

2002 REPORT

ON THE

LOSS CONTROL CERTIFICATION PROGRAM,

HIGH HAZARD ENFORCEMENT PROGRAM

AND

HIGH HAZARD CONSULTATION PROGRAM

MARCH 2002

DEPARTMENT OF INDUSTRIAL RELATIONS

Stephen J. Smith, Director

DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

John Howard, Chief

EXCERPTS FROM LETTERS BY EMPLOYERS IN Cal/OSHA's HIGH HAZARD ENFORCEMENT AND CONSULTATION PROGRAMS

"The consultative assistance by Cal/OSHA was informative and certainly worthwhile. The recommendations which he mentioned while walking the facility are in the process of being addressed. The program meeting was certainly more beneficial than was anticipated beforehand."

Excerpted from a 4 April 1996 letter from an employer who received targeted consultative assistance.

"... A year and a half has passed since this inspection and we are very pleased with the results of our efforts. Our workers' comp loss experience has dropped, some of our people are certified not only in respirator training but fork lift driving as well. [We] appreciated the way in which [Cal/OSHA] handled the audit and the obvious respect they have not only for their agency but the business community as well. We are a different company eighteen months later."

Excerpted from a 29 August 1996 letter from an employer who underwent a targeted enforcement inspection.

"Thank you for all your time and assistance. I assure you we are moving at great speed to remedy all of the discrepancies you noted on our past inspections. I have included a copy of our projected experience mod rate for the upcoming year. All the effort on your part and ours, is paying off. If you have any questions at all please give me a call. Also, if you are in the area stop by and we'll grab some lunch. Thanks again!!!!"

Excerpted from a 30 August 1996 letter from an employer who received consultative assistance.

"Thank you for visiting our company to review our health and safety program. I really enjoyed our meeting and learned a great deal about ways to improve and maintain a safe and effective work environment. Especially helpful to me were your recommendations on accident investigation and reporting, OSHA Log 200 entries, and followup. In addition, I am eager to take advantage of the large selection of training videos available through Cal/OSHA."

Excerpted from a 12 November 1996 letter from an employer who received targeted consultative assistance.

"Although an OSHA review is not pleasant by nature, I would like to thank [Cal/OSHA staff] for being human and turning the inspection into more of a preventative maintenance session than a firing squad. The inspections definitely improve a business's ability to provide a safer environment for its employees and it is unfortunate (for those businesses who have demonstrated a commitment to safety) that fines have to be a part of this process as it tends to produce a negative experience when it really is a valuable process which should result in a positive experience. Thanks again, cautiously looking forward to your return."

Excerpted from a 7 February 1997 letter from an employer who underwent a targeted enforcement inspection.

"I wanted to take this opportunity to express our appreciation for the professional manner in which this inspection was completed. Our Cal/OSHA experience was very positive. We are committed to a safe work environment for our employees and the Cal/OSHA experience strengthened our program."

Excerpted from a 21 March 1997 letter from an employer who underwent a targeted enforcement inspection.

"Our broker was instrumental in helping us decrease our experience modification rate by providing classes to us and other [businesses] in their policy area on accident prevention and awareness. Our first contact with [our insurer] was in September of 1994. Since the October 1, 1994 policy renewal date, we have had no accidents greater than that which was handled with a band-aid or ice pack. This month I received notification that our modification rate has dropped to 83% for the 97-98 policy year and was informed that this lower rate takes us off the OSHA high hazard list."

Excerpted from a 22 September 1997 letter from an employer who received loss control consultation from its workers' compensation insurer.

"Our company requested consulting services from Cal/OSHA back in early 1996. We relied on the advice given to us by the Cal/OSHA consultants in implementing a thorough safety program and getting into Cal/OSHA compliance. The results have been fantastic. Our employees' morale is way up, our shops are cleaner and customers like that, our number of injuries are down 32% and our incurred claims are down from \$565,000 to \$342,000. Thanks for all your help!"

Excerpted from a 24 September 1997 letter from an employer who received consultative assistance.

"Just a quick note to let you know that things are "looking up" for [the employer] since your inspection. Since implementing a new safety award incentive program and making requested improvements around the plant, we feel the employees are all more safety aware and are making every effort to work safely. We are optimistic and are looking forward to a bright injury free future."

Excerpted from a 28 September 1998 letter from an employer who received targeted consultative assistance.

"Thank you for following up. All compliance modifications were made subsequent to your visit, however, the biggest impact of your consultation was the change it produced in how [the employer] perceives the workplace and its workers. This new perception has absolutely had a positive effect in our workplace. Thank you again for your assistance. The consultation program is an absolute benefit to the commercial community."

Excerpted from a 29 September 1998 letter from an employer who received targeted consultative assistance.

"The suggestions you made to me have made it easier to train my employees and have them understand the importance of safety. I implemented my injury and illness prevention program and started my training of my employees. I elected a safety committee to help implement this program. We implemented the suggestions you made to me. I am confident that we are heading in the right direction. Thanks for your time."

Excerpted from a 30 September 1998 letter from an employer who received targeted consultative assistance.

"Thank you for setting us up with the High Hazard Consultant Team. That statement may seem odd since most employers cringe when Cal/OSHA is mentioned, however [the consultants] have taken the pain out of OSHA visits. We have established a goal of applying for VPP status in the year 2000. Due to the strong support of the High Hazard Employer Team we believe that we will achieve our goal. With their assistance we have already seen a 20% reduction in accidents, and have established an early return to work policy, which has significantly reduced the number of lost workdays. In addition our workers' comp costs have dropped, machinery maintenance and housekeeping have improved, and most importantly the employee morale is high."

Excerpted from a 29 January 1999 letter from an employer who received targeted consultative assistance.

"I would like to advise you of the excellent job that was done by Cal OSHA in communicating my position as a business owner in relationship to my workers' compensation....I would also like to compliment Cal/OSHA on the literature and program materials that are available to small business owners."

Excerpted from a 10 November 1999 letter from an employer who received consultative assistance.

"As a business owner, I expect my contacts with [Cal]OSHA to be quite unpleasant and hopefully something that I could avoid. However, I feel that I must commend one of your employees for the skillful way in which she has been able to work with me and my organization... The manner in which [Cal/OSHA] has presented suggestions and ideas has been easy to accept and put into practice. [Cal/OSHA] clearly wants to collaborate with owners, not just demand changes. [Cal/OSHA] treats us like a valued customer, for this I am grateful... I truly believe that the level of safety in our shops has increased due to [Cal/OSHA]."

Excerpted from a 15 November 1999 letter from an employer who received targeted consultative assistance.

"We really appreciate this consultation program which identifies potential problems and suggests solutions prior to being cited, or worse, by OSHA inspectors."

Excerpted from a 17 November 1999 letter from an employer who received consultative assistance.

"The consultative visit was very helpful to the management and the union in identifying opportunities to improve safety in the workplace. Thank you for allowing both union and management personnel to participate during your visit. This was the first time both entities were directly involved with this type of Cal/OSHA process and it was a positive experience for both."

Excerpted from a 21 December 1999 letter from an employer who received targeted consultative assistance.

"Despite the potential for an adversarial climate due to the nature of the inspection process, [Cal/OSHA inspectors] conducted with complete professionalism... and did everything in their power not to disrupt our employees who provide the resident care and other services."

Excerpted from a 28 January 2000 letter from an employer who received a targeted enforcement inspection.

"[We] recently utilized the services of the High Hazard Consultation Unit to assist with the process of reviewing and improving the safety conditions within our operation. We found the process of recognizing issues before they became a business detriment to be beneficial and educational."

Excerpted from a 22 July 2000 letter from an employer who received targeted consultative assistance.

"We have implemented a very successful safety plan with the help of OSHA. As you can see, our Log 200 data has reduced and remained stable."

From a 7 December 2000 letter from an employer who received targeted consultative assistance.

"On September 12th and 13th, a Cal/OSHA consultant spent two days of valuable time to assist, advise and help to better organize our safety program. As General Manager, I wanted to inform the State of California of the professionalism that was displayed by your consultant during the consultative assistance visit. Your consultant added a new sense of awareness for the seriousness of safety in all aspects along with added development of employee morale."

Excerpted from a 15 December 2000 letter from an employer who received targeted consultative assistance.

"We had a dramatic decrease in the number of occupational injury and illness occurrences. From a high of 12 cases in 1998, we had only 4 cases in 1999 and 1 case in 2000. We attribute this success to (1) the efforts of Cal/OSHA Consultation Unit who came here in 1998 to help us address occupational injuries and illnesses and guided us on how to prevent occurrences by proactively looking at our situation and affording remedies ahead of time, and (2) the efforts of our safety and ergonomic staff in our office to implement the program Cal/OSHA helped us develop."

Excerpted from a 2 January 2001 letter from an employer who received targeted consultative assistance.

"[We] truly appreciate the efforts your agency has made in assisting us with our Cal/OSHA High Hazard program/status. Since 1998, when we first received your assistance, we believe we have improved significantly in the reduction of occupational injuries and illnesses. We feel that your assistance has been instrumental in this improvement. The personnel who worked with us from your office in this regard were very helpful and probably the most helpful part of the consultation was the onsite visits which we had and the very precise and measurable items which were reviewed with us that needed improvement."

Excerpted from a 10 January 2001 from an employer who received targeted consultative assistance.

"... I would like to say that the services provided by the Consultation Unit were most valuable in spotlighting the areas where we needed improvement. We were quickly able to fix hazardous items rather easily once they were pointed out to us. Your personnel involved in this effort were extremely helpful in the basic safety issues."

Excerpted from an 11 January 2001 letter from an employer who received targeted consultative assistance.

"I want to thank you and Cal/OSHA for your efforts in reducing occupational injuries and illnesses. Considering the assistance provided our company by [Cal/OSHA Consultation] in 1998, we believe that the records show a considerable improvement in our safety efforts. We had our busiest years in our short history in 1999 and 2000. In spite of all the activity, we only had two minor injuries in each year with zero lost time."

Excerpted from a 16 January 2001 letter from an employer who received targeted consultative assistance.

Your services helped pinpoint areas where improvement was needed. We increased safety awareness among our employees by involving more employees in our safety committees, training sessions on hazard recognition, and site inspections. With your help we have reduced our accidents and injuries each year since your visit. Thank you.

Excerpted from a 3 July 2001 letter from an employer who received targeted consultative assistance.

In general, the feedback received from Cal/OSHA Consultation services was helpful to reduce our experience modification rate. The consultant reviewed our safety and security programs, the Log 200 and inspected our facilities. Some deficiencies were identified during the inspections process and direction to fix those deficiencies was provided. The consultant provided a lot of information about safety and security and suggested additional programs that we were required to have.

Excerpted from an 8 July 2001 letter from an employer who received targeted consultative assistance.

In regards to feedback, we do feel we are making progress. Although zero claims a year is our goal, we are pleased to see our modification rate coming down slowly but steadily. Some of the credit must go to the Cal/OSHA High Hazard Consultation Program and your representative's recommendations. In my opinion, one of the major hurdles we continually face is the continuing high turnover-rate of personnel, but it seems to be industry-wide or even business-wide as other manufacturers complain of the same situation.

Excerpted from an 8 July 2001 letter from an employer who received targeted consultative assistance.

Over the past four to five years, our agency as consulted with Cal/OSHA and our carrier in order to reduce occupational illnesses and injuries. We have scheduled ongoing safety training, made our employees partners in the effort to reduce injuries and increased the awareness and responsiveness of our supervisors to employee stress. Our experience modification rating has dropped the last few years from 159% to 107%.

Excerpted from a 10 July 2001 letter from an employer who received targeted consultative assistance.

I wanted to thank you again for all the time that you spent with us helping our company to improve our safety conditions. Please feel free to come by and visit our new location if you are up this way!

Excerpted from a 4 September 2001 letter from an employer who received targeted consultative assistance.

We are pleased to report that our experience modification rate has dropped to 130%. As a result of the work Cal/OSHA Consultation has provided, we are doing a better job, but need to do more.

Excerpted from a 6 September 2001 letter from an employer who received targeted consultative assistance.

On November 15, 1999, our company had a high hazard consultative meeting with a representative of your department. At the time we met, our company owned three recreation properties with 62 staff members with a total of 118,400 work hours. Our experience modification rate was at an all time high of 214%. Since that time, we have used the tools given to us and been able to reduce our experience modification rate to 103% as of this date.

Excerpted from a 27 September 2001 letter from an employer who received targeted consultative assistance.

TABLE OF CONTENTS

EXECUTIVE SUMMARY

I. 1993 WORKERS' COMPENSATION INSURANCE REFORM LEGISLATION

- A. Insurance Code Section 11721
- B. Labor Code Section 62.7
- C. Labor Code Section 6314.1
- D. Labor Code Sections 6354 and 6355
- E. Labor Code Section 6357

II. 1995, 1998 AND 1999 LEGISLATIVE MODIFICATIONS

- A. Senate Bill (SB) 1051 -- Labor Code Section 6354.5
- B. Senate Bill (SB) 996 -- Labor Code Section 62.9
 - 1. TICF Assessment Formula for Insured Employers
 - 2. TICF Assessment Formula for Self-Insured Employers
 - 3. TICF Collection Procedures
 - a. DIR Request for List of 1.25 Insured Employers
 - b. DIR Request Annual Payroll
 - c. Indirect Invoicing by DIR to Insured Employers Through Insurers
 - d. Referral of Disputes to DIR
 - e. DIR Identification of Unpaid Assessments, Insurer Notification and Insurer-Initiated Notice of Delinquency
 - f. DIR Referral of Unpaid Assessments
 - 4. Reports to the Legislature
 - a. Programmatic Activity and Efficacy Measures
 - b. Alternative Funding Methodologies
 - 5. Sunset Clause for Targeted Inspection and Consultation Fund
- C. Assembly Bill (AB) 1957 -- Labor Code Section 62.9
- D. Assembly Bill (AB) 1655 -- Labor Code Section 62.9

III. LOSS CONTROL CERTIFICATION PROGRAM

A. Initial Organizational Activities

- 1. Establishment of the Loss Control Certification Unit (LCCU)**
- 2. Establishment of an Advisory Committee ("Working Group")**

B. Regulatory Development -- 1993-1999

- 1. Initial**
- 2. Revision**

C. Programmatic Activities -- 1994-1999

- 1. Initial Certifications -- 1994-1995**
- 2. Recertifications -- 1999**
- 3. Plan Evaluations -- 1997-1999**
 - a. Performance of Plan Evaluations**
 - b. Findings from Plan Evaluations**

D. Program Needs -- Plan Evaluation

E. Effectiveness Evaluations

- 1. *Analysis of Employer Experience***
- 2. *Analysis of Employer Experience Limitations***
- 3. *Major Findings from Analysis of Employer Experience***

F. Legislation -- 2002

IV. TARGETED INSPECTION AND CONSULTATION FUND (TICF) ASSESSMENT

A. TICF Assessment Process for Insured Employers

- 1. 1995 TICF Assessment**
- 2. 1996 TICF Assessment**
- 3. 1997 TICF Assessment**
- 4. 1998 TICF Assessment**
- 5. 1999 TICF Assessment**
- 6. 2000 TICF Assessment**
- 7. 2001 TICF Assessment**

8. 2002 TICF Assessment

B. TICF Collections for Insured Employers

- 1. Employer Population Subset for TICF Assessments**
- 2. TICF Collections by the Department of Industrial Relations**

**Table IV-A
TICF Invoices, Assessments
and DIR Collections in Dollars for
Insured Employers**

- 3. TICF Collections by the Franchise Tax Board,
Non-Tax Debt Collection Unit**

**Table IV-B
TICF Accounts Referred, Assessments,
Penalties and FTB Collections in Dollars for
Insured Employers**

C. TICF Assessment Process for Self-Insured Employers

D. TICF Collections for Self-Insured Employers

**Table IV-C
TICF Invoices, Assessments and
DIR Collections in Dollars for
Self-Insured Employers**

E. Consolidated Financial Statement

F. Alternative TICF Funding Methodologies

- 1. Introduction**
- 2. Specific Funding Alternatives**
 - a. Retention of Experience
Modification Rating (ExMOD)**
 - b. Frequency-Based Alternative (FMOD)**
 - c. Combined Experience Modification
and Frequency-Based Alternative
(ExMOD/FMOD)**
 - d. Across-the-Board Alternative**
 - e. General Fund Augmentation**

V. SELECTING EMPLOYERS FOR CONSULTATION AND ENFORCEMENT

- A. California Statutory Mandates**
- B. California Statutory Employer Selection Formulas**
 - 1. First Statutory Formula -- Assessed Employer Funding**
 - 2. Second Statutory Formula -- High Hazard Employer Inspection**
 - 3. Third Statutory Formula -- High Hazard Consultation**
- C. Legislative Analyst Office (LAO) 1994-95 Opinion**
 - 1. Coupling Funding with High Hazard Consultation**
 - 2. Coupling Funding with High Hazard Inspection**
- D. Federal High Hazard Programs**
 - 1. Federal OSHA's Maine 200 Program-- Workers' Compensation Claim Data**
 - 2. Federal OSHA's Cooperative Compliance Program (CCP) and the OSHA Data Initiative -- Injury and Illness Data from OSHA Log 200**
- E. Comparison of Federal OSHA and Cal/OSHA Targeting**
 - 1. Use of the ExMOD or Other Single Workers' Compensation Insurance-Based Indicator of "Hazard" Status**
 - a. ExMOD**
 - b. Claims Frequency**
 - 2. Separation of "Compliance Assistance" from Consultation**
 - 3. Effective Selection Must Be Based on Multiple Sources**

VI. HIGH HAZARD CONSULTATION AND INSPECTION PROGRAMS

- A. Overview of the High Hazard Programs**
- B. Overview of Employer Selection Criteria**
 - 1. High Hazard Consultation**
 - a. Employers Assessed for the First Time**
 - b. Employers Assessed in Multiple Years Who Have Persistently Elevated ExMODs**
 - c. Consultative Special Emphasis Projects**
 - 2. High Hazard Enforcement**
 - a. Traditional Method for Employer Selection**
 - b. "On-Site" Establishment Targeting**
- C. Highest Hazard Industry Selection**
 - 1. Source Data for Highest Hazard Industries Lists**
 - 2. Utilization**
 - 3. 1996-1997 List of Highest Hazard Industries**
 - 4. 1997-1998 List of Highest Hazard Industries**
 - 5. 1998-1999 List of Highest Hazard Industries**
 - 6. 1999-2000 List of Highest Hazard Industries**
 - 7. 2000-2001 List of Highest Hazard Industries**
 - 8. 2001-2002 List of Highest Hazard Industries**

**Table VI-A
1996-1997 List of
Highest Hazard Industries**

**Table VI-B
1997-1998 List of
Highest Hazard Industries**

**Table VI-C
1998-1999 List of
Highest Hazard Industries**

**Table VI-D
1999-2000 List of
Highest Hazard Industries**

**Table VI-E
2000-2001 List of
Highest Hazard Industries**

**Table VI-F
2001-2002 List of
Highest Hazard Industries**

- D. High Hazard Inspection and Consultation Policy and Procedures**
- 1. Programmatic Goals**
 - 2. Employer Contacts**
 - a. TICF Assessment Letters**
 - b. Offer of Consultative Assistance**
 - 3. High Hazard Consultation**
 - a. Assignment**
 - b. Purpose**
 - c. Development of Recommendations and Action Plan**
 - d. Efficacy Measures**
 - 4. High Hazard Research and Education**
 - a. Responsibilities**
 - b. Activities**
 - (1) Electronic Products**
 - (2) Publications**
 - (3) Video Library**
 - (4) Outreach Seminars for Employers**
 - (5) Health and Safety Publications Distribution**
 - (6) Research and Development**
 - (7) Web Publications Page**
 - 5. High Hazard Enforcement**
 - a. High Hazard Enforcement Inspections**
 - (1) High Hazard Industry/Employer Programmed Inspection**

(2) Complaint or Accident Referral
from Cal/OSHA Enforcement Unit

b. High Hazard Consultation Referrals

(1) Refusal-to-Accept
High Hazard Consultation

(2) Failure-to-Cooperate
High Hazard Consultation

(3) Failure-to-Implement
High Hazard Consultation

VII. HIGH HAZARD PROGRAMS ACTIVITY MEASURES

A. Statutory Origin

B. Activity Measures -- 1994 through 2001

1. Administrative -- TICF Assessments

**Table 1
Number of TICF Invoice/Offers Sent
By Year**

2. High Hazard Consultation

a. Onsite Consultations

**Table 2A
Onsite Consultations by Employer
by Year**

**b. Number and Type of High Hazard
Consultations**

**Table 2B
Number and Type (By SIC Code)
of High Hazard Consultation Employers
by Year**

c. Number of Follow-Up High Hazard Consultations

**Table 2C
Number of Follow-Up High Hazard Consultations By Year**

d. Number of Employers with Significantly Elevated ExMODs Provided High Hazard Consultation

**Table 2D
Number of Employers with Significantly Elevated ExMODs Provided High Hazard Consultation**

e. Number and Classification of Violations Observed and Corrected During High Hazard Consultations (1994-2001)

**Table 2E
Number and Classification of Violations Observed and Corrected During Completed Onsite High Hazard Consultations**

f. Most Frequently Observed Hazards and Violations Corrected During High Hazard Consultations (1994-2001)

**Table 2F
Most Frequently Observed Title 8 Violations Corrected During High Hazard Consultations**

g. Most Frequently Observed Loss-Related Deficiencies During High Hazard Consultations

**Table 2G
Most Frequently Observed Loss-Related Deficiencies During High Hazard Consultations**

h. Violation Per Inspection Ratio: High Hazard vs. Non-High Hazard Consultations

**Table 2H
Violation Per Inspection Ratio**

3. High Hazard Enforcement

a. Number of High Hazard Enforcement Inspections

**Table 3A
High Hazard Enforcement Inspections by Employer by Year**

b. Types of Employers Provided High Hazard Enforcement Inspections

**Table 3B
Number and Type (by SIC Code) of High Hazard Enforcement Employers by Year**

c. Number of Follow-Up High Hazard Enforcement Inspections

**Table 3C
High Hazard Follow-Up Enforcement Inspections By Employer**

d. Number and Classification of Violations Observed and Abated As a Result of High Hazard Enforcement Inspections

**Table 3D
Number and Classification of Violations Observed and Abated During High Hazard Enforcement Inspections**

e. Enforcement Actions Taken During High Hazard Inspections by Year

**Table 3E
Enforcement Actions Taken During High Hazard Inspections by Year**

f. Violation per Inspection Ratio: High Hazard and Non-High Hazard Enforcement Inspections

