific instances OSHA refers to until these cases are identified, and we are still awaiting that</p>

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			<p>information. We have not been told which case files the federal reviewers looked at where they felt there was problem. If those files are identified to us we will review them to determine if anything was done outside our written policy.</p> <p>Action: 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.</p> <p>Completion date: January 2011</p>
<p>Cal 11 (OSHA 16)</p>	<p>There were 209 Serious / Willful / Repeat (S/W/R) violations identified in the SAMM Report that were not abated timely.</p>	<p>Develop a tracking system to ensure all violations are abated timely and/or ensure abatement data is accurately entered into IMIS.</p>	<p>Data needed. Cal/OSHA is unable to respond directly to this finding without more specific information regarding which cases the finding is attempting to address. This information has been requested but has not yet been made available.</p> <p>However, Cal/OSHA takes abatement very seriously and it is a top priority to ensure every violation found is abated.</p> <p>Action: 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.</p> <p>Completion date: First quarter 2011 and ongoing.</p>

OTHER FINDINGS

Finding		Recommendation	Cal/OSHA Response
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 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 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	Disagree. The Cal/OSHA appeals process is qualitatively different from the Fed/OSHA Contest process. However, in spite of these differences, Cal/OSHA believes that its practices are "at least as effective as" Fed/OSHAs in spite of the differences. Further, Cal/OSHA does have contained within its P&P the process and practices Fed/OSHA is requesting. Action: Continue current policy.
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.	Disagree. Cal/OSHA and DIR Accounting make every effort to ensure that the IMIS data is current, including the information on penalty collections and outstanding collections. Many issues in this area that exist are a result of limitations caused by the antiquated information management system OSHA requires Cal/OSHA to use. Action: Continue current policy.
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	Disagree. Cal/OSHA does not use the IMIS system for debt collection and therefore the finding is inaccurate. Action: 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 these data into IMIS will be issued. Completion date: First quarter 2011.
Cal 15 (OSHA 27)	State initiated rulemaking 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.	Disagree. The Standards Board disagrees that the standard for Bakery Oven—Inspections is not as effective as the corresponding Federal standard. The State rulemaking process disclosed that Federal OSHA has stated words to the effect that employers should strive to comply with the most recent national consensus standards, which is the approach taken in the State standard. Specifically, an April 2, 1998 interpretation letter regarding 29 CFR 1919.263(1)(9)(ii) stated that: <i>“Employers are encouraged by OSHA to comply with the current revision of a national consensus standard, such as ANSI Z50.1-1994, in place of an</i>

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		<p><i>applicable OSHA standard based on a previous standard, such as ANSI Z50. 1-1947, as long as the current revision provides at least the level of safety and health otherwise provided by complying with applicable OSHA standard.”</i></p> <p>The Standards Board always seeks an advisory opinion from the regional office of Federal OSHA on any proposed changes to Cal/OSH standards. This was done in the Bakery oven case, the state did not receive a response back from federal OSHA expressing any concern with regard to this standard. Prior to this becoming an issue on the evaluation we did not received any response from Federal OSHA that the amended bakery oven standard is not as effective as the Federal standard.</p> <p>Federal OSHA sent the Standards Board a letter dated May 21, 2008 to the effect that the original State proposal (a virtual verbatim rendition of the Federal standard) was at least as effective as the Federal standard. After the State proposal was modified in accordance with the interpretation letter quoted above, the Standards Board sent Federal OSHA a Plan Change Supplement dated May 7, 2009. That Plan Change Supplement clearly sets forth the bakery oven standard as adopted by the Standards Board, and prior to the FAME report, no concerns about that adopted standard were shared with the Standards Board by Federal OSHA. Moreover, the FAME report does not explain why Federal OSHA thinks that the State standard is not as effective as the federal standard. The absence of such an explanation limits the Standards Board’s ability to respond and underscores the Standards Board’s belief that the State standard is at least as effective as the Federal standard, especially in light of the interpretation letter.</p> <p>Action: Continue current policy.</p>
Cal 16 (OSHA 37)	The Cal/OSHA program does not require a Medical Access Order (MAO) or equivalent to review establishments’ medical records.	<p>Adopt MAO procedures and have the employer post it prior to the on-site visit.</p> <p>Disagree. The EFAME Report is incorrect in this finding. The DOSH P&P C-38, ACCESS TO EMPLOYEE EXPOSURE AND/OR MEDICAL RECORDS, provides clear, explicit and thorough guidance for accessing the necessary medical records during the course of an inspection, and is equivalent to the Federal MAO procedures.</p> <p>Action: Continue current policy.</p>