**Table 3F
Violations per Inspection Ratio**

- g. Most Frequently Observed Title 8 Violations Abated During High Hazard Enforcement Inspections**

**Table 3G
Most Frequently Observed Title 8
Violations Abated During High Hazard
Enforcement Inspections by Type**

VIII. HIGH HAZARD PROGRAMS EFFICACY MEASURES

A. Statutory Origin

B. How Do You Measure "Efficacy"?

- 1. Injury Prevention Measures**
- 2. Economic Measures**
- 3. Service Satisfaction Measures**

C. Efficacy Measures -- 1994 through 2000

1. Efficacy Measures in General

a. Injury and Illness Rates

- (1) Lost Work Day Case Incidence Rate (LWDI)**
- (2) Total Injury and Illness Recordable Case Incidence Rate (TRI)**
- (3) Total Injury and Illness Severity Rate (TSR)**
- (4) Musculoskeletal Injury and Illness Recordable Case Incidence Rate (MRI)**
- (5) Musculoskeletal Injury and Illness Severity Rate (MSI)**

b. Workers' Compensation Loss Indicators

- (1) Number of Workers' Compensation Claims Made (CM)**
- (2) Medical Costs Associated with Claims Paid (MC)**
- (3) Disability Costs Associated with Claims Paid (DC)**

(4) Experience Modification Rating (ExMOD)

- 2. Efficacy Measures -- 1997 Report**
- 3. Efficacy Measures -- 1998 Report**
- 4. Efficacy Measures -- 1999 and 2000 Reports**
 - a. High Hazard Consultation**
 - b. High Hazard Enforcement**
 - c. Summary of 2000 Efficacy Measures**
- 5. Efficacy Measures -- 2001 and 2002 Reports**
 - a. LWDI -- High Hazard Consultation and Enforcement**
 - b. ExMOD -- High Hazard Consultation**
 - c. 2001-2002 Efficacy Measures -- High Hazard Consultation**

**Table 4A
Lost Work Day Case Incidence
Rate (and Percent Change) for
Cohort of Employers Who
Underwent Targeted Consultation**

**Table 4B
Experience Modification Rating
(and Percent Change) for Cohort of Employers
Who Underwent Targeted Consultation**

- d. 2000 Efficacy Measures -- High Hazard Enforcement**

**Table 5A
Lost Work Day Case Incidence
Rate (and Percent Yearly Change) for
Cohort of Employers Who
Underwent Targeted Enforcement
Inspection in 1994**

**Table 5B
Lost Work Day Case Incidence
Rate (and Percent Change) for
Cohort of Employers Who
Underwent Targeted Enforcement
Inspection in 1995**

**Table 5C
Lost Work Day Case Incidence
Rate (and Percent Yearly Change) for
Cohort of Employers Who
Underwent Targeted Enforcement
Inspection in 1996**

**Table 5D
Lost Work Day Case Incidence
Rate (and Percent Yearly Change) for
Cohort of Employers Who
Underwent Targeted Enforcement
Inspection in 1997**

**Table 5E
Lost Work Day Case Incidence
Rate (and Percent Yearly Change) for
Cohort of Employers Who
Underwent Targeted Enforcement
Inspection in 1998**

**Table 5F
Lost Work Day Case Incidence
Rate (and Percent Yearly Change) for
Cohort of Employers Who
Underwent Targeted Enforcement
Inspection in 1999**

**Table 5G
Cumulative Percent Yearly Change in
LWDI for Each High Hazard Enforcement
Cohort by Years**

- e. 2001 Efficacy Measures Summary**
- f. Summary of Efficacy Measures
for 2002 Report**

ATTACHMENTS

Attachment A	Insurance Code Section 11721
Attachment B	Labor Code Section 62.7
Attachment C	Labor Code Section 6314.1
Attachment D	Labor Code Section 6354
Attachment E	Labor Code Section 6355
Attachment F	Labor Code Section 6357 & 6719
Attachment G	8 CCR Section 5110
Attachment H	Labor Code Section 6354.5
Attachment I	Labor Code Section 62.9
Attachment J	8 CCR Sections 15600 et seq.
Attachment K	8 CCR Section 15601.7 (Revised)
Attachment L	Article 6. Workers' Compensation Loss Control Consultation Services, Annual Health and Safety Loss Control Plan -- Requirements and Procedures
Attachment M	Analysis of Employer Experience with the Loss Control Certification Program, and Financial Impact on Insurers, as Reported by Insurers for Premium Years 1998 and 1999
Attachment N	Authorized and Filled DOSH Positions Supported by Funding Based on the 1993 Workers' Compensation Reform Legislation and the 1995 Amendments
Attachment O	Consolidated Financial Statement
Attachment P	Sample TICF Assessment Invoice/Offer Letter

2002 REPORT
ON THE
LOSS CONTROL CERTIFICATION PROGRAM,
HIGH HAZARD ENFORCEMENT PROGRAM AND
HIGH HAZARD CONSULTATION PROGRAM

March 2002

Division of Occupational Safety and Health
Department of Industrial Relations

EXECUTIVE SUMMARY

Former Labor Code Section 62.9(i)(1) and (2) required that the Department of Industrial Relations submit to the Joint Legislative Budget Committee an Interim (1997) and a Final (1998) Report on the Targeted Enforcement (Inspection) and Consultation Programs. An Interim Report had to be submitted no later than January 1997, and a Final Report no later than January 1998. The Department submitted these legislatively-required reports in a timely manner.

Labor Code Section 62.9 specified that the Interim and Final Reports must contain the following information: (1) number and type of targeted employers inspected; (2) number and type of follow-up inspections conducted; (3) the number and type of violations observed and corrected; (4) the number and type of enforcement actions taken; (5) the total number of program staff hours expended in enforcement, administration, and support for the program; and (6) an overall assessment of the efficacy of the programs, supported by workplace injury and illness data.

Labor Code Section 62.9 was amended in 1998 by Assembly Bill 1957, and no longer requires reports on the High Hazard Enforcement and Consultation Programs. Even though no statutory mandate still exists, the Division of Occupational Safety and Health believes that it is important to report annually on the status of the Loss Control Certification Program, High Hazard Enforcement Program and High Hazard Consultation Program.

The 2002 Report summarizes the status of the programs established by the Department of Industrial Relations as a result of the 1993 reforms to the workers' compensation insurance system--the Loss Control Certification Program, the High Hazard Enforcement Program and the High Hazard Consultation Program--their activities during

the calendar year 2001 and measures of how effective the programs have been in meeting their goals.

Loss Control Certification Program

As of December 2001, a total of 107 insurer group plans have been recertified. This represents a total of 263 individual insurers. Fifteen (15) individual insurers have been given provisional certifications because they are new to the loss control certification program. One (1) insurer became uncertified in 2001 and this information was reported to the Department of Insurance. The insurer failed to achieve recertification prior to the expiration of a current annual plan. Eleven (11) insurer groups requested and received extensions to their certifications to permit changes to their selection methodologies or to receive additional data to complete their plan submittals.

Through 2001, the LCCU has conducted a total of 142 primary evaluations of insurers' Annual Loss Control Plans. Forty (40) insurer groups have received their second evaluation. Evaluations by the LCCU have now covered all of the workers' compensation market in California.

Insurer selection methodologies for targeting their insureds often fail to identify those who have the greatest workers' compensation losses or the most significant preventable safety and health problems. In 2001, numerous insurers have developed more effective methodologies. The LCCU has worked closely with insurers to assist in revising the methodologies which have proven to be less than effective. Methodologies which use policy premium or experience modification as a single criterion have proven to be the most unreliable. This finding, which has been consistently noted from 1994 through 2001, has prompted the LCCU to propose changes in the Loss Control regulations governing selection methodologies.

In order to provide a quantitative profile of the effectiveness of the Loss Control Certification Program, the LCCU examined in 2000 insured employers' experience with the Loss Control Certification Program, as reported by their workers' compensation insurers to the Workers' Compensation Insurance Rating Bureau (WCIRB) for the premium years 1998 and 1999. The results of this effectiveness survey is contained in the LCCU's *Analysis of Employer Experience*.

Due to the limitations inherent in insurer-provided data that is not consistent across insurer groups, tests of statistical significance cannot be reliably applied to the data. Nevertheless, the insurer reports are based on objective evaluation of employer experience. An analysis of that experience indicates that insurers, as a group, have successfully identified employers with greatest workers' compensation losses and the most significant and preventable health and safety hazards.

The other findings from the 2000 *Analysis of Employer Experience* are: (1) insurer loss control intervention has led to the improvement of the loss experience for a significant percentage of target employers; (2) loss control services delivered to targeted

employers under the Loss Control Certification Program have had a significant positive impact in reducing the frequency of injuries to California workers and on the reduction of workers' compensation losses for targeted employer-insureds; (3) the percent of targeted employer-insureds achieving reductions in frequency of claims and/or reduction of workers' compensation losses remains consistently high; (4) the costs to insurers for the Loss Control Certification Program do not present an undue burden on insurers, relative to their direct written premium or loss control budgets; (5) competition under "open rating" continues to cause significant turnover in the coverage of targeted employers, which has led to the exclusion of a number of targeted employers identified as eligible for loss control services; (6) adoption of a uniform selection methodology, based on a criteria already recognized by the insurance industry, will ensure the selection of employer-insureds, across all insurer groups, who would most benefit from loss control services; and (7) the Loss Control Certification Unit is meeting its mandate contained in Labor Code Section 6354.5.

Legislation (AB 749) signed by the Governor on 15 February 2002 repeals the statutory basis for the Loss Control Certification Unit and mandate a "Loss Control Coordinator." Changes to Labor Code Section 6354.5 specify that "the coordinator shall provide information to employers about the availability of loss control consultation services and respond to employers' questions and complaints about loss control consultation services provided by their insurer." Insurers would no longer be required to submit an annual plan to the Department, or to undergo an audit of their plan. AB 749 will go into effect on 1 January 2003 and the Loss Control Certification Unit will cease operations.

Targeted Inspection and Consultation Fund

The 2002 Report describes the status of the Targeted Inspection and Consultation Fund (TICF) (Labor Code Sections 62.7 and 62.9) for insured and self-insured employers. In 1995, 1996, 1997, 1998, 1999, 2000 and 2001, 11,650, 11,387, 11,378, 11,812, 13,019, 13,977 and 11,579 employers, respectively, were reported by the Workers' Compensation Insurance Rating Bureau (WCIRB) to have had an ExMOD of 1.25 or more, and were subject to the TICF assessment under Labor Code Section 62.7 (in 1995) and Section 62.9 (in 1996, 1997, 1998, 1999, 2000 and 2001). A total of 84,802 TICF invoices were sent to insured employers for the years 1995 through 2001. The total amount invoiced for 1995 through 2001 was \$50,582,072. As of 1 February 2002 the net amount collected from insured employers for 1995 through 2001 is \$49,149,098, or 97.1% of the total assessment.

As provided by Labor Code Section 62.9(c)(5) and (6), employers who have been sent TICF invoices, but who have failed to pay the amount assessed in thirty (30) days, receive a "Notice of Delinquency" from the Department of Industrial Relations. Delinquent TICF invoices (plus a 25% penalty) are then referred to the Franchise Tax Board, Non-Tax Debt Collection Unit, for collection after 15 days of non-payment. As of 1 February 2002, a total of 5,929 unpaid TICF accounts have been referred to the Franchise Tax Board, representing \$3,416,146.69 in uncollected monies (with imposition of the 25% penalty, the total is \$4,274,309.99). As of 1 February 2002,

\$1,400,974.80 (33%) has been collected by the Franchise Tax Board (although amounts collected by FTB for 2001 accounts are not available at the time of this Report). The TICF Assessment for self-insured employers indicates that since 1995, 789 self-insured employers were sent invoices and were assessed a total of \$2,159,273. As of 1 February 2002, a total of \$2,159,273 (100%) has been collected from self-insured employers.

High Hazard Consultation Program

The 2002 Report describes the status of the High Hazard Consultation Program (see Labor Code Sections 62.9, 6354 and 6355).

In 2001, 663 employers were provided on-site high hazard consultative assistance. During consultation with these employers, 4,336 Title 8 violations were observed and corrected as a result of the provision of consultative assistance. Since 1994, 5,100 employers have been provided direct on-site consultative assistance, and 24,401 Title 8 violations have been observed and corrected.

Beginning in 2000, the efficacy of high hazard consultative assistance is assessed through measurement of a high hazard employer's Lost Work Day Case Incidence Rate (LWDI) and an employer's Experience Modification Rating (ExMOD).

For employers who were provided high hazard consultative assistance in 1999 and surveyed in 2001 (n=393), 114 employers responded with detailed information from their Log 200 Record of Occupational Injuries and Illnesses to calculate their Lost Work Day Incidence Rate (LWDI) for the three years prior to the consultative assistance intervention and for the year following the intervention. As Table 4A indicates, the average LWDI for this 1999 cohort, the average LWDI decreased by 22% (from 6.82 to 5.33). For the same cohort, the 2001 experience modification rating (ExMOD) of 114 employers was obtained from the Workers' Compensation Rating Bureau (WCIRB) and compared to the ExMOD for the year prior to the consultative assistance intervention. As Table 4B indicates, the average ExMOD for this 1998 cohort decreased from 216 to 162, a decrease of 25%.

High Hazard Enforcement Program

The 2002 Report describes the status of the High Hazard Enforcement Program (see Labor Code Section 6314.1).

In 2001, 401 employers underwent a high hazard enforcement inspection. During these inspections, 1,650 violations were observed and cited. Since 1994, 3,296 employers have undergone a high hazard enforcement inspection, and 16,002 violations have been observed and cited. Of these violations, 41.12% were classified as "serious."

For a series of six cohorts of employers who underwent high hazard enforcement inspections during the years 1994 through 1999, detailed information from their Log 200

Record of Occupational Injuries and Illnesses was used to calculate their Lost Work Day Incidence Rate (LWDI) for the year in which the enforcement inspection took place (baseline), and for each subsequent year up to and including 2000 (except for the 1994 cohort). As Table 5G indicates, the cumulative percent change in the LWDI for each of the six cohorts (except the 1995 cohort) indicates that inspected employers' LWDI decreased by anywhere from 20% (for 1999 cohort) to 68% (for 1996 cohort) and by a total of 32% for all cohorts.

Summary

The 2002 Report indicates that the targeting of establishments with elevated rates of workplace injuries, and illnesses and the application by Cal/OSHA of consultation or enforcement resources to those establishments, is an effective way to identify hazards and violative conditions and to reduce injury and illness incidence rates and workers' compensation loss indicators arising from those hazards and violative conditions.

Please direct any questions about the 2002 Report, or suggestions for the 2003 Report, to John Howard, Chief, Division of Occupational Safety and Health, P.O. Box 420603, San Francisco, CA 94142.

Thank you.

I. 1993 WORKERS' COMPENSATION INSURANCE REFORM LEGISLATION

On 16 July 1993, former Governor Wilson signed into law six bills passed earlier that same day by the Legislature (AB 110, AB 119, AB 1300, SB 484, SB 983, and SB 1005).

These six bills, together with another bill, SB 30, which the former Governor signed on 28 July 1993, represented, according to most observers at the time, significant reform of the California workers' compensation insurance system.

Some of the highlights of the new 1993 injury and illness compensation laws included:

- A seven percent rollback in employers' workers' compensation insurance premiums;
- Abolishment of the "minimum rate" law;
- A cap on vocational rehabilitation expenditures;
- Medical cost containment;
- Restrictions on mental stress claims;
- Provision for managed care options;
- Anti-fraud protections; and
- Opportunities for labor and management in the construction industry to create alternatives to the current injury compensation system in a collective bargaining agreement.

Even though the new workers' compensation reform laws related primarily to injury compensation, there were five important provisions in AB 110 pertaining to injury prevention, i.e., Insurance Code Section 11721 and Labor Code Sections 62.7, 6314.1, 6354, 6355, and 6357. These five provisions provided the statutory basis for the Loss Control Certification Program, the Targeted Enforcement Program and the Targeted Consultation Program.

A. Insurance Code Section 11721

Section 11721 imposed two major obligations on workers' compensation insurers.¹ Insurers were required to:

¹ See Attachment A for the text of Insurance Code §11721. In 1995, Insurance Code Section 11721 was amended and its provisions, together with some amendments, were adopted as Labor Code in Section 6354.5. See Attachment H for the text of Labor Code Section 6354.5.

- "Maintain or provide occupational safety and health loss control consultation services certified by the Director of Industrial Relations;" and
- Submit to the Director an annual health and safety loss control plan for targeting employers with the greatest workers' compensation losses and the most significant and preventable health and safety hazards on a form prescribed by the Director and meeting specific statutory requirements."

Section 11721 was implemented by the Department of Industrial Relations by establishing a Loss Control Certification Unit within the Division of Occupational Safety and Health.² See Section III of this Report.

B. Labor Code Section 62.7

AB 110 added Section 62.7 to the Labor Code and established the Cal/OSHA Targeted Inspection and Consultation Fund (TICF) as a Special Fund in the State Treasury.³

According to Section 62.7, monies from the TICF could be expended by the Department of Industrial Relations, upon appropriation by the Legislature, for the Cal/OSHA Enforcement Inspection and Consultation Programs and for certifying the loss control services of workers' compensation insurers.

In order to fund the administrative costs of implementing and maintaining the various programs mandated by AB 110, Labor Code Section 62.7 permitted the Director of the Department of Industrial Relations to levy an assessment, expressed as a percentage of premium, on all insured employers with a workers' compensation insurance experience modification rating (ExMOD) of 1.25 or greater, and on private self-insured employers with an equivalent experience rating of 1.25 or greater and to direct the assessments to the Targeted Inspection and Consultation Fund.

In doing so, Labor Code Section 62.7 provided a mechanism for augmenting the funding currently available to the Division of Occupational Safety and Health from the State General Fund and from the U.S. Department of Labor, Occupational Safety and Health Administration, to conduct programmed enforcement inspections of California employers with the highest injury, illness and workers' compensation loss rates.

The monetary assessment of the type found in Labor Code Section 62.7 was described as a type of "user" funding, since the assessed employers

² The Loss Control Certification Unit (LCCU) is a component unit of the Division of Occupational Safety and Health, but not a component of the Cal/OSHA Program. See Section III of this Report for an update on administrative implementation of Insurance Code Section 11721 (later transferred to Labor Code Section 6354.5).

³ See Attachment B for text of Labor Code Section 62.7.

make "use" of consultation assistance resources which are made possible by the TICF to eliminate their work-related injuries, illnesses and workers' compensation losses.

Prior to 1993, several other states had implemented various types of occupational safety and health consultation and educational assistance programs funded primarily by state, as opposed to federal, monies. However, California was the first state to utilize funds raised from individual employers to provide support for compliance or enforcement inspection activities (See Section 6414.1).

See Sections II.B. and C. for an update on the 1995 and 1998 Legislative reform of the TICF Assessment Fund Program through a new Labor Code Section -- Section 62.9, passed during the 1994-1995 Legislative Session (Senate Bill 996), and amendments to that Labor Code Section, passed during the 1997-98 Legislative Session.

C. Labor Code Section 6314.1

AB 110 repealed existing Labor Code Section 6314.1⁴ and added new language to Section 6314.1⁵ which required the Division to

- "Identify employers in high hazardous industries with the highest incidence of preventable⁶ occupational injuries and illnesses and workers' compensation losses;"
- "Establish procedures for ensuring that the highest hazardous employers in the most hazardous industries are inspected on a priority basis;" and
- "Coordinate the inspections conducted in accordance with Section 6314.1 with the Division's consultation services."

Section 6314.1 required that the Division establish a new compliance program for

"targeting employers in high hazardous industries with the highest incidence of preventable occupational injuries and illnesses and workers' compensation losses."

Section 6314.1 sets forth a programmatic formula which requires a two-tiered selection or targeting methodology. First, "high hazardous industries" must be selected, and then specific employer-members of

⁴ The pre-1993 Labor Code Section 6314.1 had established the "100 High Hazard Industry List" as a tool for the selection of employers for programmed inspections by the Division. One of the limitations of the 100 High Hazard Industry List was that the sheer number of its entries tended to undermine the concept of "highest hazard." In addition, since the List was composed only of industry classifications, it could not serve as a means to identify specific establishments for inspection.

⁵ See Attachment C for the text of Labor Code Section 6314.1.

⁶ Although no definition of the term "preventable" was provided in Section 6314.1, the Division understands the term "preventable" to mean that there exists a feasible and effective means of reducing or eliminating the risk of occupational injuries, illnesses or workers' compensation losses.

those hazardous industries must be selected on an establishment level basis. Section 6314.1 provides, then, a combination "industry" and "establishment" selection process. Identifying employers according to establishment level "hazard" criteria is much easier said (or legislated) than done. In California, workplace injury and illnesses data, by employer, cannot be accessed from one source.⁷

For instance, Section 6314.1(a) provides that employers can

"be identified from any or all of the following data sources: California Work Injury and Illness Program; Occupational Illness and Injury Survey; Federal Hazardous Employers' List; experience modification and other relevant data maintained and furnished by all rating organizations; histories of violations of Occupational Safety and Health Act standards; and any other source deemed appropriate that identifies injury and illness rates."

Some of these employer data sets were defunct even at the time that AB 110 was enacted, e.g., Federal Hazardous Employers' List. Other data sets provide employer data for only a small subset of California employers, e.g., the experience modification rating.

Finally, when data compiled by "rating organizations," e.g., the California Workers' Compensation Insurance Rating Bureau (WCIRB), is accessed, such data is arrayed differently in terms of categorizing employers as "high hazard." The WCIRB database categorizes employers by "Governing Classification Codes" and OSHA injury incidence database categorizes employers by Standard Industrial Classification (SIC) Codes.

The Division has studied ways to overcome the obstacles to creating a single list of employers

"in high hazardous industries with the highest incidence of preventable occupational injuries and illnesses and workers' compensation losses"

which would be suitable as a targeting tool for performing programmed enforcement inspections and for offering consultation services.

See Sections V. and VI.B for a discussion of various employer selection methods.

⁷ In States with only one provider of workers' compensation insurance, all workplace injury and illness claims-made and claims-paid data is aggregated in a centralized database. California has multiple providers of workers' compensation insurance and has not had a centralized database for all workers' compensation claims. In 1993, the Legislature mandated a Workers' Compensation Information System (WCIS) to be administered by the Division of Workers' Compensation (DWC). The section was amended in 1997. See Labor Code Section 138.6. The California WCIS has been developed by DWC and became operational in 2000. The Division of Occupational Safety and Health hopes to utilize the WCIS database as a part of its "targeting" methodology. See Section V. of this Report.

D. Labor Code Sections 6354 and 6355

AB 110 amended Sections 6354⁸ and 6355⁹ of the Labor Code to require that the Division:

- "Establish a program for identifying categories of occupational safety and health hazards causing the greatest number and most serious preventable injuries and illnesses and workers' compensation losses, and places of employment where they are occurring, by utilizing the data system from which the list of high hazard employers is developed. The program must also include a component for reducing the number of work-related, repetitive motion injuries, including, but not limited to, back injuries;"
- "Develop procedures for offering consultation services to high hazard employers which may include development of educational material and procedures for reducing or eliminating safety and health hazards, conducting workplace surveys to identify health and safety problems, and development of plans to improve employer health and safety loss records; and"
- "Develop model injury and illness prevention training programs to prevent repetitive motion injuries, including recommendations for the minimum qualification of instructors."

In adding the concept of "offering" consultative assistance, AB 110 provided a more proactive focus for Cal/OSHA Consultation Service. Amended Section 6354 requires that

"the Division develop procedures for offering consultation services to high hazard employers ..." (underlining added)

identified from the data used to identify high hazard employers for the targeted enforcement program.¹⁰

Careful comparison of Section 6314.1 with Section 6354 reveals that the latter provides a programmatic formula a little different than that which Section 6314.1 provides. Section 6354 requires that the Division establish a program

"...for identifying categories of occupational safety and health hazards causing the greatest number and most serious preventable injuries and illnesses and workers' compensation losses and the places of employment where they are occurring."

However, absent from the Section 6354 programmatic formula is the "high hazardous industries" modifier. Rather, it is the "categories" of hazards "causing the greatest number and most serious preventable injuries and

⁸ See Attachment D for full text of Labor Code Section 6354.

⁹ See Attachment E for full text of Labor Code Section 6355.

¹⁰ Traditionally, consultative assistance is provided to employers upon "request." The concept of "offering" consultative assistance to which Section 6354 refers was new in 1993. However, to be of any value in reducing employee injuries and illnesses and workers' compensation losses, an "offer" of consultative assistance has to be accepted. See Section VI.

illnesses and workers' compensation losses" and "the places of employment where they are occurring" which must be identified.

See Sections V. and VI.B. for a discussion of the various employer selection methods found in the 1993 workers' compensation insurance reform legislation.

In requiring the Division to "establish" a targeted consultation program, Section 6354 also mentions that

"The program must also include a component for reducing the number of work-related, repetitive motion injuries, including, but not limited to, back injuries."

and that the Division

"shall establish model injury and illness prevention training programs to prevent repetitive motion injuries, including recommendations for the minimum qualification of instructors."

In conjunction with the efforts of the Occupational Safety and Health Standards Board to adopt a repetitive motion injury standard, the Division has ensured that the targeted consultation program contain a programmatic emphasis on reducing the number of repetitive motion injuries, including back injuries, during the performance of on-site consultative assistance visits. In addition, the targeted consultation program has developed several model injury and illness prevention training programs to prevent repetitive motion injuries. See Section VI.B.

E. Labor Code Section 6357

In 1993, AB 110 also added a new Section 6357 to the Labor Code,¹¹ which required the California Occupational Safety and Health Standards Board -- an agency separate and independent from the Division of Occupational Safety and Health -- to adopt

"[O]n or before January 1, 1995... standards for ergonomics in the workplace designed to minimize instances of injury from repetitive motion."

At the time the legislation passed in mid-1993, the California Occupational Safety and Health Standards Board ("Standards Board") was relying on the Division of Occupational Safety and Health and its public Ergonomics Advisory Committee to develop an ergonomics standard for the Standards Board's consideration and adoption. In November of 1993, a Notice of Public Hearing was published in the California Notice Registry which contained the ergonomics standard (8 CCR Section 5110) proposed by the Division based on the public advisory committee process. In

¹¹ See Attachment F for full text of Labor Code Section 6357.

November of 1994, after two large public hearings, and the submission of over 6,500 written comments, the Standards Board voted down the proposed Section 5110 standard.

On 19 January 1995, the Standards Board was sued by the California Labor Federation, and three named injured workers, in Superior Court in Sacramento, California for its failure to "adopt" a standard "to minimize instances of injury from repetitive motion" by 1 January 1995. The Superior Court ordered the Standards Board to develop and adopt a standard which complied with Section 6357 by 1 December 1996.

In December of 1995, the Standards Board published a Notice of Public Hearing which contained a proposed repetitive motion standard. Hearings on the proposed standard were held on 18 (Los Angeles) and 23 (Sacramento) January 1996.

On 14 November 1996, the Standards Board adopted a new 8 CCR Section 5110 entitled "Repetitive Motion Injuries."

The Standards Board's adoption met the 1 December 1996 deadline established by the Sacramento County Superior Court. However, on 3 January 1997, the Office of Administrative Law disapproved Section 5110 and returned it to the Standards Board "because Section 5110 fails to satisfy the clarity standard of Government Code Section 11349.1." Within 120 days (as permitted by the California Government Code), the Standards Board resubmitted Section 5110 to the Office of Administrative Law for its approval.

The Office of Administrative Law approved 8 CCR Section 5110 on 3 June 1997, and the new repetitive motion injury standard became legally enforceable in California on 3 July 1997.¹²

In mid-1997, Section 5110 was challenged by both organized labor and employer representatives in the Sacramento Superior Court. On 15 October 1997, Superior Court Judge James T. Ford issued a Minute Order and made the following changes to Section 5110 and declared the remainder to be valid:

- (1) Judge Ford modified subsection (a)(1) to strike the words "predominant" and "(i.e., 50% or more)";
- (2) Judge Ford modified subsection (a)(3) to strike the word "objectively;"

¹² See Attachment G for the text of §5110 as adopted by the Standards Board on 14 November 1996, amended by the Third Appellate District of the California Court of Appeal on 29 October 1999, and as currently enforced by the Division of Occupational Safety and Health.

- (3) Judge Ford modified subsection (a) by striking the words "Exemption: Employers with 9 or fewer employees," following subdivision (a)(4); and
- (4) Judge Ford modified subsection (c) by striking the entire subsection (c).

On 12 December 1997, the Occupational Safety and Health Standards Board, as well as the American and California Trucking Associations, filed an appeal of the Superior Court Order with the Third Appellate District of the California Court of Appeals in Sacramento.

On 13 March 1998, the Third Appellate District stayed Judge Ford's Order of 6 February 1998 (issued at a special hearing on that date), thus reinstating the wording of the standard as adopted by the Standards Board on 14 November 1996.

On 29 October 1999, the Third Appellate District of the Court of Appeal reversed in major part the judgment of the Superior Court.

The Court of Appeal concluded on the appeal by the Standards Board and the Associations

"that, except for one conspicuous exemption, the regulation [8 CCR Section 5110] is valid, that the trial court improperly invaded the rulemaking authority of the [Standards] Board by striking the remaining provisions and that the APA-based challenges to the regulation are meritless."

The "one conspicuous exemption" that the Court of Appeal found defective in the Standards Board's regulation was the small employer exemption, found in 5110, subsection (a).

The trial court had ruled this provision was inconsistent with the Standards Board's statutory authority to "minimize RMIs in the workplace." On this issue, the Court of Appeals agreed with the trial court, stating that a standard which excludes four out of five workplaces is inherently inconsistent with [the Board's statutory] responsibility to promulgate standards for minimizing RMIs in all places of employment in California.

In addition, the Court of Appeal specifically found that there was no reason to return the entire regulation to the Standards Board for more rulemaking just to sever the invalid small employer exemption. As a result, the small employer exemption in Section 5110 ceased to have any legal effect.

Neither the Standards Board nor the employer trucking associations filed a petition for hearing in front of the California Supreme Court. Thus, litigation over California's ergonomics standard concluded approximately three years after the Repetitive Motion Injury Standard was adopted by the Standards Board.

Despite the end of appellate litigation mostly in the favor of the Standards Board, the Legislature in 1999 reaffirmed its continuing concern over the prevalence of repetitive motion injuries in California workplaces and reminded the Occupational Safety and Health Standards Board of its continuing duty to carry out Labor Code Section 6357.¹³

On 14 November 2000, the Federal OSHA promulgated a Final Ergonomics Program Standard.¹⁴ However, the OSHA standard was subsequently nullified by Congress in early 2001. Since then, no other federal ergonomics rulemaking has been promulgated, and California's ergonomics standard remains the only state standard enforced in the United States.

¹³ See Attachment F for the full text of Labor Code Section 6719.

¹⁴ See Federal Register, Vol. 65, No. 220 (Tuesday, November 14, 2000), pp. 68262-68870

II. LEGISLATIVE MODIFICATIONS IN 1995, 1998 and 1999

A. Senate Bill (SB) 1051 -- Labor Code Section 6354.5

During their 1994-1995 session, the Legislature amended Labor Code Section 62.7 by means of Senate Bill 1051. SB 1051 created a Special Fund separate from the Cal/OSHA Targeted Inspection and Consultation Fund (TICF) for the deposit of certification fees from the Loss Control Certification Unit (LCCU).

New Labor Code Section 62.7¹⁵ repealed the previous provision which had insurer certification fees being deposited into the Targeted Inspection and Consultation Fund within the State Treasury. The reason for this change was that insurers were concerned that their certification fees could be expended by the Department of Industrial Relations to support compliance activities as set forth in Section 6314.1.

In addition, SB 1051 amended Insurance Code Section 11721 to read as follows:

"An insurer desiring to write workers' compensation insurance shall maintain or provide occupational safety and health loss control consultation services certified by the Director of Industrial Relations pursuant to Section 6354.5 of the Labor Code."

SB 1051 then added a new Section 6354.5 to the Labor Code¹⁶ which essentially duplicated the previous Insurance Code Section 11721, as set forth in AB 110, but added the following new provisions:

- SB 1051 provided that the insurers do not have "to identify any employer by name" in their annual health and safety loss control plan;
- SB 1051 provided for the confidentiality of information provided to the Division's LCCU during the certification process;
- SB 1051 required the DIR to develop "guidelines to assist insurers in identifying the employers with the highest preventable health and safety hazards;" and
- SB 1051 provided that an exemption, extension or exception to the annual filing requirements can be granted by the LCCU with a showing by the insurer that one of the following applies:

"That no new filing is required because there are no material changes to the plan currently on file with the director;

That the filing is limited to material changes to the plan on file with the director;

¹⁵ See Attachment B for full text of amended Labor Code Section 62.7.

¹⁶ See Attachment H for text of Labor Code Section 6354.5.

That the information necessary for the filing is not yet in the possession of the insurer and that an extension of time for the filing is necessary to enable the insurer to make a full and complete filing; or

That the insurer has no policy holders in California who meet the appropriate criteria for identification pursuant to the plan currently on file with the director."

B. Senate Bill (SB) 996 -- Labor Code Section 62.9

1. TICF Assessment Formula for Insured Employers

During their 1994-95 session, the Legislature also took a second look at the way Section 62.7 assessed employers with ExMODs of 1.25 or more for the Targeted Inspection and Consultation Fund (TICF).

As a result, SB 996 was passed and went into effect 30 June 1995 on an urgency basis. It added a new section to the Labor Code-- Section 62.9, which is more extensive than Section 62.7.¹⁷

SB 996 changed the way in which insured employers are assessed for the TICF. Instead of the TICF assessment being based on a percentage of the premium dollar paid by the employer to the insurer (as the former Section 62.7 mandates), assessments under Section 62.9 are fixed by a statutory "schedule," based on an employer's yearly workers' compensation payroll.

Section 62.9(a) set forth a schedule of the amount an employer owes in TICF assessment as follows:

<u>Payroll Range</u>	<u>Assessment Amount</u>
Less than \$250,000	\$ 100
\$250,000 to \$500,000	\$ 200
\$500,001 to \$750,000	\$ 400
\$750,001 to \$1,000,000	\$ 600
\$1,000,001 to \$1,500,000	\$ 800
\$1,500,001 to \$2,000,000	\$1,000
\$2,000,001 to \$2,500,000	\$1,500
\$2,500,001 to \$3,500,000	\$2,000
\$3,500,001 and above	\$2,500

2. TICF Assessment Formula Self-Insured Employers

In addition to modifying the manner in which insured employers are to be assessed for the TICF, SB 996, in Section 62.9(f)(1), also required the Director of the Department of Industrial Relations to

¹⁷ See Attachment I for the text of Section 62.9.

adopt revised regulations to determine experience modification ratings for private self-insured employers

"that is generally equivalent to the modification ratings that apply to insured employers and is weighed by both severity and frequency."

After passage of AB 110 in 1993, the Self Insurance Plans (SIP) Program of the Department of Industrial Relations, and the California Self Insurance Association, developed a set of regulations to determine an "equivalent" experience modification rating for self-insured employers. The methodology in these regulations was weighted toward the severity of a workers' compensation claim and was viewed by self-insured employers as not truly "equivalent" to the ExMOD.¹⁸ Revised regulations containing a new self-insured employer assessment methodology (as required by Labor Code Section 62.9(f)(1)) were prepared by the Department of Industrial Relations and went into effect on 10 November 1997.¹⁹

3. TICF Collection Procedures

Labor Code Sections 62.9(c)(1) through (6) set forth procedures for the Department of Industrial Relations (DIR) to follow in collecting TICF assessments from insured employers. These procedures are as follows:

a. DIR Request for List of 1.25 Insured Employers.

"Upon the request of the director, the Department of Insurance shall direct the licensed rating organization designated as the department's statistical agent to provide to the director, for purposes of subdivision (b), a list of all insured employers having a workers' compensation experience rating modification of 1.25 or more, according to the rating organization's records at the time the list is requested, for policies incepting the year preceding the year in which the assessment is to be collected." Section 62.9(c)(1)

b. DIR Request for Annual Payroll

"The director shall determine the annual payroll of each insured employer subject to assessment from the payroll that was reported to the licensed rating organization identified in paragraph (1) for the most recent period for which one full year of payroll information is available for all insured employers." Section 62.9(c)(2)

¹⁸ See Attachment J for text of 8 CCR Section 15600 et seq.

¹⁹ See Attachment K for the text of 8 CCR Section 15601.7.

c. Indirect Invoicing by DIR to Insured Employers Through Insurers

"On or before July 16, 1995, for the purposes of the July 1995 assessment, and thereafter not later than March 1 of each year, the director shall provide each insurer with a statement identifying each of its current insured employers subject to assessment, and the amount of the total assessment, and the amount of the total assessment for which each insured employer is liable. The insurer immediately shall notify each insured employer, in a format chosen by the insurer, of the insured's obligation to submit payment of the assessment to the director within 30 days after the date the billing was mailed, and warn the insured of the penalties for failure to make timely and full payment as provided by this subdivision. Each insurer shall report to the director the date on which the notice required by this paragraph was mailed." Section 62.9(c)(3)

d. Referral of Disputes to DIR

"In the event an insured employer notifies the insurer that there is a disagreement as to the payment obligation described in paragraph (3), the insurer shall refer the employer to the department and notify the director that the employer has made an objection." Section 62.9(c)(4)

e. DIR Identification of Unpaid Assessments, Insurer Notification and Insurer-Initiated Notice of Delinquency

"The director shall identify to each insurer any of its insured employers that, within 30 days after the mailing of the billing notice, fails to pay, or object to their assessments. The insurer immediately shall mail to each of these employers a notice of delinquency and a notice of the director's intention to assess penalties, advising that, if the assessment is not paid in full within 15 days after mailing of the notices, the director will levy against the employer a penalty equal to 25 percent of the employer's assessment, and will refer the assessment and penalty to the Franchise Tax Board for collection. The notices required by this paragraph shall be sent by United States first class mail. Each insurer shall report to the director the date on which the notices required by this paragraph were mailed." Section 62.9(c)(5)

f. DIR Referral of Unpaid Assessments

"If an assessment is not paid by an insured employer within 15 days after the mailing by the insurer of the notices required by paragraph (5), the director shall refer the delinquent assessment and the penalty to the Franchise Tax Board for collection pursuant to Section 19290.1 of the Revenue and Taxation Code." Section 62.9(c)(6)

4. Reports to the Legislature

Labor Code Section 62.9(i) also set forth requirements for the Department of Industrial Relations to submit reports to the Joint Legislative Budget Committee in January of 1997 and 1998 on the targeted enforcement and consultation programs. Reports were submitted in January 1997 and 1998.²⁰

a. Programmatic Activity and Efficacy Measures

Section 62.9(i) specifies that the Reports shall contain the following information:

- The number and type of targeted employers inspected.
- The number and type of follow-up enforcement inspections conducted.
- The number and type of violations observed and corrected.
- The number and type of enforcement actions taken.
- The total number of program staff hours expended in enforcement, administration, and support for the programs.
- A preliminary (1997) and an overall (1998) assessment of the efficacy of the programs, supported by workplace injury and illness data.

b. Alternative Funding Methodologies

Section 62.9(k)(1) specifies that the Department:

"... shall submit to the Legislature a report addressing one or more alternative methods of funding the Cal-OSHA targeted inspection and consultation programs specified by Section 62.7. The report also shall propose and evaluate one or more alternatives to the use of workers' compensation insurance experience modification ratings for the identification of employers subject to assessment, and alternative methods for determining assessment amounts and collecting the assessments."

Section 62.9(k)(2) also specifies that the Department in its 1997 Interim Report:

²⁰ Reports for calendar years beyond 1998 are not legislatively-mandated, but are available for the years 1999 through 2001.

"... shall submit to the Legislature an interim report concerning its progress with regard to the report described in paragraph (1), including any tentative findings made by the department concerning alternative methods of funding the Cal-OSHA targeted inspection and consultation programs specified by Section 62.7."

5. Sunset Clause for Targeted Inspection and Consultation Fund

Lastly, SB 996 provided for a "sunset" of the Targeted Inspection and Consultation Fund by stating in subsection (L) that

"This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date."

C. Assembly Bill (AB) 1957 -- Labor Code Section 62.9

SB 996 in 1995 provided for a "sunset" of the Targeted Inspection and Consultation Fund authority by stating in subsection (L) that

"This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date."

During their 1997-1998 session, the Legislature amended Labor Code Section 62.9 by means of Assembly Bill 1957.

In addition to other minor changes, AB 1957 extended the authority for the Department to levy and collect assessments from employers to fund the Cal/OSHA Targeted Inspection and Consultation Programs from 1 January 1999 to 1 January 2000.²¹

D. Assembly Bill (AB) 1655 -- Labor Code Section 62.9

In 1999, AB 1655 was enacted which removed the "sunset" provision-- subsection (g)--from Labor Code Section 62.9. Effective 1 January 2000, the Department has the statutory authority to levy and collect assessments from employers to support the Targeted Inspection and Consultation Programs on an annual basis without "sunset."

²¹ AB 1957 also deleted obsolete provisions from Section 62.9, giving the Department explicit authority to collect the assessments from employer-insureds, as opposed to the previous language in Section 62.9 which provided for "indirect" billing of employer-insureds through their workers' compensation insurers.

III. LOSS CONTROL CERTIFICATION PROGRAM

A. Initial Organizational Activities

1. Establishment of Loss Control Certification Unit (LCCU)

In 1993, the Director of the Department of Industrial Relations (DIR) assigned the programmatic responsibility for implementing the provisions of Insurance Code Section 11721 (and later Labor Code Section 6354.5) to the Division of Occupational Safety and Health (DOSH) within the Department. In 1994, the DOSH established a Loss Control Certification Unit (LCCU) within the Division.

2. Establishment of an Advisory Committee ("Working Group")

In addition to establishing a LCCU, the Division also established an ongoing advisory committee (called the "Working Group"), composed of labor, employer and insurer representatives, to provide assistance to the LCCU in determining the best methods for certifying and evaluating the insurer's plans under 8 CCR Section 339.1 et seq.

B. Regulatory Development -- 1993-2002

1. Initial

The first task of the LCCU was to adopt implementing regulations which set forth the insurers' duties under Insurance Code Section 11721. Regulations were developed through an advisory committee composed of representatives from labor, management and the insurance industry. 8 CCR Section 339.1 through 339.11 went into effect on an emergency basis on 10 January 1994.²²

2. Revision

In October of 1998, the Division of Occupational Safety and Health convened a second advisory committee to review 8 CCR Sections 339.1 through 339.11 to clarify the insurer's duties and the Division's responsibilities under the statute. The Loss Control Regulatory Revision Advisory Committee is composed of representatives from the labor, employer and insurer communities. The Advisory Committee met for the second time in November of 1999. In response to the Advisory Committee, the Division made further revisions to the draft regulations, which are undergoing final

²² See Attachment L for text of 8 CCR Sections 339.1 through 339.11.

review. The revised regulations will be formally proposed in mid-2002 at which time a public hearing will be held.

C. Programmatic Activities -- 1994-2001

1. Initial Certifications -- 1994 -1995

By early 1995, all workers' compensation insurers writing workers' compensation insurance in California--a total of 120 insurer groups, which represent 302 individual insurers--had been certified by the LCCU.

2. Recertifications -- 2001

As of December 2001, a total of 107 insurer group plans have been recertified. This represents a total of 263 individual insurers. Fifteen (15) individual insurers were provided applications for provisional certifications because they were newly authorized by the Department of Insurance. One (1) insurer became uncertified in 2001 and this information was reported to the Department of Insurance. The insurer failed to achieve recertification prior to the expiration of a current annual plan. Eleven (11) insurer groups requested and received extensions to their certifications to permit changes to their selection methodologies or to retrieve additional data to complete their plan submittals.

3. Plan Evaluations -- 1997-2001

a. Performance of Plan Evaluations

Through 2001, the LCCU has conducted a total of one hundred forty-two (142) evaluations of insurers' Annual Loss Control Plans. Forty (40) insurer groups have received a second evaluation. Evaluations have now covered all of the workers' compensation market in California.

b. Findings from Plan Evaluations

- (1) Most California workers' compensation insurers are making good faith efforts to understand and comply with the statutes and regulations governing the provision of loss control services to their insureds.
- (2) Evaluations of the certified Annual Plans from the 1994 to 2001 plan years indicate that most carriers

have provided loss control services to a majority of the insureds they selected for their Annual Plan.

- (3) The LCCU believes that the competitive effect of open rating has resulted in disruptions in the senior management of loss control services within many workers' compensation insurance companies. In addition, the LCCU believes that many insurers' loss control staffing is in greater flux due to the competitive pressures of under pricing, substantial increases in losses, consolidation of insurer companies, withdrawals from the market, and the conservation by the California Department of Insurance of the second largest workers' compensation insurer in California.