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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.	Cal/OSHA must ensure that it has sufficient on-board staff available to provide effective worker protection.	Disagree. Cal/OSHA believes that it has effectively managed its staff to respond to and address fatality, accident and illness investigations to include responding to and investigating complaints in California workplaces. This has been accomplished during an extraordinary time in history with operational and budgetary limitations imposed on Cal/OSHA. The EFAME fails to identify specific evidence supporting this finding. Action: Continue current policy.
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.	Disagree. Cal/OSHA believes the EFAME Report finding is erroneous on this point. The indirect cost rate is calculated based on prior year actual expenditures, and as far as we can determine the correct indirect rates have consistently been used. The approved rate is applied to a base to determine the indirect costs to be charged to the federal grant. The U.S. Department of Labor, Division of Cost Determination, has issued a letter specifically addressing most of the alleged disallowed costs, and determined that they are in fact allowable. In addition, our indirect costs, which include statewide central services costs and DIR overhead, are recorded on the general ledger. Our budget staff monitors the amount of indirect costs charged, and adjusts the charges accordingly to ensure that the appropriate amount is reflected on the ledger. Action. Cal/OSHA believes this issue has been resolved in discussions with Region 9 OSHA representatives. Completed.
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)	Agree in part, disagree in part. Action: The DOSH P&P C-7 addresses the Handling/Processing of Referrals from Other Agencies. However, DOSH P&P 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 Completion date: January 2011.

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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.	<p>Agree in part, disagree in part.</p> <p>Action: 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.</p> <p>Completion date: January 2012</p>
Cal 21 (OSHA 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.	<p>Agree in part, disagree in part. Cal/OSHA believes that the signing into law and implementation of AB 2774 will harmonize differences between those citations Cal/OSHA has been classifying as serious and those the Appeals board has been willing to uphold as serious. The applicability of the serious classification is the single greatest factor resulting in differences between pre-contest and post-contest penalties</p> <p>Action: 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.</p> <p>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.</p> <p>Completion date: Third Quarter, 2011</p>
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).	<p>Agree in part, disagree in part. Federal policies referenced in the EFAME report above were already in effect, although not formalized in Cal/OSHA's VPP Policy and Procedure, D-64.</p> <p>Action: Cal/OSHA will adopt policies equivalent to Federal OSHA CSP 03-01-003, VPP Policies and Procedures Manual, Chapter V.</p> <p>Completion date: January 2011</p>

Finding		Recommendation	Cal/OSHA Response
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).	<p>Agree in part, disagree in part.</p> <p>Action: 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 P&P D-64. We are also contemplating further specifications for level 1, 2 and 3 qualifications.</p> <p>Completed except for further specifications which will be completed second quarter 2011.</p>
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.	<p>Agree in part, disagree in part. The EFAME Report implies that DIR accounting staff received the invoices for the aforementioned amount, but failed to process them in a timely manner. In reality, what occurred was that the encumbrance of \$1,229,548 was not liquidated by December 31. This was an error caused by misunderstanding of the accounting requirements for federal funding. The \$1,229,548 encumbrance outstanding as of December 31, 2009, was disencumbered from federal funds and re-encumbered to 100% state funding source.</p> <p>Action: 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.</p> <p>Completion date: January 2011</p>
Cal 25 (OSHA 44)	A "Program Report Narrative" that describes in detail the ARRA activity for each quarter was not submitted in a timely fashion.	Submit all required ARRA reports in a complete and timely fashion.	<p>Agree in part, disagree in part. DOSH has submitted all ARRA reports as required by the ARRA grant. All have been timely with the exception of the first report.</p> <p>Action: None</p>