Turnovers in loss control management, and in some instances complete turnover of staff within an insurer's organizational structure, has created repeated deficiencies in Annual Plan applications and plan implementation. Starting over with new managers is very time-consuming for the LCCU since the Unit has to educate the insurer's personnel during the application process. Wide variances in Annual Plan performance have been seen by Plan Evaluators when loss control management continuity has been disrupted.

- (4) Some specific observations from the insurer plan evaluations which the LCCU conducted from 1994 through 2001 indicate the following:

- (a) Performance Improvement -- Second Evaluation

When comparing insurers' performance on their 1994 through 1996 Plans with their 1997 through 2001 Plans, the LCCU has noted significant improvement in insurers' understanding of their regulatory responsibilities and in their delivery of consultative services to their targeted insureds.

- (b) Cooperation

With very few exceptions, insurers have been very cooperative with the LCCU during the

Plan evaluation process. During the re-evaluations, most insurers have seen some value in the review of loss control services and indicate that certification and recertification has assisted them in focusing on identifying and assisting those insureds who need loss consultative services.

(c) Consultant Training and Management Intervention

The LCCU has recognized that training has improved substantially for loss control consultants, both those working directly for the insurer and those under contract from outside sources. The LCCU has provided on-site training to insurer management and consultants on the regulatory service requirements. Insurers have demonstrated greater oversight of the services provided to target employers.

(d) Documentation

In numerous cases, the LCCU has noted that insurer and/or consultant file documentation has failed to substantiate full compliance with the insurer's certified Annual Plan or with the regulations. Many files have lacked the data which is necessary for the LCCU to verify the effectiveness of an insurer's provision of loss control services to their targeted insureds.

(e) Selection Methodologies

Some insurer selection methodologies for targeting their insureds still fail to consistently identify those employers who have the greatest workers' compensation losses or the most significant preventable safety and health problems.

In 2001, more insurers developed effective methodologies. The LCCU has worked closely with insurers to assist in revising the methodologies which have proven to be

ineffective. Methodologies which use policy premium or experience modification as a single criterion have proven to be the most unreliable.

This finding, which has been consistently noted from 1994 through 2001, has prompted the LCCU to propose changes in the Loss Control regulations governing selection methodologies.

D. Program Needs -- Plan Evaluation

Currently, the Loss Control Certification Unit has a budget allocation for only three (3) plan evaluators. An increased allocation to the level of six (6) plan evaluators is necessary in order to more completely verify:

1. That the selection methodology utilized by each insurer has actually identified all of its insureds with the greatest workers' compensation losses and the most significant preventable health and safety hazards;
2. That the resources expended by the insurer to be in compliance with the loss control regulations have been accurately reported in the Annual Plans; and
3. That the delivery of services documented in the insurer's loss control files has actually produced the loss reductions submitted in subsequent Annual Plans.

E. Effectiveness Evaluation

1. *Analysis of Employer Experience*

In order to provide a quantitative profile of the effectiveness of the Loss Control Certification Program, the LCCU examined in 2000 insured employers' experience with the Loss Control Certification Program, as reported by their workers' compensation insurers to the Workers' Compensation Insurance Rating Bureau (WCIRB) for the premium years 1998 and 1999. The results of this effectiveness survey is contained in the LCCU's *Analysis of Employer Experience*.²³

²³ See Attachment M for the text of the *Analysis of Employer Experience with the Loss Control Certification Program, and Financial Impact on Insurers, as Reported by Their Insurers for the Premium Years 1998 and 1999.*

2. *Analysis Limitations*

Due to the limitations inherent in insurer-provided data that is not consistent across insurer groups, tests of statistical significance cannot be reliably applied to the data. Nevertheless, the insurer reports are based on objective evaluation of employer experience. An analysis of that experience indicates that insurers, as a group, have successfully identified employers with greatest workers' compensation losses and the most significant and preventable health and safety hazards.

3. *Major Findings from the 2000 Analysis of Employer Experience*

- a. Loss control services delivered to targeted employers under the Loss Control Certification Program have had a significant positive impact in reducing the frequency of injuries to California workers and on the reduction of workers' compensation losses for target employers;
- b. The percent of targeted employers achieving reductions in frequency of claims and/or reduction of workers' compensation losses remains consistently high;
- c. The costs to insurers for the Loss Control Certification Program relative to their direct written premium or loss control budgets do not present an undue burden on insurers;
- e. Competition under open rating continues to cause significant turnover in the coverage of targeted employers, which has led to the exclusion of loss control services from a significant number of eligible targeted employers;
- f. Adoption of a uniform selection methodology, based on an insurance industry standard database, will assure a consistent population of employers across all insurer groups that would most benefit from loss control services; and
- g. The Loss Control Certification Unit is meeting its mandate contained in Labor Code Section 6354.5.

F. *Legislation -- 2002*

In 2002, Assembly Bill 749 amended Labor Code Section 6354.5 to require insurers to maintain or provide occupational safety and health loss control consultation services, but such services do not have to be certified

by the Director. AB 749 was signed by Governor Davis on 15 February 2002.

Under AB 749, the director is required to establish an insurance loss control services coordinator position in the Department of Industrial Relations. The coordinator would provide information to employers about the availability of loss control consultation services and respond to employers' questions and complaints about loss control consultation services provided by their insurer. The coordinator would notify the insurer of every complaint concerning loss control consultation services. If the employer and the insurer are unable to agree on a mutually satisfactory solution to the complaint, the coordinator would investigate the complaint. Whenever the coordinator determines that the loss control consultation services provided by the insurer are inadequate or inappropriate, the Coordinator would recommend to the employer and the insurer the actions required to bring the loss control program into compliance. If the employer and the insurer are unable to agree on a mutually satisfactory solution to the complaint, the coordinator would then forward his or her recommendations to the Director.

IV. TARGETED INSPECTION AND CONSULTATION FUND (TICF) ASSESSMENT

A. TICF Assessment Process for Insured Employers

1. 1995 TICF Assessment

The invoices for the first TICF Assessment were sent out by the Department of Industrial Relations in September of 1995.²⁴

For the 1995 TICF Assessment, the Department of Industrial Relations followed the "indirect invoicing" procedure as set forth in Labor Code Section 62.9(c)(3). According to the "indirect invoicing" procedure, the billing of employers for TICF assessments was to be performed indirectly by the Department of Industrial Relations through the assessed employers' workers' compensation insurers.

On 5 September 1995, the Department sent lists of insureds to their insurers for billing purposes. When the insurer received the list from the Department, Section 62.7(c)(3) created a duty on insurers to notify their insureds of their obligation to pay the TICF assessment and to certify to the Department that their insureds have been invoiced.

However, Labor Code Section 62.9 left the format in which the billing notification was to occur up to the insurer. Labor Code Section 62.9(c)(3) states:

"[T]he insurer immediately shall notify each insured employer, in a format chosen by the insurer, of the insured's obligation to submit payment of the assessment to the director within 30 days after the date the billing was mailed, and warn the insured of the penalties for failure to make timely and full payment as provided by this subdivision." (underlining added).

Some insurers invoiced their insureds in a "manner and a format" which led to much confusion on the part of their insureds.

Examples of such billing practices included the following:

- Non-letterhead invoices;
- No return address on envelope containing the invoice (which resulted in undeliverable and unreturnable mail that the postal authorities eventually destroyed);

²⁴ Before the passage of SB 996 changing the assessment formula, some insurers had paid the assessments owed by their insureds as a percentage of premium according to the previous Labor Code Section 62.7. DIR began refunding these assessments to insurers in early 1996.

- No explanatory letter accompanying the invoice as to the statutory basis for the assessment;
- No explanation on the invoice as to what services insureds, or TICF assessees, could expect for their money;
- No information on the invoice as to the year the ExMOD rate (it was 1994), or the payroll amount (it was 1992), was used to determine the 1995 TICF Assessment; and
- No instructions on how the insured would go about disputing their ExMOD or payroll figures.

Other insurers, upon receiving notices from the Department in September of 1995 to invoice their insureds with ExMODs of 1.25 or greater, were tardy in sending the invoices for the 1995 TICF Assessment to their insureds. Unfortunately, some invoices were sent as late as March of 1996, creating further confusion among employers who were assessed for both the first and second (sent out 12 March 1996) TICF Assessments.²⁵

2. 1996 TICF Assessment

Before the 1996, or Second TICF Assessment, was implemented, the Director of the Department of Industrial Relations called a meeting on 8 December 1995 of interested parties to discuss the problems associated with the "indirect invoicing" method as set forth in SB 996. At this meeting, there was a strong consensus among employer, insurer and labor representatives that the Department should consider "directly invoicing" insureds for the next TICF assessment.

After evaluating the 1995 TICF Assessment, the DIR determined that invoicing insureds indirectly through their workers' compensation insurers was an ineffective way to implement the intent of SB 996. Furthermore, it created several administrative problems for the DIR, the insurer community and for insured employers who are assessed. Therefore, the 1996 TICF Assessment was implemented through a "direct invoicing" method on 12 March 1996.

²⁵ The 1996 Assessment (covering the period 1 January 1996 to 31 December 1996) was sent out soon after the 1995 TICF assessment invoices were sent. This caused some confusion among employers subject to both the first and second assessment, i.e., have an ExMOD in 1994 and 1995 of 1.25 or more.

The Department received 1995 ExMod and 1993 workers' compensation payroll data from the WCIRB on 1 March 1996. After a few days of electronic data preparation, the Department sent on 12 March 1996, 11,387 invoice letters directly to insured employers.²⁶

In addition, lists of insureds who were directly invoiced by the Department were sent to each insurer. Direct invoicing for the 1996 TICF Assessment, and subsequent assessments, has resulted in far less confusion for the insured employers and their insurers, and a more efficient TICF collection effort.

In fact, the success of the TICF collection effort in 1996 made it possible for DIR to meet its obligation under Labor Code Section 62.9(h) to repay a \$4 million loan from the State's General Fund. The purpose of this loan was to enable the Targeted Enforcement and Consultation Programs to begin hiring prior to commencement of the TICF collection.²⁷

3. 1997 TICF Assessment

The third assessment--1997 TICF Assessment--was implemented by the "direct invoicing" method as in 1996. On 1 March 1997, 11,378 invoice letters were sent directly to insured employers.

4. 1998 TICF Assessment

The fourth assessment--1998 TICF Assessment--was the final assessment authorized by Labor Code Section 62.9 (as amended in 1995). On 2 March 1998, 11,812 invoice letters were sent directly to insured employers.²⁸

²⁶ See Attachment P for a sample TICF Assessment Invoice/Offer Letter.

²⁷ "[T]he repayment of the loan that was made to the Cal-OSHA Targeted Inspection and Consultation Fund for the purposes of Section 62.7, and of interest on the loan, is hereby deferred until the director determines that sufficient funds in excess of the requirements of the programs specified by Section 62.7 are available in the fund to make that repayment, except that in no event shall this deferment extend beyond January 1, 1996." See Labor Code Section 62.9(h).

²⁸ Subsection (l) of Section 62.9 states that Section 62.9 "shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date." See Section II.C. for a discussion of AB 1957 in the 1997-98 Legislative Session, which extended the Department's TICF assessment authority to 1 January 2000, and Section II.D. for a discussion of AB 1655 in the 1999 Legislative Session which removed the "sunset provision" altogether from Labor Code Section 62.9.

5. 1999 TICF Assessment

The fifth assessment--1999 TICF Assessment--was implemented on 1 March 1999, as authorized by Labor Code Section 62.9 (as amended in 1998), and 13,019 invoice letters were sent to insured employers.

6. 2000 TICF Assessment

The sixth assessment--2000 TICF Assessment--was implemented on 20 March 2000, as authorized by Labor Code Section 62.9 (as amended in 1999), and 13,977 invoice letters were sent to insured employers.

7. 2001 TICF Assessment

The seventh assessment--2001 TICF Assessment--was implemented on 20 March 2001, as authorized by Labor Code Section 62.9 (as amended in 1999), and 11,579 invoice letters were sent to insured employers.

8. 2002 TICF Assessment

The eighth assessment--2001 TICF Assessment--is expected to be implemented in March of 2002, as authorized by Labor Code Section 62.9 (as amended in 1999), and approximately 12,000 invoice letters are expected to be sent to insured employers.

B. TICF Collections for Insured Employers

1. Employer Population Subset for TICF Assessments

During the assessment years 1995 through 2000, there have been approximately 550,000 to 600,000 workers' compensation insured employers in California.

Of these, only about 20% meet the WCIRB requirements to have an experience modification rating (ExMOD) (based on employer size).

For the years 1995 through 2001, 84,802 employers were reported by the WCIRB to have had an ExMOD of 1.25 or more, and were subject to the TICF assessment under Labor Code Section 62.7 (in 1995) and Section 62.9 (1996 through 2001).

2. TICF Collections by the Department of Industrial Relations

Table IV-A indicates by year the number of TICF invoices sent to insured employers, their assessment account amount, and the amount collected by the Department of Industrial Relations as of 1 February 2002.

TABLE IV-A

**TICF Invoices, Assessments and DIR Collections in Dollars
for Insured Employers**

Year	Invoices	Assessment	DIR Collection²⁹
1995	11,650	6,131,591	5,867,919
1996	11,387	6,066,152	5,883,306
1997	11,378	6,668,214	6,573,288
1998	11,812	6,831,067	6,697,156
1999	13,019	7,960,507	7,895,558
2000	13,977	8,984,026	8,797,128
2001	11,579	7,886,515	7,434,743
Totals	84,802	50,582,072	49,149,098

3. TICF Collections by Franchise Tax Board, Non-Tax Debt Collection Unit

Labor Code Section 62.9(c)(5) provides that

"[T]he director shall identify to each insurer any of its insured employers that, within 30 days after the mailing of the billing notice, fails to pay, or object to their assessments. The insurer immediately shall mail to each of these employers a notice of delinquency and a notice of the director's intention to assess penalties, advising that, if the assessment is not paid in full within 15 days after mailing of the notices, the director will levy against the employer a penalty equal to 25 percent of the employer's assessment..."

Thus, employers who failed to pay their TICF invoices after thirty (30) days receive a "Notice of Delinquency" from the Department. Delinquent TICF invoices (plus a 25% penalty) are then referred to the Franchise Tax Board, Non-Tax Debt Collection Unit, for collection. Labor Code Section 62.9(c)(6) provides that

"[I]f an assessment is not paid by an insured employer within 15 days after the mailing by the insurer of the notices required by paragraph (5), the director shall refer the delinquent assessment and the penalty to the Franchise Tax Board for collection pursuant to Section 19290.1 of the Revenue and Taxation Code."

²⁹ TICF revenue collections are displayed on an accrual basis.

Table IV-B indicates by year the number of delinquent TICF accounts, their original assessment account amount, their penalty account amount, the total assessment and the amount collected by the Franchise Tax Board as of 1 February 2002. Note that FTB Collections for 2002 are later than normal, and as of 1 February 2002, no collections have yet to be reported by FTB.

TABLE IV-B

**TICF Accounts Referred, Assessment,³⁰ Penalties
and FTB Collections In Dollars for Insured Employers**

Year	Accounts	Assessment	Penalty	Total	FTB Collection
1995	911	452,807.50	117,320.50	570,128.00	285,385.79
1996	808	367,535.42	91,883.86	459,419.28	169,124.43
1997	870	517,599.02	129,399.76	646,998.78	279,256.23
1998	920	501,002.10	125,250.53	626,252.63	285,926.61
1999	865	548,070.66	137,017.66	685,088.32	288,408.28
2000	877	532,106.99	133,026.74	665,133.73	92,873.66
2001	678	497,025.00	124,256.25	621,281.25	00,000.00
Totals	5929	3,416,146.69	858,155.30	4,274,309.99	1,400,974.80

C. TICF Assessment Process for Self-Insured Employers

The TICF collection process for self-insured employers is specified by Title 8 regulations.³¹To initiate the TICF collection process, the Department's Self-Insurance Program submits a list of self-insured employers to the DIR Director. These self-insured employers are selected for assessment according to the formula specified in 8 CCR Section 15601.7(e).³² After receiving a TICF invoice, self-insured employers submit their TICF assessments to the Accounting Unit of the Department of Industrial Relations.

³⁰ The referred account "assessment" amount represents the amount of money remaining unpaid at 45 days or more following the TICF invoice date. See Section II.B.3. for explanation of TICF collection procedures.

³¹ See Attachments J and K for text of Title 8 regulations applicable to the TICF assessment process for self-insured employers with equivalent ExMOD of 1.25 or greater.

³² 8 CCR Section 15601.7(e) states: "For each private self insurer, the Manager shall calculate an individual 1-year number of indemnity claims per 100 employees, using information reported by each self-insurer on its last full year Self-Insurer's Annual Report submitted for the reporting period immediately prior to the current budget year. In this calculation, the manager shall divide the total number of indemnity claims reported in the most recent claim year by the total number of California employees reported, with the result multiplied by 100. Any self-insurer with less than 100 total employees shall be considered to have 100 employees for purposes of this calculation."

D. TICF Collections for Self-Insured Employers

Table IV-C indicates by year the number of TICF invoices sent to self-insured employers, their assessment account amount, and the amount collected by the Accounting Unit of the Department of Industrial Relations as of 1 February 2002.

TABLE IV-C

**TICF Invoices, Assessments and DIR Collections in Dollars
for Self-Insured Employers**

<u>Year</u>	<u>Invoices</u>	<u>Assessment</u>	<u>DIR Collection³³</u>
1995	144	826,341 ³⁴	826,341
1996	144	116,032	116,032
1997	77	182,700	182,700
1998	116	281,000	276,000
1999	103	246,400	246,400
2000	109	270,700	267,600
2001	96	236,100	236,100
Totals	789	2,159,273	2,159,273

E. Consolidated Financial Statement

See Attachment O for a Consolidated Financial Statement for the Loss Control Certification Program and the Targeted Enforcement and Consultation Programs.

F. Alternative TICF Funding Methodologies

1. Introduction

In 1995, SB 996 required the DIR Director to report to the Legislature in an Interim (1997) and Final (1998) Report about methods--other than the current legislatively-mandated ExMOD methodology--as the basis of assessing employers for the Targeted Inspection and Consultation Fund. (See Labor Code Section 62.9(k)).

In 1995, the Department formed an informal discussion group to review "one or more alternative methods of funding the Cal/OSHA Targeted Inspection and Consultation Programs...". Representatives of the Department of Industrial Relations, the

³³ TICF revenue collections are displayed on an accrual basis.

³⁴ The 1995 TICF assessment figure represents a gross figure and does not account for \$582,465 in refunds made as a result of changes from 1995 to 1996 in the self-insured assessment methodology. See Attachments J and K.

Workers' Compensation Insurance Rating Bureau (WCIRB), the business community, organized labor and the insurance industry were invited to discuss alternative ways to identify employers for purposes of targeted enforcement inspection and consultation fund assessments.

2. Specific Funding Alternatives

As a result of these, and other, discussions over the past three years, the following proposals were offered in the 1997 Report to the Legislature as alternatives to support the Targeted Enforcement and Consultation Programs in the Division of Occupational Safety and Health.

a. Retention of Experience Modification Rating (ExMOD)

Despite the limitations of using an experience modification rating (ExMOD) to identify employers with a higher than average number of preventable occupational safety and health hazards in their establishments, support still exists for retaining the current ExMOD-based funding formula as a basis for assessing "high hazard" employers. Those who support retention of the ExMOD argue that the ExMOD is the most widely used measure of "hazard" status that currently exists in California.

The contributing factors which are used to calculate an employer's ExMOD are generally understood and accepted by the employer community.

Supporters point out that many employers use the ExMOD rating to design injury and illness reduction programs for their businesses.

ExMOD proponents, however, do acknowledge that the chief disadvantage of the ExMOD for purposes of the targeted inspection and consultation assessment is that only a small proportion of insured California employers who might have "high hazard" establishments currently have an ExMOD,³⁵ i.e., approximately 110,000.

Of these, only approximately 11,000, or about 10%, meet the definition of "high hazard" employers found in Labor Code

³⁵ Employers with less than seven (7) employees are generally not rated by experience factors. Since 80% of California employers have less than 6 employees, the majority of California employers are not experience rated.

Section 62.9, i.e., employers with ExMODs of 1.25 or greater.

In using the current TICF funding "ExMOD-based" methodology, an assessed employer's average assessment is approximately \$590.³⁶

b. Frequency-Based Alternative (FMOD)

ExMOD supporters acknowledge that increasing the proportion of employers subject to a TICF assessment would reduce the amount that each individual employer would have to be assessed to support the program. In order to increase the subset population of assessed employers and to make the assessment more representative of "high hazard" employers, some observers have suggested that a "frequency-based" methodology be used for TICF assessments.³⁷

The basic idea behind the "frequency-based" funding alternative is to use workers' compensation injury and illness claims-made counts to generate a list of insured-employers with the highest claim counts, or frequency, for purposes of assessment. If such a list of employers were developed for assessment purposes, using the 1.25 or greater cutoff, the current ExMOD-based subset population of assessed employers would increase six-fold from 11,000 employers to approximately 60,000.³⁸

Individual assessments would decline from \$590 per assessed employer to \$108 per assessed employer.

³⁶ The "average assessment per employer" calculation is based on a total yearly average TICF assessment of \$6,500,000. Thus, the assessment per employer equals the average annual TICF assessment divided by the number of employers assessed by the particular methodology. In the case of an "ExMOD-based" methodology that number is approximately 11,000.

³⁷ A "frequency-based methodology" is based on workers' compensation injury and illness claims-made. It was developed as a methodology for ranking insured employers for premium pricing purposes as an alternative to the current "ExMOD-based" methodology by the WCIRB for the California Department of Insurance. After the "frequency-based methodology" was developed, public hearings were held on the question of whether it should replace the ExMOD methodology. At the conclusion of these hearings, the Commissioner of Insurance declined to utilize the "frequency-based" methodology.

³⁸ The number of employers assessed under the FMOD methodology is provided by the Workers' Compensation Insurance Rating Bureau.

c. Combined Experience Modification and Frequency-Based Alternative (ExMOD/FMOD)

Some have suggested combining the ExMOD and FMOD methodologies to create a subset population of employers who are identified as "high hazard" by both methodologies.

Specifically, the "ExMOD/FMOD Combination" alternative involves combining the subset of employers who have both an ExMOD and FMOD of 1.25 or greater (approximately 8,500) with the subset of employers who have an FMOD of 1.25 or greater and who are not experience rated (approximately 27,000). This creates a subset of approximately 35,500 employers.³⁹ Individual assessments using a combined ExMOD and FMOD methodology would be approximately \$183 per assessed employer.

d. Across-the-Board Alternative

An "across-the-board" funding methodology would assess all California employers an amount based on a pre-determined percentage of the workers' compensation insurance premium dollar paid. The assessment would be the same amount for every California employer regardless of ExMOD or any other indicator of hazard status. Since the insured employer base would be approximately 550,000 employers, individual assessments, using the across-the-board" methodology would be approximately \$10 per assessed employer.

The "across-the-board" funding alternative is viewed by many as "too broad" in that it does not differentiate between "high hazard" and "low hazard" employers. Moreover, others consider that lack of differentiation among the employer population to be fundamentally "unfair." They believe that it is not fair for "non-high hazard employers" to subsidize consultative assistance services that are to be directed primarily at "high hazard employers."

Some believe, though, that the consultative and compliance services provided as a result of a TICF assessment benefits all employers by helping those employers who receive

³⁹ The ExMOD/FMOD combined approach reduces the subset population of employers identified solely by the FMOD methodology by one-third because employers with ExMODs less than 1.25 are not included in the subset population. The number of employers assessed under the ExMOD/FMOD methodology is provided by the Workers' Compensation Insurance Rating Bureau.

assistance to achieve a reduction in their work-related injuries and illnesses and workers' compensation losses thereby lowering premium rates overall. In addition, it is pointed out that many so-called "non-high hazard" employers already make use of consultative assistance for the very purpose of continuing to remain non-high hazard employers.

Finally, others believe that the across-the-board funding alternative has merit because it eliminates the administrative complexity and resentment associated with an employer assessment system which relies on the ExMOD as an indicator of hazard status.⁴⁰

e. General Fund Augmentation

Another funding alternative would be to eliminate the statutory Targeted Inspection and Consultation Fund levy and replace the total assessment amount needed to support the Targeted Inspection and Consultation Programs (not the same figure as the total assessed or collected TICF assessment) with an augmentation of monies from the State of California General Fund.

The General Fund Augmentation alternative would eliminate the special fund approach which "targets" individual employers for assessment based on pre-selected claims-paid criteria." Many in the occupational safety and health community believe there is no single indicator in widespread use today which can accurately differentiate between low and high hazard employers. The General Fund Augmentation alternative may give more flexibility to implement the statutory goals of the Targeted Inspection and Consultation Programs, i.e., providing compliance and consultative services to the subset of California employers who most need such services by decoupling program funding from a type of "pre-selected" service provision. See Sections V. and VI.B. for a discussion of employer selection methods for purposes of provision of compliance and consultative services.

⁴⁰ Many assessed employers express the belief that using their ExMOD to make a determination that they are "high hazard" employers is unfair because they believe that the reason that they have a high ExMOD is because their insurer did not vigorously contest the compensation claims filed by their employees. These employers feel that basing the TICF assessment on the ExMOD is "doubly unfair."

V. SELECTING EMPLOYERS FOR CONSULTATION AND ENFORCEMENT

A. California Statutory Mandates

AB 110 mandates that the Division establish two programs:

- A "targeted" inspection program (Section 6314.1); and
- A "targeted" consultation program (Section 6354).

These programs are to be supported fiscally by "assessments" on the subset of insured and self-insured California employers who have an ExMOD of 1.25 or greater (or, if self-insured, have an equivalent ExMOD of 1.25 or greater). See Section 62.9(b)(1).

Read separately, each of these three statutory sections which provide the basis for the targeted assessment program and targeted inspection and consultation programs contain distinct formulas for selecting (or targeting) employers for (1) funding, (2) inspection (compliance) activities; and (3) consultative assistance activities.

B. California Statutory Employer Targeting Formulas

1. First Statutory Formula -- Assessed Employer Funding

Labor Code Section 62.9(b)(1) states that

"In the manner as specified by this section, the director shall identify those insured employers having a workers' compensation experience modification rating of 1.25 or more, and private sector self-insured employers having an equivalent experience modification rating of 1.25 or more as determined pursuant to subdivision (f)."

Thus, insured employers with an ExMOD of 1.25 or greater, and private self-insured employers with an equivalent ExMOD, are required to support fiscally the targeted inspection and consultation programs based on their status as "high hazard" employers.

2. Second Statutory Formula -- High Hazard Employer Inspection

Labor Code Section 6314.1(a) states that

"The division shall establish a program for targeting employers in high hazardous industries with the highest incidence of preventable occupational injuries and illnesses and workers' compensation losses. The employers shall be identified from any or all of the following data sources: California Work Injury and Illness Program; Occupational Illness and Injury Survey; Federal Hazardous Employers' List; experience modification and other relevant data maintained and furnished by all rating organizations as defined

in Section 11750.1 of the Insurance Code; histories of violations of Occupational Safety and Health Act standards; and any other source deemed appropriate that identifies injury and illness rates."

Any employer identified through the data sources specified in Section 6314.1(a), who is a member of "a high hazardous" industry, and who has "a high incidence of preventable occupational injuries, illnesses and workers' compensation losses," is statutorily subject to the targeted inspection program.

Note that there is no express language in Section 6314.1 which "couples" the subset of employers identified through the assessed funding methodology, i.e., ExMOD, found in Section 62.9 with the set of employers identified by the targeted inspection formula in Section 6314.1. Also, note that the statute does not mandate that a particular method be used for identifying industries as "high hazard."

3. Third Statutory Formula -- High Hazard Employer Consultation

Labor Code Section 6354(a) states that

"The division shall, upon request, provide a full range of occupational and health consulting services to any employer or employee group. These consulting services shall include: (a) A program for identifying categories of occupational safety and health hazards causing the greatest number and most serious preventable injuries and illnesses and workers' compensation losses and the places of employment where they are occurring. The hazards, industries, and places of employment shall be identified from the data system that is used in the targeted inspection program pursuant to Section 6314.1. The division shall develop procedures for offering consultation services to high hazard employers who are identified pursuant to this section. The services may include the development of educational material and procedures for reducing or eliminating safety and health hazards, conducting workplace surveys to identify health and safety problems, and development of plans to improve employer health and safety loss records."

Section 6354 does not specifically "target" any type of employer. Rather, it specifies that a program be developed to identify "categories of occupational safety and health hazards causing the greatest number and most serious preventable injuries and illnesses and workers' compensation losses and the places of employment where they are occurring." However, a data link is provided to Section 6314.1 in that Section 6354 states that

"[T]he hazards, industries, and places of employment shall be identified from the data system that is used in the targeted inspection program pursuant to Section 6314.1."

Note that there is no express language in Section 6354 which "couples" the subset of employers identified through the assessed funding methodology found in Section 62.9(b)(1) (TICF funding formula) with the set of employers identified by the targeted consultation formula in Section 6354.

C. Legislative Analyst Office (LAO) 1994-95 Opinion

1. Coupling TICF Funding Targeting with Consultation

In 1994, the Legislative Analyst's Office (LAO), when reviewing the Governor's Budget for 1994-95 for the California Legislature, recommended that:

"... the DOSH report to the Legislature during budget hearings to ensure that the program implementation is consistent with legislative intent and address issues concerning (1) the overlap, if any, between assessed employers and targeted employers, (2) the means for identifying high hazard industries and employers, and (3) the process for assigning work to compliance staff and to consultation staff." See LAO Report, 1994, page G-74.

The LAO expressed concern that if the Division ignored the TICF assessment formula in selecting or "targeting" employers for inspection and/or consultation services, little or no overlap might occur between employers who were "assessed" and those employers who were provided targeted inspection and consultation services.

Any lack of overlap between these two groups was viewed by the LAO as contrary to the intent of the Legislature in passing AB 110. The LAO based their opinion in part on the fact the TICF funding was often described during the legislative adoption process as a type of "user funding." As such, the LAO believed that assessed employers should have the right of "first refusal" for the services which they are funding.

Simply put, the LAO's reading of Section 62.7/62.9, Section 6314.1 and Section 6354--the three statutory employer selection formulas--represents a view that the three sections were enacted as "coupled" sections. According to this view, the only employers which should be offered TICF-supported consultative services by the Division, for example, should be those employers who have contributed an assessment to the TICF. TICF funds should not be spent on providing consultative assistance service to non-assessed employers.

Aside from the LAO's statutory interpretation based on legislative intent, considerations of fairness also argue for the "coupling" of

Labor Code Sections 62.9 (funding) and 6354 (consultative services).

It seems fair to offer consultative assistance first to employers who are funding the provision of that assistance (and who have been identified as "high hazard" in the first place), and then, if sufficient resources exist, to non-assessed employers.

In fact, it would seem unfair to assess one subset of California employers, because their ExMOD is greater than the ExMODs of other employers, and then provide consultative assistance (designed to lower the ExMOD) to a subset of non-assessed employers whose ExMOD may not be as high as the assessed subset.

The selection of employers for consultative assistance based not on whether they have contributed a TICF assessment (a decoupled approach) can result in significant resentment among employers who have paid a TICF assessment of up to \$2500 per employer and want to be offered "something for their money," but are unable to receive such service because those limited resources are serving employers who have not paid a TICF assessment. Unless fully coupled with funding, these employers end up providing "user" funding, but for users other than themselves! Thus, it seems that the coupled approach is the best approach for the targeted consultation program.

Therefore, the Division accepted the "coupling" view to the extent that consultative assistance services supported by TICF assessments should be offered first to assessed employers.

2. Coupling of TICF Funding Targeting with Inspection

One of the chief disadvantages of coupling funding with targeted inspection is that it focuses compliance resources on a group of employers whose "high hazard" status is based solely on the experience modification rating--a workers' compensation-based indicator. Although in lengthy historical use by the workers' compensation insurance industry, the ExMOD is not an accurate predictor of "high hazard" status for purposes of a compliance inspection. The reason for this is that the ExMOD is a poor "real-time" indicator of an establishment's likelihood to have occupational injuries, illnesses or workers' compensation losses which are violative of a Title 8 regulation. The primary reason is that the ExMOD is a three year rolling average which reflects what happened at the establishment three to five years before the

ExMOD is calculated. Compliance inspections which are conducted based on such a "historical" view of a workplace yield little in the way of hazards which are currently violative of Title 8 of the California Code of Regulations.

Most importantly, an ExMOD does not distinguish between "claims" of injuries and illnesses and "occupational hazards" which are violative of Title 8 regulations. For instance, certain types of compensation claims can greatly increase the ExMOD, but falsely identify an employer as having a high incidence of injuries, illnesses or workers' compensation losses which are preventable⁴¹ by an employer's adherence to a current Title 8 occupational safety and health standard, e.g., stress claims.

The Division's experience to date is that less than 5% of employers identified by the ExMOD as "high hazard" are in an industry which, as a whole, has higher than average rates of occupational injuries and illnesses. Furthermore, the on-site inspection of these "assessed" employers' establishments reveals few, if any, violations of current Title 8 standards.

Therefore, "decoupling" funding selection from compliance inspection targeting is a more efficient use of resources. In fact, AB 110 provided that the Division could utilize for inspection selection:

"[A]ny method deemed to be appropriate that identifies injury and illness rates" for "targeting employers in high hazardous industries with the highest incidence of preventable occupational injuries and illnesses and workers' compensation losses." See Labor Code Section 6314.1.

If the statutory funding and compliance sections are "coupled," only "assessed" employers can be targeted for a compliance inspection. Practically speaking, though, assessed employers would hardly consider a "compliance" inspection to be a beneficial "service" from government.⁴²

Instead of "coupling" the funding and targeted inspection sections of AB 110, the Division learned in 1995 that the TICF-generated

⁴¹ Although no definition of the term "preventable" was provided in Section 6314.1, the Division understands the term "preventable" to mean that there exists a feasible and effective means of reducing or eliminating the risk of occupational injuries, illnesses or workers' compensation losses.

⁴² Enforcement inspections are not designed to "assist" employers in the same sense as a consultative visit. In fact, the results of a compliance inspection (at least initially) can be quite negative for the employer in that he or she may be issued citations carrying substantial monetary penalties, the employer may incur reputational injury, and also may see their workers' compensation premium raised because of their "experience" being cited by Cal/OSHA. However, the abatement of hazards which results from the compliance inspection is a positive outcome for the employees, and assists the inspected employer in developing a safer workplace.

compliance resources can be utilized best by identifying high hazard establishments not by whether they have been assessed, but by a combination of industry injury and illness incidence data and establishment level injury and illness data during an "on-site" compliance inspection. The Division believes that Section 6314.1 grants it the authority to do so. See Section VI. Furthermore, "decoupling" funding selection from targeted inspection selection allows the Division to target its compliance resources to the most hazardous workplaces, resulting in more protection for California workers without disadvantaging employers who may have been assessed but whose establishments are not truly "high hazard."

D. Federal Targeting Programs

1. Federal OSHA's Maine 200 Program -- Workers' Compensation Claim Data

In 1993, Federal OSHA's Augusta, Maine Area Office selected 200 Maine employers who had very high numbers of workers' compensation claims. The goal of the "Maine 200" Program was to target OSHA's resources on this group of "high hazard" employers in order to reduce the number of injuries and illnesses which were causing Maine's overall high number of workers' compensation claims. OSHA invited targeted employers to develop an action plan based on OSHA's site-specific analysis of their workers' compensation claims data and offered them "compliance assistance" with their action plans. Targeted employers who declined to produce action plans were placed on a primary inspection list.

Even though OSHA showed that injury and illness rates declined in participating establishments (although changes in Maine's workers' compensation laws also took place during the same period of time), OSHA terminated the Maine 200 Program in 1997 without implementing it nationally. The belief was that targeting based solely on workers' compensation data was inadequate.

2. Federal OSHA's Cooperative Compliance Program (CCP) and the OSHA Data Initiative -- Injury and Illness Data from OSHA Log 200.

The Maine 200 Program was replaced by the Cooperative Compliance Program (CCP) which utilizes establishment level Log 200 data as its targeting methodology as opposed to workers' compensation claim data (as in the Maine 200 Program).

The OSHA Data Initiative involves the collection of Log 200s. (containing entries of all recordable work-related injuries and illnesses) directly from employers. The Department of Labor's Bureau of Labor Statistics (BLS) has collected Log 200s from a sample of employers by SIC Code for a number of years, but has held such establishment data submissions as confidential.

The BLS Annual Survey of Nonfatal Occupational Injuries and Illnesses includes the Lost Workday Incidence Rate by SIC Code as well as other injury and illness rates by SIC Code. However, data the BLS reports to OSHA and the public is industry-specific, but not establishment-specific. Therefore, the BLS data cannot serve as an establishment-level targeting methodology for OSHA inspection or consultation purposes. The OSHA Data Initiative is an attempt to develop a targeting system based on establishment-level data which was not based on workers' compensation claims.

E. Comparison of Federal OSHA and Cal/OSHA Targeting

1. Use of the ExMOD or Other Single Workers' Compensation Insurance-Based Indicator of "Hazard" Status

a. ExMOD

The experience of the California targeted programs has been that using workers' compensation claim data exclusively, especially the ExMOD, as a targeting tool has false positive and false negative errors associated with it. For instance, the ExMOD identifies some employers for compliance targeting whose employees have no injuries and illnesses preventable by compliance with Title 8 standards (false positive error). The ExMOD also fails to identify other employers who have low ExMODs, but who still have significant hazards in their workplace, e.g., oil refineries and chemical plants or employers in the underground economy who do not have workers' compensation insurance (false negative error).

b. Claims Frequency

The use of a "claims frequency" data (expressed as a rate using "total hours worked" or "total number of employees employed by employer") may be a more accurate workers' compensation data indicator--at least for those employers who have workers' compensation insurance. See Section IV.F.2.b. on Alternative Funding Methodologies or Footnote

No. 7 on the Workers' Compensation Information System (WCIS).

2. Separation of "Compliance Assistance" from Consultation

Federal OSHA's failure to programmatically separate inspection from consultation activities (as in Maine 200 Program) has been criticized as enforcement "dilution" and as contrary to the purpose of the Federal Occupational Safety and Health Act. The California high hazard programs maintain a strict separation of enforcement and consultation activities.

3. Effective Targeting Must Be Based on Multiple Sources

Using a combination of databases for targeting, e.g., workers' compensation claim frequency data, OSHA Log 200 injury and illness data, information about the underground economy, data about the presence of "hazards" (as opposed to injuries/illnesses or claims about injuries/illnesses), and other sources of targeting information, provides the most effective targeting strategy. No one targeting source can be the basis for an effective statewide high hazard program.

VI. HIGH HAZARD ENFORCEMENT AND HIGH HAZARD CONSULTATION PROGRAMS

A. Overview of the High Hazard Programs

In order to implement the targeted inspection and targeted consultation programs as a single program, the Division of Occupational Safety and Health established the "High Hazard Employer Program" in 1994.

Beginning in 1997, however, the Targeted Inspection Program ceased to use the list of TICF-assessed employers as a primary targeting methodology, because the experience of the Targeted Inspection Program was that a high experience modification rating did not necessarily indicate the presence of workplace injuries and illnesses preventable by compliance with Title 8 standards and regulations.

The Targeted Consultation Program continues to provide consultative assistance to employers who accept the offer of such assistance in the TICF Invoice Letter.

B. Overview of Employer Selection Criteria

1. High Hazard Consultation

a. Employers Assessed for the First Time

Utilizing a coupled approach for TICF funding and targeted consultation, every employer who was sent a TICF Assessment Invoice and Offer Letter (see Attachment P) from 1995 through 1998 was also offered consultative assistance. Beginning in 1999, the offer of consultative assistance was incorporated into the TICF Assessment Invoice Letter.

Approximately 5% to 10% of employers accept the offer of consultative assistance from Cal/OSHA. Most choose to seek assistance from their workers' compensation insurer.⁴³ These employers are provided targeted consultative assistance during the assessment year. See Section VII.

⁴³ Only a minority of high ExMOD employers accept an offer of assistance from Cal/OSHA, but the majority of these employers are not members of a high hazard industry as defined by total lost workday incidence data (see Tables VI-A, VI-B, VI-C, VI-D, VI-E and VI-F).

b. Employers Assessed in Multiple Years Who Have Significantly Elevated ExMODs

Beginning with the 4th TICF Assessment in 1998,⁴⁴ a subset of TICF-assessed employers with significantly high ExMODs was selected for application of targeted consultation services. These employers were selected by means of the following criteria:

- (1) Each year all TICF-assessed employers with ExMODs of 200% or greater in the policy year prior to the assessment year; and
- (2) Who had not voluntarily sought consultative assistance from Cal/OSHA.

This subset of employers were believed to be in the greatest need of assistance in identifying and eliminating the hazards which were causing their increasing ExMOD. The subset of employers with significantly elevated ExMODs number approximately 600 to 700 per assessment year. See Section VII. for information on this subset of TICF assessed employers.

c. Consultative Special Emphasis Projects

Consultation Special Emphasis Projects assist high hazard industries by working with high hazard industry employers in a cooperative effort to identify and reduce the cause of the industry's high incidence of injuries, illnesses and workers' compensation claims. The Consultative Special Emphasis Projects Program, like the Targeted Inspection Program, utilizes the Lists of Highest Hazard Industries (see Tables VI-A, VI-B, VI-C, VI-D, VI-E and VI-F).

2. High Hazard Enforcement

Utilizing a decoupled approach for TICF funding and targeted inspection, employers are selected for high hazard enforcement by means of an "on-site selection method."

⁴⁴ Selection of employers who have significantly high ExMODs from the general subset of TICF-assessed employers will be continued on a yearly basis as a means of reducing injuries, illnesses and workers' compensation claims among those employers in the "highest hazard" status.

a. Traditional Method for Employer Selection

The traditional method of selecting employers for programmed inspections which is used by occupational safety and health programs at the federal and state levels begins with selection of high hazard industries. Industries are first selected from injury and illness data assembled by the U.S. Department of Labor, Bureau of Labor Statistics.⁴⁵ After industries with high injury and illness incidence rates are selected, using three or four digit Standard Industrial Classification (SIC) Codes, employer-members of that industry are selected at "random" for inspection.⁴⁶

Using the traditional selection method, the selected establishment's membership in a high hazard industry is "assumed" to be a sufficient predictor of the hazard status of the establishment itself to warrant being targeted for a compliance inspection. However, if the particular employer targeted for a compliance inspection is one with an injury and illness incidence rate which is lower than his or her industry average, then they will be "mistargeted" for an inspection. This type of "false positive targeting error" results in the identification of employers who belong to a hazardous industry, but who are not themselves "high hazard" employers.

Thus, the traditional employer selection method for compliance inspections using injury and illness data grouped by industrial classification is inefficient in that compliance resources are not directed to the workplaces which could benefit most from a compliance inspection. It is not hard to understand that one of the reasons for the compliance targeting formula found in Section 6314.1-- specifying "establishment-level" selection--was to provide for a more efficient application of compliance resources than does the traditional, industry-level, approach.

b. "On-Site" Establishment Targeting

In order to overcome partially the false-positive targeting error problem, the Division has developed the "on-site"

⁴⁵ In California, state-specific data by industry is obtained from the California Injury and Illness Survey Data, which is compiled yearly by the Division of Labor Statistics and Research (DLSR) in the Department of Industrial Relations.

⁴⁶ Specific establishments are usually selected at random from sources such as the Dun & Bradstreet establishment listings, or from the telephone directory or other primary data sources.

method for selecting establishments for comprehensive programmed inspections. The "on-site" establishment targeting method used by the Targeted Inspection Program utilizes both industry-level injury and illness incidence rate data and establishment-level injury and illness incidence rate data.

Employers are first selected from a list of employer establishments in a particular hazardous industry. Then, an employer is screened "on-site" by compliance personnel to determine if the employer is a high hazard member of that industry by means of an on-site review of their injury, illness and loss data and other regulatorily-required programs, e.g., Injury and Illness Prevention Program (IIPP). Based on the outcome of the on-site review process, a determination can be made as to whether that particular establishment is "high hazard" and should receive a comprehensive compliance inspection.

C. Highest Hazard Industry Selection

1. Source Data for Highest Hazard Industry Lists

On an annual basis, the Division of Occupational Safety and Health compiles a list of the "highest hazardous industries." Industries are selected based on their total lost workday case incidence rate arising from nonfatal occupational injuries and illnesses--often referred to as the "LWDI."

The source data for determining highest hazard industries is provided by the Division of Labor Statistics and Research (DLSR) in their "Annual Survey of Nonfatal Occupational Injuries and Illnesses." The Division of Occupational Safety and Health uses Table 1 of the Annual Nonfatal Survey, which is entitled "Incidence Rates of Nonfatal Injuries and Illnesses by Industry and Selected Case Types."

To be included on the Division's List of Highest Hazard Industry List, industries are ranked by calculating how much their LWDI rate exceeds the average for California employers in the private sector (expressed as a percentage). Only private sector industries with an LWDI which is greater than 175% (or greater than or equal to 200% for the 1999-2000, 2000-2001 and 2001-2002 Lists) of the LWDI for private sector employers in California are included on the Division's Annual List of Highest Hazard Industries.