Finding	Recommendation	Cal/OSHA Response
<p>Cal 26 (OSHA 5)</p>	<p>The CPPM does not address elements that are required in the fatality process</p>	<p>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).</p>
<p>Cal 27 (OSHA 6)</p>	<p>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 FY2000.</p>	<p>Update ASHIP and CSHIP protocols at least annually.</p>
<p>Cal 28 (OSHA 23)</p>	<p>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.</p>	<p>Generate and review the Referral Log on a regular basis and ensure that all referrals are handled appropriately and timely</p>
		<p>Agree.</p> <p>Action: Cal/OSHA will review and update its P&P relative to fatality cases.</p> <p>Completion date: First quarter 2011.</p> <p>Agree.</p> <p>Action: 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 California to update special emphasis protocols such as these annually, we will make every effort to keep the written protocols current.</p> <p>Completed.</p> <p>Data needed. Cal/OSHA formally requested that Region 9 provide a list of the specific inspections referenced on the Referral Logs that were allegedly not inspected in a timely manner, and thirteen instances where there apparently was no inspection at all. That requested information has not been provided.</p> <p>Action: California will respond when that information has been provided and the files analyzed.</p> <p>Completion date: Pending</p>

Finding		Recommendation	Cal/OSHA Response
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).	Agree. Action: Cal/OSHA has revised and updated DOSH VPP P&P 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. Completed
Cal 30 (OSHA 41)	The Standards Board and Appeals Board could not provide actual hours, time-sheets or employment status at any given time for all employees.	Provide periodic certifications of employment status for all employees.	Agree. Action: DOSH Appeals Board and Standards Boards will provide periodic certifications of employment status for all employees. Completion date: January 2011
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.	Agree. Action: 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 Completed.
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.	Data needed. Cal/OSHA is unable to confirm this finding without information from OSHA identifying the files it reviewed. Action: 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 P & P 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. Completion date: Completed.

Finding		Recommendation	Cal/OSHA Response
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.	<p><u>Data needed.</u></p> <p>Cal/OSHA is unable to confirm this finding without information from OSHA identifying the files it reviewed.</p> <p>Action: 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.</p> <p>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 and P regarding contact the victim's families. The same memo will outline a procedure for tracking such communication.</p> <p>Completed.</p>
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.	<p>Data needed. Cal/OSHA does initiate fatality inspections timely after initial notification and Compliance Officers communicate and document reasons for any delays in the case file. The two subject case files were reviewed and it was determined that both fatality inspections were in initiated in a timely fashion. However, a data entry error into IMIS had occurred with the opening dates of the inspections.</p> <p>Action: The importance of accurate data entry has been reinforced with all field staff.</p> <p>Completed.</p>

Finding		Recommendation	Cal/OSHA Response
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).	Data needed. Cal/OSHA is unable to confirm this finding without information from OSHA identifying the files it reviewed. Cal/OSHA P&P addresses the issues stated. Action: Cal/OSHA will reinforce through training to ensure all personnel are clear on Cal/OSHA existing P&Ps with regard to this item. Completion date: First quarter 2011
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.	Data needed. Cal/OSHA is unable to confirm this finding without information from OSHA identifying the files it reviewed. Cal/OSHA P&P addresses the issues stated. Action: 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. Completion date: January 2011
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. And in 91 cases, photos did not always describe the violation, exposure, specific equipment/process, location, and employee job title (if applicable), the date and time of the picture and the inspection number.	Ensure that all aspects of the injury and illness documentation are included in the 1B or equivalent form to identify the hazard in enough detail to clearly describe the hazard or exposure. Ensure that photos identify the violation, exposure, specific equipment/process, location and employee job title (if applicable) and include the date and time of picture and the inspection number.	Data needed. Cal/OSHA is unable to confirm this finding without information from OSHA identifying the files it reviewed. Cal/OSHA P&P addresses the issues stated. Action: Cal/OSHA will ensure through training that these practices are reinforced to all personnel and quality assurance reviews will be performed. Completion date: First Quarter 2011.