2. Utilization

The High Hazard Enforcement Program and the High Hazard Consultation Program utilize the Division's Annual List of Highest Hazard Industries as a basis for their programmatic activities.

3. 1996-1997 List of Highest Hazard Industries

Using data from the 1994 DLSR Nonfatal Occupational Injury and Illness Survey,⁴⁷ seventeen (17) industries had LWDI rates greater than 175% of the private sector industry average of 4.0.

These 17 industries had on average an LWDI rate of 9.5 and were composed of approximately 34,000 employers and 520,000 workers. See Table VI-A for the 1996-1997 List of Highest⁴⁸ Hazard Industries based on DLSR's 1994 Nonfatal Occupational Injuries and Illnesses (published in January of 1996).

4. 1997-1998 List of Highest Hazard Industries

Using data from the 1995 DLSR Nonfatal Occupational Injury and Illness Survey, fifteen (15) industries had LWDI rates greater than 175% of the private sector industry average of 3.7. These 15 industries had (on average) an LWDI rate of 10.1 and were composed of approximately 47,036 employers and 512,900 workers. See Table VI-B for 1997 List of Highest⁴⁹ Hazard Industries based on DLSR's 1995 Report of Nonfatal Occupational Injuries and Illnesses by SIC Code (which was published in January of 1997).

Twelve (12) industry entries appear both on the 1995-1996 List (based on 1994 DLSR data) and the 1997-1998 List (based on 1995 DLSR data)⁵⁰ and three (3) industries entries are new to the 1997-1998 List.⁵¹ Five (5) industry entries no longer appear.⁵²

⁴⁷ The Annual Survey of Nonfatal Occupational Injuries and Illnesses is released by DLSR in January of the second year following the year during which the injuries occurred, e.g., the 1994 Annual Survey is released in January of 1996, the 1998 Survey is released in January of 2000.

⁴⁸ For 1996-1999, the term "highest" is defined as a lost workday incidence rate of 175% or greater than the average LWDI of 4.0 for all private industries in California.

⁴⁹ For 1997-1998, the term "highest" is defined as a lost workday incidence rate of 175% or greater than the average LWDI of 3.7 for all private industries in California.

⁵⁰ These are (by SIC Code): 176, 2034, 205, 2086, 2421, 243, 371, 373, 421, 449, 495, and 805.

⁵¹ These are (by SIC Code): 171, 335 and 3949.

⁵² These are (by SIC Code): 2015, 202, 2033, 2984 and 251.

5. 1998-1999 List of Highest Hazard Industries

Using data from the 1997 DLSR Nonfatal Occupational Injury and Illness Survey, fifteen (15) industries had LWDI rates greater than 200% of the private sector industry average of 3.5. These 15 industries have (on average) an LWDI rate of 9.8 and are composed of approximately 27,570 employers and 367,400 workers. See Table VI-C for the 1998-1999 List of Highest⁵³ Hazard Industries based on DLSR's 1997 Nonfatal Occupational Injuries and Illnesses (which was published in January of 1999).

Eight (8) industry entries appear both on the 1997-1998 List (based on 1995 DLSR data) and the 1999-2000 List (based on 1997 DLSR data)⁵⁴ and seven (7) industries entries are new to the 1999-2000 List.⁵⁵ Seven (7) industry entries no longer appear.⁵⁶

6. 1999-2000 List of Highest Hazard Industries

Using data from the 1998 DLSR Nonfatal Occupational Injury and Illness Survey, twenty (20) industries had LWDI rates greater than 200% of the private sector industry average of 3.2. These 20 industries have (on average) an LWDI rate of 8.7 and are composed of approximately 26,710 employers and 398,900 workers. See Table VI-D for the 1999-2000 List of Highest⁵⁷ Hazard Industries based on DLSR's 1998 Nonfatal Occupational Injuries and Illnesses (which was published in January of 2000).

Eight (8) industry entries appear both on the 1998-1999 List and the 1999-2000 List⁵⁸ and twelve (12) industry entries are new to the 1999-2000 List.⁵⁹ Seven (7) industry entries no longer appear.⁶⁰

7. 2000-2001 List of Highest Hazard Industries

Using data from the 1999 DLSR Nonfatal Occupational Injury and Illness Survey, twenty-one (21) industries had LWDI rates greater than 200% of the private sector industry average of total lost workdays of 3.0. These 21 industries have (on average) an LWDI

⁵³ For 1998-1999, the term "highest" is defined as a lost workday incidence rate of 200% or greater than the average LWDI of 3.5 for all private industries in California.

⁵⁴ These are (by SIC Code) 176, 2034, 2086, 2431, 3731, 449, 495 and 805.

⁵⁵ These are 172, 175, 2033, 204, 2396, 252, and 343.

⁵⁶ These are 171, 2051, 2421, 335, 371, 3949 and 421.

⁵⁷ For 1999-2000, the term "highest" is defined as a lost workday incidence rate of 200% or greater than the average LWDI of 3.2 for all private industries in California.

⁵⁸ These are (by SIC Code) 175, 176, 2034, 2086, 3731, 449, 495, and 805.

⁵⁹ These are 2026, 2051, 206, 2084, 2421, 2434, 249, 254, 289, 3273, 353 and 371.

⁶⁰ These are 172, 2033, 204, 2396, 2431, 252 and 343.

rate of 7.5 and are composed of approximately 25,340 employers and 438,900 workers. See Table VI-E for the 2000-2001 List of Highest⁶¹ Hazard Industries based on DLSR's 1999 Nonfatal Occupational Injuries and Illnesses (which was published in January of 2001).

Thirteen (13) industry entries appear both on the 1999-2000 List and the 2000-2001 List⁶² and eight (8) industries entries are new to the 2000-2001 List.⁶³ Six (6) industries entries no longer appear.⁶⁴

8. 2001-2002 List of Highest Hazard Industries

Using data from the 2000 DLSR Nonfatal Occupational Injury and Illness Survey, nineteen (19) industries had LWDI rates greater or equal to 200% of the private sector industry average of total lost workdays of 3.2. These 19 industries have (on average) an LWDI rate of 8.3 and are composed of approximately 49,595 employers and 922,400 workers. See Table VI-F for the 2001-2002 List of Highest⁶⁵ Hazard Industries based on DLSR's 2000 Nonfatal Occupational Injuries and Illnesses (which was published in January of 2002).

Thirteen (13) industry entries appear both on the 1999-2000 List and the 2000-2001 List⁶⁶ and seven (7) industry entries are new to the 2000-2001 List.⁶⁷ Eight (8) industry entries no longer appear.⁶⁸

⁶¹ For 2000-2001, the term "highest" is defined as a lost workday incidence rate of 200% or greater than the average LWDI of 3.0 for all private industries in California.

⁶² These are (by SIC Code): 175, 176, 202, 203, 205, 2084, 2086, 2421, 254, 3273, 371, 373 and 495.

⁶³ These are (by SIC Code): 174, 201, 204, 2431, 252, 343, 346 and 358.

⁶⁴ These are (by SIC Code): 206, 249, 289, 353, 449 and 805.

⁶⁵ For 2000-2001, the term "highest" is defined as a lost workday incidence rate of 200% or greater than the average LWDI of 3.0 for all private industries in California.

⁶⁶ These are (by SIC Code): 174, 175, 201, 202, 204, 2051, 2084, 2086, 254, 327, 358, 373 and 495.

⁶⁷ These are (by SIC Code): 179, 2099, 344, 3544, 365, 45 and 806.

⁶⁸ These are (by SIC Code): 176, 203, 2421, 2431, 252, 343, 346 and 371.

TABLE VI-A

1996-1997 HIGHEST HAZARD INDUSTRY LIST

SIC Code	Industry	LWDI	#Employers	#Employees
421	Trucking & courier services, except air	14.1	8,700	148,600
2086	Bottled & canned soft drinks	12.7	600	9,000
373	Ship & boat building & repairing	12.5	1,700	10,300
176	Roofing, siding & sheet metal work	12.3	8,000	20,700
2421	Sawmills & planing mills, general	11.3	40	11,500
449	Water transportation services	10.4	1,000	12,100
495	Sanitary services	9.3	400	23,000
2033	Canned fruits & vegetables	8.6	10	21,500
205	Bakery products	8.5	800	21,900
202	Dairy products	8.1	900	14,100
243	Millwork, plywood & structural members	8.1	4,400	17,800
805	Nursing & personal care services	8.1	4,100	119,400
2015	Poultry slaughtering & processing	7.8	20	9,700
251	Household furniture	7.4	1,000	24,300
371	Motor vehicles & equipment	7.2	1,100	32,200
2034	Dehydrated fruits & vegetables	7.1	170	9,800
2984	Wines, brandy & brandy spirits	7.1	1,200	14,200
Totals	17 SIC Codes	9.5	34,000	520,000

TABLE VI-B

1997-1998 HIGHEST HAZARD INDUSTRY LIST

<u>SIC Code</u>	<u>Industry</u>	<u>LWDI</u>	<u>Employers</u>	<u>#Employees</u>
373	Ship & boat building & repair	19.5	1,700	10,100
2086	Bottled & canned soft drinks	14.9	600	8,400
176	Roofing, siding & sheet metal work	12.8	8,000	23,100
2431	Millwork	10.8	155	9,000
3949	Sporting & athletic goods	10.3	1056	12,200
495	Sanitary services	10.1	400	23,900
2421	Sawmills & planing mills, general	10.0	40	11,300
449	Water transportation services	9.9	1,000	12,900
421	Trucking & courier services, except air	8.8	8,700	156,700
2034	Dehydrated fruits, vegetables, soups	8.0	170	9,300
371	Motor vehicles & equipment	7.9	1,100	32,500
2051	Bread, cake & related products	7.7	48	17,500
171	Plumbing, heating & air conditioning	7.5	19899	54,000
805	Nursing & personal care services	7.0	4,100	121,300
335	Nonferrous rolling & drawing	6.9	68	10,700
Totals	15 SIC Codes	10.1	47,036	512,900

TABLE VI-C

1998-1999 HIGHEST HAZARD INDUSTRY LIST

<u>SIC Code</u>	<u>Industry</u>	<u>LWDI</u>	<u>Employers</u>	<u>#Employees</u>
3731	Ship building & repairing	16.5	86	10,900
2086	Bottled & canned soft drinks	14.6	166	10,100
343	Plumbing & heating	12.2	452	7,400
449	Water transportation services	11.8	1,989	13,500
2431	Millwork	11.7	399	10,400
2034	Dehydrated fruits, vegetables, soups	9.5	163	8,700
252	Office furniture	8.8	309	7,700
805	Nursing & personal care facilities	8.5	5,162	120,300
176	Roofing, siding & sheet metal work	8.2	4,654	25,500
204	Grain mill products	7.9	225	8,200
175	Carpentry	7.8	6,375	34,600
495	Sanitary services	7.8	2,045	24,000
172	Painting & paper hanging	7.5	5,017	23,900
2396	Automotive & apparel trimmings	7.2	167	10,100
2033	Canned fruits & vegetables	7.0	195	18,200
Totals	15 SIC Codes	9.8	27,570	367,400

TABLE VI-D

1999-2000 HIGHEST HAZARD INDUSTRY LIST

SIC Code	Industry	LWDI	#Employers	#Employees
3731	Shipbuilding & repairing	14.7	1,700	7,300
2086	Bottled & canned soft drinks	12.8	600	10,200
206	Sugar & confectionery products	12.1	300	10,500
495	Sanitary services	10.1	400	23,600
2434	Wood kitchen cabinets	9.1	200	8,500
3273	Ready-mixed concrete	9.0	200	8,400
289	Misc. chemical products	9.0	150	6,900
371	Motor vehicles & equipment	8.9	1,100	35,700
249	Misc. Wood Products	8.2	400	8,800
353	Construction & Related Machinery	8.0	350	8,300
254	Partitions & fixtures	7.8	400	9,100
449	Water transportation services	7.7	1,000	12,100
2421	Sawmills & planing mills, general	7.6	40	10,400
2084	Wines, brandy & brandy spirits	7.2	1,200	18,900
2034	Dehydrated fruits & vegetables	7.0	170	7,800
176	Roofing, siding & sheet metal work	6.9	8,000	20,700
805	Nursing & personal care services	6.8	4,100	123,000
2026	Fluid milk	6.7	600	8,500
2051	Bread & cake	6.6	800	19,900
175	Carpentry & floor work	6.6	5,000	40,300
Totals	20 SIC Codes	8.7	26,710	398,900

TABLE VI-E

2000-2001 HIGHEST HAZARD INDUSTRY LIST

SIC Code	Industry	LWDI	#Employers	#Employees
2086	Bottled and canned soft drinks	12.9	600	10,400
373	Ship and boat building and repairing	12.7	1,700	11,200
495	Sanitary services	11.4	2,000	22,100
2421	Saw and planing mills, general	10.3	40	10,200
371	Motor vehicles & equipment	8.1	1,100	33,800
2431	Millwork	7.9	400	12,200
346	Metal forgings and stampings	7.9	75	13,700
176	Roofing	7.8	8,000	28,100
358	Refrigeration and service machinery	7.4	100	12,000
343	Plumbing and heating, except electric	7.2	500	7,400
202	Diary products	7.0	900	14,700
201	Meat products	6.9	400	18,600
254	Partitions and fixtures	6.8	300	8,700
252	Office furniture	6.7	350	9,200
174	Masonry	6.7	1,000	76,000
2051	Bread, cake and related products	6.6	800	19,400
175	Carpentry and floor work	6.3	5,000	47,800
2084	Wines, brandy and related spirits	6.2	1,200	20,300
203	Preserved fruits and vegetables	6.0	300	44,400
204	Grain mill products	6.0	225	9,400
3273	Ready-mixed concrete	6.0	350	9,300
Totals	21 SIC Codes	7.5	25,340	438,900

**TABLE VI-F
2001-2002 HIGHEST HAZARD INDUSTRY LIST**

Industry Group	SIC Code	Industrial Activity	LWDI	#Employers	#Employees	
Construction	174	Masonry, Stonework, and Plastering	7.4	1,000	82,000	
	175	Carpentry and floor work	7.1	5,000	53,500	
	179	Misc. special trade contractors	6.8	25,000	76,500	
Manufacturing: Durable Goods	254	Partitions and fixtures	7.3	300	8,500	
	327	Concrete, gypsum and plaster products	6.7	350	22,000	
	344	Fabricated structural metal products	6.4	5000	43,500	
	3544	Special dyes, tools, jigs and fixtures	8.2	600	8,200	
	358	Refrigeration and service machinery	8.2	300	11,500	
	365	Household audio and video equipment	10.5	2000	17,300	
	3731	Shipbuilding and repairing	18.8	1,700	6,400	
	Manufacturing: Nondurable Goods	2015	Poultry slaughtering and processing	7.4	20	10,300
		2026	Fluid milk	8.5	900	8,400
204		Grain mill products	9.8	225	9,300	
2051		Bread, cake and related products	6.5	800	20,500	
208		Beverages	6.8	2,000	37,500	
2099		Food preparations, n.e.c.	6.4	1,000	14,300	
Transportation	45	Transportation by Air	11.7	2,000	142,000	
	495	Sanitary Services	7.1	400	22,400	
Services	806	Hospitals	7.0	1,000	328,300	
Totals	19 SIC Codes		8.3	49,595	922,400	

D. High Hazard Enforcement and Consultation Policy and Procedures

1. Programmatic Goals

- Select employer establishments in high hazard industries with the highest incidence of preventable occupational injuries and illnesses and workers' compensation losses;
- Offer and provide to the employers selected consultative assistance in eliminating or reducing preventable work-related injuries and illnesses and workers' compensation losses;
- Inspect those employers who are members of industries on the Highest Hazard Industry List and whose establishments contribute the most to the elevated injury and illness indicators for that industry;
- Evaluate the employer's implementation of the recommendations developed during the provision of a consultative assistance visit and abatement of violations found during the provision of a targeted inspection; and
- Develop educational materials and training programs designed to aid employers in eliminating or reducing preventable work-related occupational injuries and illnesses and workers' compensation losses and repetitive motion injuries.

2. Employer Contacts

a. TICF Assessment Invoice

Insured employers with the highest ExMODs are first contacted through the TICF Assessment Invoice/Offer Letter, which is sent annually to all TICF invoiced employers.⁶⁹

b. Offer of Consultative Assistance

Even though the primary purpose of the TICF Assessment Invoice Letter is to explain the TICF Assessment, the assessed employer is also offered targeted consultative assistance in identifying and eliminating the hazards that are causing their elevated ExMOD.

3. High Hazard Consultation

⁶⁹ See Attachment P for Sample TICF Assessment Invoice/Offer Letter.

a. Assignment

From 1995 through 1997, the High Hazard Consultation Program depended on assessed employers to voluntarily request assistance. When an employer accepted the offer of consultative assistance, the employer was then assigned to receive assistance from a consultant working in the High Hazard Consultation Program. Beginning in 1998, employers with the highest ExMOD rates (i.e., 200% or above) are contacted directly by the High Hazard Consultation Program Coordinator. If the employer accepts consultative assistance, the employer's case is assigned to a consultant in a local Consultation Area Office, who is responsible for providing consultative assistance. If the employer refuses, the Coordinator tries to convince the employer of the advantages of consultative assistance. If the employer with an ExMOD of 200% or more refuses assistance, the employer may be referred by the Coordinator to the High Hazard Enforcement Program for an enforcement inspection.

b. Purpose

The purpose of high hazard consultative assistance is to evaluate the cause(s) of the employer's preventable work-related injuries, illnesses and workers' compensation losses. High hazard consultative assistance focuses on the areas, processes, conditions or machinery which are pertinent to the employer's preventable work-related injury, illness or loss rate and not solely on conditions which are violative of Title 8 occupational safety and health standards.

c. Development of Recommendations and an Action Plan

As a result of the consultative visit, a set of recommendations or an Action Plan is developed for employer implementation. Follow-up visits are arranged as appropriate per the employer.

d. Efficacy Measures

As a part of high hazard consultative assistance, various efficacy outcome measures have been obtained over the years from employers who have accepted consultation. Among these measures are: (1) injury and illness recordable

incidence rate; (2) injury and illness severity rate; (3) number and type of preventable work-related injuries and illnesses; (4) number of lost workdays and number of days with restricted work activity; and (5) pertinent data about workers' compensation claims made and costs per claim. Beginning in 2000, only injury and illness lost workday incidence rate and ExMOD is collected from each high hazard consultation employer.

4. High Hazard Research and Education

a. Responsibilities

The Research and Education Unit (REU), an organizational unit of the Cal/OSHA Consultation Service, provides educational assistance for the targeted enforcement and consultation programs. The REU's responsibilities include:

- (1) Advising High Hazard Consultation Program offices about the availability of workplace safety and health materials, especially educational and instructional materials relating to acute and chronic musculoskeletal, nerve and other ergonomic injuries and illnesses, including acute and chronic injuries to the back;
- (2) Conducting research into preventable work-related safety and health injuries and illnesses and how best to prevent them from occurring;
- (3) Developing educational products for reducing or eliminating safety and health hazards causing employee injuries and illnesses and materials to assist consultation personnel on how to effectively evaluate an employer's injury and illness recordkeeping;
- (4) Establishing model injury and illness prevention training programs to prevent repetitive motion injuries for employer use in industries and work activities such as Video Display Terminal (VDT) use, construction, agriculture, manufacturing and materials handling; and

- (5) Disseminating the model programs to employers, employer associations, workers' compensation insurers, and employee organizations on request.

b. Activities

To date, the Research and Education Unit has conducted the following activities for the High Hazard Enforcement Consultation Programs:

- (1) Electronic Products
 - (a) Web Module for Employer Records of Occupational Injuries and Illnesses
 - (b) Web Module for Dental Ergonomics
 - (c) Web Module for Bloodborne Pathogens
 - (d) Cal/OSHA Pocket Guide for the Construction Industry (CD)
 - (e) Easy Ergonomics (CD)
 - (f) Back Injury Prevention in Health Care (CD)
 - (g) Fitting the Task to the Person: Ergonomics for Very Small Businesses (CD)
 - (h) Hazard Communication Guide (CD)
 - (i) Respiratory Protection Resource (CD)
 - (j) Employer Records of Occupational Injuries and Illnesses (Power Point Presentation Binder)
 - (k) East Ergonomics (Power Point Presentation Binder)
 - (l) Farm Labor Contractor Safety and Health Guide (Power Point Presentation Guide)
 - (m) Lockout/Blockout Booklet -- English and Spanish (PDF)
 - (n) Tailgate/Toolbox Topics (PDF)

- (o) Onsite Consultation Brochure (PDF)
 - (p) Guidelines for IIP Program (PDF)
 - (q) Reducing Workplace Risk for Anthrax Exposures to Mail Handlers (PDF)
- (2) Publications
- (a) *Four Step Ergonomics Program for Employers with Video Display Terminal (VDT) Operators*
 - (b) *A Back Injury Prevention Guide for Health Care Providers*
 - (c) *Complying with the New Confined Space Standard and Permit Requirements -- Is It Safe To Enter a Confined Space?*
 - (d) *Lockout/Blockout (Spanish)*
 - (e) *Workplace Injury & Illness Prevention Model Program for Employers with Intermittent Workers (Spanish)*
 - (f) *Workplace Injury & Illness Prevention Model Program for Employers with Intermittent Workers In Agriculture (English and Spanish)*
 - (g) *Farm Labor Contractor Guide to Health and Safety*
 - (h) *Farm Labor Contractor Guide to Health and Safety (in Spanish)*
 - (i) *Managing Stress Arising from Work*
 - (j) *How to Train New Employees*
 - (k) *Fall Prevention Packet for Employers and Workers in Construction*
 - (l) *Easy Ergonomics-- A Problem-Solving Approach to Workplace Ergonomics*
 - (m) *Hazard Communication Guide*

- (n) *Cal/OSHA Agricultural Safety and Health Inspection Project (ASHIP) Publications* (in English and Spanish)
- (o) *Cal/OSHA Agricultural Safety and Health Inspection Project (ASHIP) Poster* (in English and Spanish)
- (p) *Cal/OSHA Construction Safety and Health Inspections Project (CSHIP) Poster* (in English and Spanish)
- (q) *Fitting the Task to the Person: Ergonomics for Very Small Businesses*
- (r) *Fitting the Task to the Person: Ergonomics for Very Small Businesses Posters*
 - i. Automotive Repair
 - ii. Retail/Wholesale Sales
 - iii. Cosmetology
 - iv. Dental Offices
 - v. Medical Offices
 - vi. Restaurant and Bar
- (s) *Cal/OSHA Pocket Guide for the Construction Industry*
- (t) *A Best Practices Approach for Reducing Bloodborne Pathogens Exposure*
- (u) *Exposure Control Plan for Bloodborne Pathogens*
- (v) *Survival Guide for Carpenters*
- (w) *Keys to Success and Safety for the Construction Foreman: An Ergonomic Approach to Cost Containment*
- (x) *Respiratory Protection in the Workplace*

(3) Video Library

From 31 October 1995 through 31 December 2001, 12,831 videotapes from the Consultation Unit's Video Library were distributed to employers for employee training purposes. Due to reduced demand, the Consultation Video Library closed on 1 July 2001.

(4) Outreach Seminars for Employers

Since 1995, the Research and Education Unit has made 257 presentations to approximately 13,643 California employers on topics pertaining to occupational safety and health. These 13,643 employers employ approximately 907,585 workers. In 2001, 14 presentations were made to approximately 1,377 employers. These 1,377 employers employ approximately 150,562 workers.

Presentation topics include various occupational safety and health issues including the following: ergonomics, back injury prevention, musculoskeletal disorders, agricultural health and safety, fall protection and confined space.

The Research and Education Unit has also developed several training aids to be used during outreach training (workshops, seminars, presentations). The materials developed include power point presentation packets, interactive educational tools, and other assortments of training tools.

(5) Health and Safety Publications Distribution

In 2001, more than 301,750 health and safety publications were mailed from the Research and Education Unit (up from 171,850 in 2000). This represents 61,418 separate requests for publications.

(6) Research and Development

During 2001, the Research and Education Unit has engaged in a number of "R&D" projects including mentoring with industry and labor; working with other educators in conducting focus groups; collaborating with other educational providers during the content

development stage of new publication development (e.g., respiratory protection, ergonomics for the small employer, safety and health guide for construction, bloodborne pathogens exposure control plan, bloodborne pathogens best practices, agricultural and construction ergonomics, electronic and web-based educational products; and providing staff development in areas of publication layout, editing and image insertion).

(7) Web Publications Page

In 2001, the Research and Education Unit continued to revise the Publications Page of the Division's Web Site. All of the Division's publications are now available for viewing online, and/or downloading, to a desktop or laptop computer. In addition, users now can order any of the Division's publications on-line.

5. High Hazard Enforcement

a. High Hazard Enforcement Inspections

(1) High Hazard Industry/Employer Programmed Inspection

Any employer who is a member of one of the highest hazard industries (see Tables VI-A, VI-B, VI-C, VI-D, VI-E and VI-F) is subject to a comprehensive enforcement inspection if an analysis of the establishment's injury and illness incidence (LWDI) rate reveals that the establishment has an LWDI which is the same or higher than their industry LWDI average.

(2) Complaint or Accident Referral from Cal/OSHA Enforcement Unit

Any formal complaint (or serious informal complaint), or accident occurring in an establishment which is in an industry on the List of Highest Hazard Industries may be referred by a Cal/OSHA Enforcement Unit District Office to the High Hazard Unit for the purpose of responding to the complaint or accident, but only if, upon telephonic referral, the High Hazard Unit verifies

to the District Office that it has the capability to respond within the required statutory time frames.

NOTE: When responding to any complaint or accident referred to the targeted enforcement program, the High Hazard Unit also conducts, in addition to the complaint inspection or accident investigation, a programmed inspection of the place of employment if the establishment has an LWDI incidence rate which is the same or higher than the LWDI of that establishment's industry.

b. High Hazard Consultation Referrals

(1) Refusal-to-Accept High Hazard Consultation

Any employer with an ExMOD rate of 200% or greater (i.e., significantly elevated ExMOD) who declines an offer of consultative assistance from a consultant of the Consultation Program, shall be referred, through the Chief, to the high hazard enforcement program for an enforcement inspection.

(2) Failure-to-Cooperate with High Hazard Consultation

Any employer with an ExMOD rate of 200% or greater who initially accepts an offer of consultative assistance, but later demonstrates non-cooperation with the provision of that assistance, and serious hazards are present in their workplace, shall be referred, through the Chief, to the high hazard enforcement program for an enforcement inspection.

(3) Failure-to-Implement High Hazard Consultation Recommendations

Any employer who initially accepts an offer of consultative assistance and cooperates initially with the provision of that assistance, but is subsequently found on a follow-up visit to have failed to implement the recommendations jointly developed by the employer and Cal/OSHA Consultation, shall be referred, through the Chief, to the high hazard enforcement program for an enforcement inspection.

VII. HIGH HAZARD PROGRAMS ACTIVITY MEASURES

A. Statutory Origin

Enacted in 1993, Labor Code Section 62.9 required that an Interim (1997) and Final (1998) Report be submitted by the Department and that each Report should contain five types of "activity" measures as follows:

- Number and type of targeted employers inspected;
- Number and type of follow-up inspections conducted;
- Number and type of violations observed and corrected;
- Number and type of enforcement actions taken;
- Total number of program staff hours expended in enforcement, administration and support for the programs

Over the ensuing five years, the categories of Activity Measures have remained largely the same from the 1997 Report through the 2002 Reports.

B. Activity Measures -- 1994 through 2001

1. Administrative -- TICF Assessments

TABLE 1

NUMBER OF TICF INVOICE/OFFERS SENT BY YEAR

YEAR	NUMBER OF TICF INVOICES/OFFERS
1995	11,650
1996	11,387
1997	11,378
1998	11,812
1999	13,019
2000	13,977
2001	11,579
TOTAL	84,802

2. High Hazard Consultation⁷⁰
 - a. Onsite Consultations

TABLE 2A
ONSITE CONSULTATIONS BY EMPLOYER BY YEAR

YEAR	NUMBER OF EMPLOYERS
1994	249
1995	978
1996	1,080
1997	773
1998	680
1999	329 ⁷¹
2000	348
2001	663 ⁷²
Total	5,100

⁷⁰ All Activity Measures appearing in Tables 2A-3G reflect high hazard activities on a calendar year basis.

⁷¹ Beginning in 1999, the number of employers shown in Table 2A as receiving high hazard consultative assistance were exclusively those employers who have ExMODs greater than 200%. In the years prior to 1999, the number of employers receiving high hazard consultation were employers who did not necessarily have ExMODs greater than 200%. It is estimated that approximately 500 employers with ExMODs between 125% and 200% received consultative assistance in 1999 and 2000, increasing the total number of employers to 829 and 848 served respectively for those years.

⁷² Beginning in 2001, the number of employers shown in Table 2A as receiving high hazard consultative assistance will be composed of two groups of employers; (1) employers with ExMODs of from 125% to 199% (n=183); and (2) employers with ExMODs of 200% or more (n=480). The 663 employers in Table 2A for 2001 received initial onsite high hazard consultations (n=579), follow-up onsite consultations (n=50) and training and assistance onsite consultations (n=34).

b. Number and Type of High Hazard Consultations

TABLE 2B

NUMBER AND TYPE (BY SIC CODE) OF HIGH HAZARD CONSULTATION EMPLOYERS BY YEAR

	94	95	96	97	98	99	00	01
0111-0783 -- Agriculture	0	27	53	33	44	6	14	54
1511-1799 -- Construction	44	336	227	110	105	32	14	85
2011-3999 -- Manufacturing	187	374	339	255	231	62	48	126
4011-4971 -- Transportation	3	51	138	78	46	17	6	37
5012-5199 -- Wholesale Trade	0	29	50	40	34	31	7	22
5211-5999 -- Retail Trade	4	30	74	57	32	26	61	106
6011-6799 -- Finance & Insurance	0	5	18	22	21	19	4	13
7011-8999 -- Services	9	126	180	176	165	124	189	213
9221-9229 -- Public Admin	2	0	1	2	2	12	5	7
Total	249	978	1080	773	680	329	348	663

c. Number of Follow-Up High Hazard Consultations

TABLE 2C

NUMBER OF FOLLOW-UP HIGH HAZARD CONSULTATIONS BY YEAR

YEAR	NUMBER OF EMPLOYERS
1994	81
1995	297
1996	203
1997	100
1998	49
1999	24
2000	76
2001	50
Total	880⁷³

⁷³ The number of employers who have received a follow-up consultative assistance visit in Table 2C (880) is smaller than the number of employers indicated in Table 2A as receiving on-site consultative assistance (5,100) because consultative assistance follow-up visits are performed only at the employer's request.

- d. Number of Employers with Significantly Elevated ExMODs Provided High Hazard Consultation Assistance

TABLE 2D

COMPLETED TARGETED CONSULTATION ASSISTANCE VISITS BY EMPLOYER WITH SIGNIFICANTLY ELEVATED ExMODs⁷⁴

YEAR	NUMBER OF EMPLOYERS
1998	156
1999	329
2000	324
2001	480
Total	1,289

⁷⁴ These employers represent a highly selected subset of the total number of TICF-assessed employers and have ExMODs of 200% or greater in the year just prior to the assessment year. These employers (approximately 650 per year) are the subset of assessed employers who, if after being contacted for high hazard consultation assistance refuse, will be subject to a high hazard enforcement inspection.

- e. Number and Classification of Violations Observed and Corrected During High Hazard Consultations (1994-2001)

TABLE 2E

NUMBER AND CLASSIFICATION OF VIOLATIONS OBSERVED AND CORRECTED DURING COMPLETED ON-SITE HIGH HAZARD CONSULTATIONS

	Serious ⁷⁵	General	Regulatory	Total
1994	1418	379	51	1848
1995	3695	996	221	4912
1996	2097	866	82	3045
1997	1301	516	81	1898
1998	286	181	29	496
1999	1330	2969	86	4385
2000	1158	2131	192	3481
2001	1881	2055	400	4336
Total	13,166	10,093	1142	24,401

⁷⁵ It should be noted when comparing the number of violative conditions characterized as serious by the high hazard consultation program to the number characterized as serious by the high hazard enforcement program, a "serious" characterization by consultation does not have to be supported by evidentiary proof of employee exposure as does a serious violation characterized as such by enforcement. Therefore, the rate of serious for consultation is more than that for enforcement inspections.

- f. Most Frequently Observed Hazards and Violations Corrected During High Hazard Consultations (1994-2001)

TABLE 2F

**MOST FREQUENTLY OBSERVED TITLE 8 VIOLATIONS CORRECTED
DURING HIGH HAZARD CONSULTATIONS**

TITLE 8 SECTION	DESCRIPTION
3203	IIP Program
2500	Flexible Cords/Cables
2340	Electrical Installation
6151	Fire Extinguisher
14301	Injury and Illness Recordkeeping
3220	Emergency Action Plan
461	Permit to Operate Air Tank
5193	Bloodborne Pathogens
5144	Respiratory Protective Equipment

- g. Most Frequently Observed Loss-Related Deficiencies during High Hazard Consultations (1994-2001)

TABLE 2G

MOST FREQUENTLY OBSERVED LOSS-RELATED DEFICIENCIES DURING ON-SITE HIGH HAZARD CONSULTATIONS

Injury and Illness Prevention Program. Lack of programs, incomplete programs, attempting to use a program that was not relevant (specific) to the type of business, and the lack of program implementation were found. Safety and health inspections were infrequently performed or performed by inexperienced personnel. Hazard recognition was poor. Accident investigations were incomplete and led to faulty assumptions that the incidents were unstoppable—result was the continued existence of the hazard. Some employers believed that by completing workers' compensation forms comprised the sum total of their investigation requirements.

Slips, Trips and Falls. There was a wide variety of slipping, tripping, and fall hazards identified and related to losses. These included tools, product, waste, water, and other obstructions left on floors or working surface; blocked or narrowed walkways; improper guardrails or other fall protection devices on elevated locations; accessing overhead and other awkward storage locations; insecure footing for ladders and mobile stairs; improperly designed and/or maintained stairs; improper handrails and stair rails; and other improperly maintained floor or work surface conditions.

Safe Work Practices. Improper work practices attributable to a lack of training, lack of supervision and assessment of work conditions, and a lack of commitment to safe work practices by both employees and supervisors resulted in a wide range of accidents and losses. These improper work practices included a lack of procedures for a particular job or improper procedures, improper use of or lack of the appropriate tools and equipment for the job, and the lack of or improper use of personal protective equipment.

Materials Handling. The majority of musculoskeletal injuries occurred due to lifting and moving product or materials. Most of the injuries involved non-repetitive tasks. Cumulative trauma disorders (CTD) were mostly related to carpal tunnel syndrome and involved the repetitive motions associated with keyboard use.

Recordkeeping and Loss Trend Analysis. As noted above, many accident investigations were inadequate. This was often compounded by failure to maintain the Log of Occupational Injuries and Illnesses (Log 200). Alternatively, when the Log 200 was kept, it was often filled out erroneously and/or contained omissions. Therefore, the Log 200 could not and were not used as a trend indicator, their intended use. The result often times was the lack of correction of the root causes of losses.

Chemical Hazard Communication Program. Employees (and many employers) were unaware of the hazards they were exposed to. The result was improper procedures, lack of appropriate control measures and either the lack of or improper use of personal protective equipment. Most employers, where a Chemical Hazard Communication Program applied, lacked a formalized written program or adequate employee training.

Machine and Tool Guarding. A broad range of machine and tool guarding hazards was found that had resulted in losses, e.g., design as well as maintenance and use of the safety devices, potential machine and tool guarding hazards were identified.

- h. Violation Per Inspection Ratio: High Hazard and Non-High-Hazard Consultations

TABLE 2H

VIOLATION/INSPECTION RATIO⁷⁶

YEAR	200% or > ExMOD	125 - 199% ExMOD	< 125% ExMOD
2001	6.12	7.65	6.16

3. High Hazard Enforcement

- a. Number of High Hazard Enforcement Inspections

TABLE 3A

HIGH HAZARD ENFORCEMENT INSPECTIONS BY EMPLOYER BY YEAR

YEAR	NUMBER OF EMPLOYERS
1994	207
1995	396
1996	270
1997	423
1998	540
1999	499
2000	560
2001	401 ⁷⁷
Total	3,296

⁷⁶ The majority of 125-199% ExMOD onsite for 2001 were targeted toward employers who were also members of high hazard industries.

⁷⁷ In 2001, the High Hazard Unit also conducted a total of 119 non-enforcement interventions, e.g., conducting verification audits for the Federal OSHA Data Initiative. In addition, a fluctuating level of enforcement personnel resources in Northern California contributed to a decrease in inspections in 2001.

b. Types of employers provided targeted enforcement inspections

TABLE 3B

NUMBER AND TYPE (BY SIC CODE) OF HIGH HAZARD ENFORCEMENT EMPLOYERS BY YEAR

	94	95	96	97	98	99	00	01
0111-0783 -- Agriculture	0	7	3	1	5	19	20	39
1511-1799 -- Construction	4	113	91	100	131	45	67	135
2011-3999 -- Manufacturing	119	165	93	210	240	148	369	210
4011-4971 -- Transportation	4	21	18	40	54	44	20	48
5012-5199 -- Wholesale Trade	20	4	8	6	9	23	0	10
5211-5999 -- Retail Trade	10	20	6	10	26	97	3	18
6011-6799 -- Finance & Insurance	0	8	1	3	7	37	1	4
7011-8999 -- Services	48	57	50	53	68	52	80	53
9221-9229 -- Public Admin	2	1	0	0	0	34	0	3
Total	207	396	270	423	540	499	560	520

c. Number of Follow-up High Hazard Enforcement Inspections

TABLE 3C

**ON-SITE HIGH HAZARD FOLLOW-UP ENFORCEMENT INSPECTIONS BY
EMPLOYER**

YEAR	NUMBER OF EMPLOYERS
1994	0
1995	7
1996	26
1997	48
1998	146
1999	77
2000	66
2001	10
TOTAL	380⁷⁸

⁷⁸ In 2002, the High Hazard Unit will be increasing its reinspections of establishments cited previously for a serious, willful and repeat violation in order to verify abatement.

d. Number and Classification of Violations Observed and Abated during High Hazard Enforcement Inspections

TABLE 3D

NUMBER AND CLASSIFICATION OF VIOLATIONS OBSERVED AND ABATED DURING HIGH HAZARD ENFORCEMENT INSPECTIONS

	SWR⁷⁹	%SWR	OTS⁸⁰	TOTAL
1994	533	35.9%	949	1,482
1995	957	39.6%	1454	2,411
1996	437	36.0%	774	1,211
1997	803	45.5%	958	1,761
1998	1049	38.9%	1647	2,696
1999	962	44.0%	1224	2,186
2000	1122	43.1%	1481	2,603
2001	717	43.45%	933	1,650
Total	6580	41.12%	9420	16,002

⁷⁹ The category "SWR" includes Serious, Willful and Repeat violations.

⁸⁰ The category "OTS" includes General and Regulatory violations.

e. Enforcement Actions taken during High Hazard Inspections by Year

TABLE 3E

ENFORCEMENT ACTIONS TAKEN DURING HIGH HAZARD INSPECTIONS BY YEAR

	Warrants	OPUs ⁸¹	Info Memos ⁸²	Citations
1994	0	0	53	668
1995	2	9	123	1,467
1996	2	3	41	491
1997	1	33	42	1,011
1998	4	4	61	946
1999	3	5	74	1,370
2000	4	17	73	2,571
2001	4	7	44	1,203
Total	20	78	511	9,727

⁸¹ An "Order Prohibiting Use" is an enforcement action taken against an employer based on the presence of an imminent hazard. It is the policy of the Division to determine the presence of a dangerous workplace condition or practice which constitutes an imminent hazard to employees, to warn the employer and the employees about the presence of an imminent hazard, and to prohibit entry (by means of an Order Prohibiting Use) into the place of employment, or any part thereof, containing the imminent hazard, or prohibit use of a machine, device, apparatus or equipment which constitutes an imminent hazard.

⁸² An "Information Memorandum" is a type of enforcement document used by the Division to direct the employer's attention to a workplace condition which has the potential of becoming a violation of a Title 8 Safety Order violation in the future if employee exposure to the violative condition occurs.

f. Violations per Inspection Ratio: High Hazard and Non-High Hazard Enforcement Inspections

TABLE 3F

VIOLATION PER INSPECTION RATIO⁸³

YEAR	HIGH HAZARD	NON-HIGH HAZARD
1994	7.16	1.80
1995	6.09	2.08
1996	4.48	2.23
1997	4.16	2.25
1998	4.99	2.10
1999	4.38	2.10
2000	4.64	1.67
2001	4.11	2.26
Cumulative	5.00	2.35

⁸³ The "violation per inspection ratio" is a measure used in occupational safety and health enforcement agencies to measure the effectiveness of the targeting method used to select the inspected establishment. It is a measure of the "enforcement yield" from the inspection, i.e., how productive the inspection was in finding and citing workplace conditions which are violative of a Title 8 occupational safety and health standard. As can be seen from the Table, the "violation per inspection ratio" for high hazard inspections (which are based on the highest hazard industry-establishment targeting methodology) is consistently higher than the ratio from non-high hazard enforcement inspections (based primarily on receipt of an employee complaint or the occurrence of an industrial accident).

- g. Most Frequently Observed Title 8 Violations Abated during High Hazard Enforcement Inspections

TABLE 3G

MOST FREQUENTLY OBSERVED TITLE 8 VIOLATIONS ABATED DURING HIGH HAZARD ENFORCEMENT INSPECTIONS BY TYPE

TITLE 8 SECTION	DESCRIPTION
1644	Metal Scaffolds
1637	Scaffolds, General Requirements
5144	Respiratory Protection
1670	Personal Fall Arrest Systems
1675	Ladders, General Requirements
5194	Hazard Communication
1509	Code of Safe Practices
6151	Portable Fire Extinguishers
4070	Guarding/Belt and Pulley Drives
2501.58	Grounding-Receptacles/Cords

VIII. HIGH HAZARD PROGRAMS EFFICACY MEASURES

A. Statutory Origin

Enacted in 1993, Labor Code Section 62.9 required that an Interim (1997) and Final (1998) Report be submitted by the Department and that each Report should contain one "outcome" or "efficacy" measure, as follows:

- Overall assessment of the efficacy of the programs, supported by workplace injury and illness data.

B. How Do You Measure "Efficacy"?

The "efficacy" requirement reflects the Legislature's concern over the effectiveness of governmental occupational safety and health programs in general, and the Targeted Inspection and Consultation Programs in particular. Since the Programs are supported by employer assessments and not by General Fund monies, it is understandable that the "benefits" of targeted inspection and consultation, in comparison to their costs, must be demonstrated.

Given the passage of SB 996, the challenge is to find ways to measure how well the Targeted Consultation and Inspection Programs achieve the goals contained in the Workers' Compensation Insurance Reform Legislation of 1993 (AB 110).

The 1993 reforms of the California workers' compensation insurance system required Cal/OSHA to identify California employers "in high hazardous industries with highest incidence of preventable occupational injuries and illnesses and workers' compensation losses" and assist them through consultative and compliance interventions in eliminating or reducing their workplace injuries, illnesses and workers' compensation losses. How, then, can the targeted consultation and inspection program's efficacy be measured?

The use of a research tool called "outcomes analysis" is one way to do so. The use of outcomes analysis can assist government providers of occupational safety and health services in assessing the effectiveness of both their compliance and consultative interventions.

As applied to occupational safety and health, outcomes analysis is a way of assessing how effectively a particular compliance and consultative activity results in the prevention of workplace hazards, in the prevention of the injuries, illnesses and fatalities which workplace hazards cause, and in the direct and indirect costs associated with the occurrence of workplace injuries, illnesses and fatalities.

Even though many different types of outcome measures exist, the following represent the three major categories of outcome measures, and some examples of each, which are applicable to targeted activities.

1. Injury and Illness Prevention Measures

Measures of various hazards or adverse health effects (fatalities, injuries or illnesses) that are prevented (or do not occur) as the result of a compliance or consultative intervention.

Examples of Injury and Illness Prevention Measures include the following:

- Number of hazards eliminated
- Number of fatalities prevented
- Number of injuries and illnesses prevented
- Number of lost workdays reduced
- Number of workers' compensation losses eliminated

2. Economic Measures

Measures which determine how cost-effective are various compliance and consultative interventions. Usually, a comparison of the costs of injuries and illnesses--direct, indirect and intangible costs--with the benefits which accrue to the employer and the employee from injury and illness prevention is utilized.