Finding		Recommendation	Cal/OSHA Response
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.	Data needed. Cal/OSHA is unable to confirm this finding, without information from OSHA identifying the files it reviewed. Cal/OSHA P&P addresses the issues stated. Cal/OSHA disagrees with this finding and believes that it is already meeting the recommendations made. Action: This issue will be addressed in ongoing training, and quality assurance reviews will be performed. Completion date: First quarter 2011.
Cal 39 (OSHA 15)	Exposure monitoring was 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.	Data needed. Cal/OSHA is unable to confirm this finding without information from OSHA identifying the files it reviewed. Cal/OSHA P&P addresses the issues stated.. A review of cases from the audited office did not reveal findings consistent with those of OSHA, and in the absence of further data from OSHA, Cal/OSHA disagrees with this finding and recommendation. Action: Continue current policy.
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.	Data needed. Cal/OSHA is unable to confirm this finding, without information from OSHA identifying the files it reviewed. Cal/OSHA P&P addresses the issues stated. Action: Continue current policy.

Division of Labor Standards Enforcement (DLSE) Responses

These are findings pertaining to the discrimination program administered by the DLSE.

	Finding	Recommendation	Cal/OSHA Response
Cal 41 (OSHA 29)	Oral complaints are not accepted and docketed in WB cases.	Accept and docket orally filed and emailed 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)).	Disagree. While DLSE mirrors some of the federal policies, we maintain the right to follow our own guidelines for conducting investigations consistent with California law and resources with the understanding that these must be "at least as effective as" the Federal policies. Written complaints are required consistently as a matter of policy for several similar State agencies, including the Department of Fair Employment and Housing (DFEH) and the Equal Employment Opportunity Commission (EEOC). The complaint form requires information which is necessary to evaluate it for jurisdiction and validity. Oral complaints leave too much room for error and result in incomplete and/or inaccurate information. Action: Continue current policy.
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).	Disagree. While DLSE mirrors some of the federal policies, we maintain the right to follow our own guidelines for conducting investigations consistent with California law and resources with the understanding that these must be "at least as effective as" the Federal policies. It is DLSE's policy to interview parties and pertinent witnesses assuming they can be located and respond to the investigator's request for an interview. A witness or party is not interviewed when the initial complaint does not meet a prima facie case of retaliation. Action: Continue current policy.
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 all WB case files.	Conduct closing conferences with Complainants as per DIS 0-0.9 Federal Whistleblower Manual, Chapter 3, Section J, and prepare a summary of relevant facts for case files that are signed and dated by both the Investigator and the evaluating Team Leader. (DIS 0-0.9 Federal Whistleblower Manual, Chapter 4, Section III, and Chapter 5, Section IV).	Disagree. While DLSE mirrors some of the federal policies, we maintain the right to follow our own guidelines for conducting investigations consistent with California law and resources with the understanding that these must be "at least as effective as" the Federal policies. Parties are advised in which direction DLSE is heading, giving all an opportunity to settle or withdraw the complaint. If the matter is not settled or withdrawn, the final report is completed. Action: Continue current policy.

Finding		Recommendation	Cal/OSHA Response
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	Disagree. DLSE disagrees with this finding. While DLSE mirrors some of the federal policies, we maintain the right to follow our own guidelines for conducting investigations consistent with California law and resources with the understanding that these must be "at least as effective as" the Federal policies. A final report or findings is submitted to the parties with a copy to the file. Further, a chronology or Individual Work Plan (IWP) is placed in each file. Action: Continue current policy
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).	Agree in part, disagree in part. Action: 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. Completion date: January 2011
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.)	Agree. Action: 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. Completion date: January 2011

The below table identifies the original Fed/OSHA # and shows the new Cal #.

Original Fed/OSHA Item #	Cal #						
1	32	13	37	25	40	37	16
2	19	14	38	26	8	38	17

3	33	15	39	27	15	39	9
4	34	16	11	28	46	40	24
5	26	17	12	29	41	41	30
6	27	18	21	30	45	42	31
7	1	19	13	31	42	43	18
8	7	20	14	32	43	44	25
9	20	21	3	33	44	45	5
10	10	22	4	34	22	46	6
11	35	23	28	35	29		
12	36	24	2	36	23		