Examples of Economic Measures include the following:

- Reduction in medical costs associated with workplace injuries/illnesses or workers' compensation losses
- Reduction in lost productivity costs associated with workplace injuries/illnesses or workers' compensation losses
- Reduction in the cost of workers' compensation claims
- Reduction in workers' compensation insurance premium costs

- Reduction in indicators used by the workers' compensation insurance industry to assess premium pricing, e.g., experience modification rating
- Reduction in lost wages to employees

3. Service Satisfaction Measures

Measures of the impact of a particular compliance or consultative intervention on employer and employee satisfaction and on the quality of occupational safety and health in the workplace.

Examples of Service Satisfaction Measures include the following:

- Satisfaction of employers with targeted services
- Satisfaction of employees with targeted services
- Increases in safety awareness among targeted employers and employees
- Increases in the effectiveness of targeted employer's IIP Programs
- Number of employers and employees taught how to recognize and correct hazard(s) from a targeted intervention
- Improvements in injury and illness recordkeeping from a targeted intervention
- Improvements in workers' compensation claims recordkeeping from a targeted intervention

How does outcomes analysis differ from the traditional way that occupational safety and health programs assess compliance and consultative performance?

The traditional way of assessing the performance of a governmental occupational safety and health program is to count how many compliance and consultative "activities" occur. Among the myriad of compliance or consultative activities which can be counted are the following:

- Number of inspections performed/consultation surveys conducted
- Number of violations cited (both compliance and consultation)

- Number of cited violations which are classified as "serious" (both compliance and consultation)
- Amount of civil penalties proposed per violation (compliance)
- Amount of proposed penalties which are collected (compliance)

These activity measures impart some information about the functioning of the program, but they are only indirect measures of what a governmental occupational safety and health program should be accomplishing. Standing alone, activity measures suggest only that (and only at one point in time, i.e., the inspection day) a "cited" establishment is "allegedly"⁸⁴ not in compliance with particular Title 8 Safety Orders.

Also, activity measures offer little long term guidance on how effective a governmental occupational safety and health program is in making workplaces safer by preventing fatalities, injuries, illnesses and workers' compensation losses.

However, activity measures are sometimes the only measure of a particular type of compliance or consultative intervention. For instance, compliance interventions have historically been triggered primarily in the Cal/OSHA program by an employee complaint being filed, the occurrence of an accident or referral from another governmental agency. Neither type of intervention allows the program to assess compliance effectiveness well. Workplaces identified by a complainant are not necessarily those workplaces which contain a high proportion of hazards or have a high injury or illness rate. Inclusion in an effectiveness analysis of interventions conducted in such workplaces can create a false-positive outcome, i.e., the compliance intervention did not result in a true reduction in workplace hazards, injuries, illnesses or workers' compensation losses even though it seemed to. Similarly, consultative on-site surveys are triggered by an employer request--not by the objectively-identified hazards, injuries or illnesses or workers compensation claims. Employers with workplaces which contain the highest proportion of workplace safety and health fatalities, injuries, illnesses and workers' compensation losses are the employers who request consultative assistance least often or not at all.

Many believe that "outcomes analysis" paints a clearer picture of how well an occupational safety and health program is functioning than does "activity" analysis. In sum, outcomes analysis is concerned with how well

⁸⁴ The Division can only "allege" that a particular Title 8 Safety Order has been violated. Only when the proposed citation is "affirmed" by a final order of the Occupational Safety and Health Appeals Board (or sustained in a contestation of the proposed citation) does the alleged citation legally become a lawful violation. If the employer does not contest a citation, the citation becomes a final order of the Appeals Board by operation of law after fifteen working days from the date of issuance.

the major components of an occupational safety and health program-- compliance and consultative interventions--actually achieve the basic mission of the program--injury and illness prevention, injury and illness cost reduction or improvements in the quality of occupational safety and health in the workplace.

C. Efficacy Assessment -- 1994 through 2000

Until 1999, Labor Code Section 62.9(i)(1)(F) required that information be provided about the "overall assessment of the efficacy of the programs, supported by workplace injury and illness data."

1. Efficacy Measures in General

During the performance of targeted inspections and consultations, data for several efficacy measures were collected for the years 1994 through 1998 (as availability permitted). In general, data for the measurement of programmatic efficacy has been collected whenever a programmatic intervention is initiated with a targeted employer, i.e., during the provision of consultative assistance or during an enforcement inspection.

Subsequent to the intervention (usually in the calendar year following the initial contact), efficacy measures were collected again. By gathering pre-intervention and post-intervention data, the relative effectiveness of the consultative assistance or inspection intervention at the establishment level was demonstrated by comparing the performance of targeted employers with other California employers.

Two types of "workplace injury and illness data" were measured for the annual Reports from 1997 through 2000. These were injury rates and workers' compensation loss indicators.

a. Injury and Illness Rates

(1) Lost Work Day Case Incidence Rate (LWDI);

The "Lost Work Day Case Incidence Rate (LWDI)" represents the number of injuries and illnesses which result in "days-away-from work" and/or "days of restricted work activity" per 100 full-time workers. The LWDI is calculated by multiplying the total number of employee injuries and illnesses resulting in lost workdays (derived by totaling columns 2 and 9 on the OSHA Log 200) by 200,000 employee-hours (i.e., 100 employees working 40 hours per week for 50 weeks a year) and dividing by the total number of hours worked by all employees during the calendar year. The LWDI is the most common measure of an industry's relative "hazard" status used by federal and state occupational safety and health agencies for industry targeting.

(2) **Total Injury/Illness Recordable Case Incidence Rate (TRI);**

The "Total Injury and Illness Recordable Case Incidence Rate (TRI)" represents the number of employee injury and illness cases which result in lost work days, medical treatment (other than first aid), restriction of work or motion, loss of consciousness or transfer to another job per 100 full-time workers. The TRI is calculated by multiplying the total number of OSHA recordable injuries and illnesses (derived by totaling columns 2, 6, 9 and 13 on the OSHA Log 200) by 200,000 employee-hours (i.e., 100 employees working 40 hours per week for 50 weeks a year) and dividing by the total number of hours worked by all employees during the calendar year.

(3) **Total Injury and Illness Severity Rate (TSR);**

The "Total Injury and Illness Severity Rate (TSR)" represents the number of days charged for lost workdays cases (days-away-from-work cases and days-of-restricted-work-activity cases) per 100 full-time workers. The TSR is calculated by multiplying the total number of OSHA recordable days away from work and days of restricted work activity (derived by totaling columns 4, 5, 11 and 12 on the OSHA Log 200) by 200,000 employee-hours (i.e., 100 employees working 40 hours per week for 50 weeks a year) and dividing by the total number of hours worked by all employees during the calendar year.

(4) **Musculoskeletal Injury and Illness Recordable Case Incidence Rate (MRI);**

The "Musculoskeletal Injury and Illness Recordable Case Incidence Rate (MRI)" represents the number of employee musculoskeletal injury cases which result in medical treatment (other than first aid), restriction of work or motion, loss of consciousness or transfer to another job per 100 full-time workers. The MRI is calculated by multiplying the total number of OSHA recordable musculoskeletal injuries and illnesses (derived by totaling columns 2, 6, 9 and 13 on the OSHA Log 200 for musculoskeletal injuries and illnesses only) by 200,000 employee-hours (i.e., 100 employees working 40 hours per week for 50 weeks a year) and dividing by the total number of hours worked by all employees during the calendar year. Since musculoskeletal injuries and illnesses account for the greatest proportion of workers' compensation claims of high severity, the MRI would be particularly useful in assessing the efficacy of the targeted consultation and inspection programs.

(5) **Musculoskeletal Injury and Illness Severity Rate (MSI);**

The "Musculoskeletal Injury and Illness Severity Rate (MSI)" represents the number of days charged for lost workdays cases (days-away-from-work cases and days-of-restricted-work-activity cases) which resulted from musculoskeletal injuries and illnesses per 100 full-time workers. The MSI is calculated by multiplying the total number of OSHA recordable days away from work and days of restricted activity (derived by totaling columns 4, 5, 11 and 12 on the OSHA Log 200 for musculoskeletal injuries and illness only) by 200,000 employee-hours (i.e., the total number of hours worked by all employees during the calendar year). Since musculoskeletal injuries and illnesses account for the greatest portion of workers' compensation claims of high severity (most costly), the MSI would be particularly useful in assessing the efficacy of the targeted consultation and inspection programs.

b. Workers' Compensation Loss Indicators

(1) Number of workers' compensation claims made (CM);

The "Number of Workers' Compensation Claims Made (CM)" is a relatively straightforward measure of how effective any workplace injury and illness reduction program can be, and refers to those claims made by employees as a result of workplace injury or illness. Data on claims made is obtained from the targeted employer.

(2) Medical costs associated with claims paid (MC);

The "Medical Costs Associated with Claims Paid (MC)" represents the direct medical costs of workplace injuries and illness measured in dollars. It measures the "severity" of workplace injuries and is useful as an effectiveness measure. Data on the medical costs associated with claims paid is obtained from the targeted employer.

(3) Disability costs associated with claims paid (DC).

The "Disability Costs Associated with Claims Paid (DC)" represents the disability costs of workplace injuries and illnesses measured in dollars. It measures the "severity" of workplace injuries and is useful as an effectiveness measure. Data on the medical costs associated with claims paid is obtained from the targeted employer.

(4) Experience Modification Rating

Comparative measurement of an employer's workers' compensation insurance experience modification rating can also be used to assess the relative efficacy of targeted consultation and compliance interventions.⁸⁵

ExMOD data is obtained from the targeted employer or, with the employer's permission, from the employer's insurer.

2. Efficacy Measures -- 1997 Report

In the 1997 Interim Report, efficacy data based on a small sample of employers who had completed targeted consultative assistance indicated that consultative assistance had a positive effect on a selected

⁸⁵ "Since 1921, experience rating has been an important element of the California workers' compensation insurance pricing system. Today, more than 110,000 employers qualify and approximately 80% of all workers' compensation insurance premium is affected by this merit rating plan... Essentially, the experience rating formula is a mathematical equation which compares the value of claims that are expected for an employer (expected losses) with the final or estimated cost of claims that were actually incurred (actual losses) during the experience period. In order to reflect the statistical credibility of an employer's experience in the experience modification and to restrict the fluctuation of an employer's experience modification from year to year (especially for small employers), a number of factors are introduced into the formula which modify the expected losses and actual losses for those employers whose experience is not fully credible." See Workers' Compensation Experience Rating: A Supplement to an Employer's Guide to the California Experience Rating Plan. WCIRB, p.13.

establishment's injury and illness incidence rates and workers' compensation loss indicators.

In a sample of 50 employers who had received consultation assistance in 1994 and 1995, the total recordable injury and illness incidence and severity rates decreased by approximately 10%, comparing data obtained at pre- and post-consultative assistance visits. In addition, the average number of workers' compensation claim cases, and the dollar cost associated with those cases (medical and disability costs), also decreased for the sample of employers receiving consultative assistance in 1994 and 1995.

3. Efficacy Measures -- 1998 Report

In the 1998 Final Report, efficacy data was reported based on a sample of 456 employers who had completed a targeted consultation during the years 1994-97 and who returned the data questionnaire, and a sample of 203 employers who had undergone a targeted compliance inspection during the years 1994-97 and who returned the data questionnaire. The efficacy data reported in 1998 indicated that the targeted consultation and enforcement programs had a positive effect on a selected establishment's injury and illness incidence rates and workers' compensation loss indicators.

4. Efficacy Measures -- 1999 and 2000 Reports

a. High Hazard Consultation

In the 1999 and 2000 Reports, a sample of 886 employers who completed a targeted consultation during the years 1994 through 1998 were asked to provide yearly injury, illness and workers' compensation claims data on the efficacy of the targeted consultation visit. Four hundred and seventy two (472) employers who received targeted consultative assistance responded to the 1999 survey.

Employers who received targeted consultation assistance saw their establishments' workplace injury and illness incidence rates, and their workers' compensation loss indicators, improve more than other California employers as a result of the consultation. In 1999, targeted consultation employers saw their lost workday case incidence rate (LWDI) decrease by 56%. During the same period of time, the average percentage decrease in the LWDI for California employers in general was only 7%. In addition, targeted consultation employers saw reductions in various other workplace

injury and illness rates and workers' compensation loss indicators of from 1% to 45%.

b. High Hazard Enforcement

From 1994-1999, high hazard enforcement inspections were conducted on a total of 2,335 employers in high hazard industries. During these enforcement inspections, 11,747 violations of Title 8 were observed and corrected. These included 4,741 serious, willful or repeat violations and 7,006 other-than-serious violations. The violation per inspection ratio arising from high hazard enforcement inspections (i.e., 5.21) continues to be more than twice the violation per inspection ratio arising from non-targeted (complaint and accident) enforcement inspections (i.e., 2.09).

c. Summary of 2000 Report Efficacy Measures

Efficacy measures reported in the Annual Reports from 1997 through 2000 demonstrate that employers who received targeted consultation assistance and targeted enforcement saw their establishments' workplace injury and illness incidence rates improve. In addition, their workers' compensation loss indicators generally improved over the same period of time. These reductions in injury and illness rates, and loss indicators, resulted in significant savings in injury costs and premium costs.

5. Efficacy Measures -- 2001 and 2002 Reports

For the 2001 and 2002 Reports, the Division decided to simplify the measurement of efficacy in both the High Hazard Consultation and High Hazard Enforcement Programs. Based on the assessment of multiple measures of injury and loss during the years 1994 through 1999 (as reported by the Division in its Annual Reports of 1997, 1998, 1999 and 2000), the Division believes that a general positive effect on employers' injury and illness rates and workers' compensation loss indicators has been seen as a result of its targeted consultative and enforcement interventions.

For the 2001 and 2002 Reports (covering calendar year 2000 and 2001 consultative assistance visits and enforcement inspections), the Division decided to reduce the number of injury and illness measures, and workers' compensation loss measures, for data collection purposes.

To determine if targeted consultative interventions were effective in 2000 and 2001, two measures were selected: (1) an injury and illness measure

-- Lost Work Day Case Incidence Rate (LWDI); and (2) a workers' compensation loss measure -- experience modification rating (ExMOD).

To determine if enforcement inspections were effective, only one measure was selected -- LWDI.

a. LWDI -- High Hazard Consultation and Enforcement

LWDIs were collected by employer survey for the year during which the intervention occurred, either a targeted consultative visit or a targeted enforcement inspection, and for all subsequent years for which complete LWDI could be calculated by the employer (1999 and 2000).

Since LWDI is the most historically accurate measure of an employer's injury rate status and it is the measure by which employers are initially selected for a targeted enforcement inspection, its measurement at the time of intervention, and annually after the intervention has occurred, is an important efficacy trend indicator to follow on a long-term basis.

b. ExMOD -- High Hazard Consultation

ExMODs were collected by employer survey for the year before a consultative assistance intervention occurred and for the last year for which an ExMOD could be determined (2000 and 2001). Since employers are initially selected for targeted consultative assistance based on their ExMOD, the Division believes that serially measuring the effect on the ExMOD that the consultative assistance intervention has is an important efficacy trend indicator to follow on a long-term basis.

c. 2001 Efficacy Measures -- High Hazard Consultation⁸⁶

TABLE 4A

LOST WORK DAY CASE INCIDENCE RATE (AND PERCENT CHANGE) FOR COHORT OF EMPLOYERS WHO UNDERWENT HIGH HAZARD CONSULTATION

Onsite Year	LWDI Baseline Years	Baseline Average LWDI	Comparison Year	Comparison Average LWDI	% LWDI Change
1998	1995-1997	11.02	1999	6.55	- 41%
1999	1996-1998	6.82	2000	5.33	- 22%

TABLE 4B

EXPERIENCE MODIFICATION RATING (AND PERCENT CHANGE) FOR COHORT OF EMPLOYERS⁸⁷ WHO UNDERWENT HIGH HAZARD CONSULTATION

Onsite Year	ExMOD Baseline Year	Baseline ExMOD	Comparison Year	Comparison ExMOD	% LWDI Change
1998	1997	159	2000	109	- 31%
1999	1998	216	2001	162	- 25%

⁸⁶ Of the 393 high hazard consultation employers who were sent data surveys, 114 (29%) responded. Of the 114 who responded, the average annual hours worked increased 10.25%.

⁸⁷ Of 393 high hazard consultation employers whose ExMODs were reviewed, 75 (19%) did not have a current ExMOD for comparison.

d. 2001 Efficacy Measures -- High Hazard Enforcement

TABLE 5A

LOST WORK DAY CASE INCIDENCE RATE (AND YEARLY CHANGE) FOR COHORT OF EMPLOYERS⁸⁸ WHO UNDERWENT HIGH HAZARD ENFORCEMENT INSPECTION IN 1994

Year	LWDI	Percent Yearly Change
1994	4.771	Baseline
1995	4.703	- 1
1996	4.648	- 1
1997	3.932	- 15
1998	5.203	32
1999	3.335	- 36

TABLE 5B

LOST WORK DAY CASE INCIDENCE RATE (AND YEARLY CHANGE) FOR COHORT OF EMPLOYERS⁸⁹ WHO UNDERWENT HIGH HAZARD ENFORCEMENT INSPECTION IN 1995

Year	LWDI	Percent Yearly Change
1995	4.266	Baseline
1996	4.058	- 5
1997	4.009	- 1
1998	5.447	36
1999	3.622	- 33
2000	4.889	35

⁸⁸ Data for the 1994 cohort is derived from 257 employer surveys.

⁸⁹ Data for the 1995 cohort is derived from 226 employer surveys.

TABLE 5C

**LOST WORK DAY CASE INCIDENCE RATE (AND YEARLY CHANGE) FOR
COHORT OF EMPLOYERS⁹⁰ WHO UNDERWENT HIGH HAZARD ENFORCEMENT
INSPECTION IN 1996**

Year	LWDI	Percent Yearly Change
1996	10.465	Baseline
1997	11.645	11
1998	7.964	- 32
1999	6.691	- 16
2000	3.347	- 50

TABLE 5D

**LOST WORK DAY CASE INCIDENCE RATE (AND YEARLY CHANGE) FOR
COHORT OF EMPLOYERS⁹¹ WHO UNDERWENT HIGH HAZARD ENFORCEMENT
INSPECTION IN 1997**

Year	LWDI	Percent Yearly Change
1997	8.969	Baseline
1998	8.623	- 4
1999	6.099	- 29
2000	6.152	1

⁹⁰ Data for the 1996 cohort is derived from 199 employer surveys.

⁹¹ Data for the 1997 cohort is derived from 269 employer surveys.

TABLE 5E

LOST WORK DAY CASE INCIDENCE RATE (AND YEARLY CHANGE) FOR COHORT OF EMPLOYERS⁹² WHO UNDERWENT HIGH HAZARD ENFORCEMENT INSPECTION IN 1998

Year	LWDI	Percent Yearly Change
1998	7.14	Baseline
1999	4.097	- 43
2000	2.902	- 29

TABLE 5F

LOST WORK DAY CASE INCIDENCE RATE (AND YEARLY CHANGE) FOR COHORT OF EMPLOYERS⁹³ WHO UNDERWENT HIGH HAZARD ENFORCEMENT INSPECTION IN 1999

Year	LWDI	Percent Yearly Change
1999	5.524	Baseline
2000	4.452	- 20

TABLE 5G

CUMULATIVE PERCENT YEARLY CHANGE IN LWDI FOR EACH HIGH HAZARD ENFORCEMENT COHORT BY YEARS

COHORT	CUMULATIVE PERCENT CHANGE
1994-1999	- 30%
1995-2000	15%
1996-2000	- 68%
1997-2000	- 31%
1998-2000	- 59%
1999-2000	- 20%
94-99 Cohorts	- 32%

⁹² Data for the 1998 cohort is derived from 289 employer surveys.

⁹³ Data for the 1998 cohort is derived from 193 employer surveys.

e. 2001 Efficacy Measures Summary

(1) High Hazard Consultation

(a) LWDI

For employers who were provided high hazard consultative assistance in 1999 and surveyed in 2001 (n=393), 114 employers responded with detailed information from their Log 200 Record of Occupational Injuries and Illnesses to calculate their Lost Work Day Incidence Rate (LWDI) for the three years prior to the consultative assistance intervention and for the year following the intervention. As Table 4A indicates, the average LWDI for this 1999 cohort, the average LWDI decreased by 22% (from 6.82 to 5.33).

(b) ExMOD

For the same cohort, the 2001 experience modification rating (ExMOD) of 114 employers was obtained from the Workers' Compensation Rating Bureau (WCIRB) and compared to the ExMOD for the year prior to the consultative assistance intervention. As Table 4B indicates, the average ExMOD for this 1998 cohort decreased from 216 to 162, a decrease of 25%.

(2) High Hazard Enforcement

For a series of six cohorts of employers who underwent enforcement inspections during the years 1994 through 1999, detailed information from their Log 200 Record of Occupational Injuries and Illnesses was used to calculate their Lost Work Day Incidence Rate (LWDI) for the year in which the enforcement inspection took place (baseline) and for each subsequent year up to and including 2000 (except for the 1994 cohort). As Table 5G indicates, the cumulative percent change in the LWDI for each of the six cohorts (except the 1995 cohort) indicates that inspected employers' LWDI decreased by anywhere from 17% (for 1999 cohort) to 68% (for 1996 cohort) and by a total of 32% for all six cohorts (94 through 99).

f. Summary of Efficacy Measures for 2002 Report

The efficacy findings of the 2002 Report show that the targeting of establishments for consultative assistance which have elevated rates of workplace injuries and illnesses, and the application of consultation and enforcement resources to those high hazard establishments is an effective way to reduce those injury and illness incidence rates and workers' compensation loss indicators.

In reviewing efficacy measures from a sample of high hazard employers, the 2002 Report indicates that both the High Hazard Consultation Program and the High Hazard Enforcement Program, have a continuing role to play as part of Cal/OSHA's efforts to eliminate workplace hazards, reduce injuries and illnesses and workers' compensation losses in California workplaces.

ATTACHMENT A

INSURANCE CODE SECTION 11721

Section 11721 Loss control consultation services

(a) Any insurer desiring to write workers' compensation insurance shall maintain or provide occupational safety and health loss control consultation services certified by the Director of Industrial Relations. The director may fix and collect fees to recover the costs for certifying the loss control consultation services and receiving and reviewing the annual health and safety loss control plan for targeting employers with the greatest workers' compensation losses and the most significant and preventable health and safety hazards. All fees shall be deposited in the Cal-OSHA Targeted Inspection and Consultation Fund as defined in Section 62.7 of the Labor Code. The insurer may employ qualified personnel to provide these services or provide the services through another entity that has been certified by the director.

(b) The program of an insurer for furnishing loss control consultation services shall be adequate to meet minimum standards prescribed by the director. The services shall include the conduct of workplace surveys to identify health and safety problems, review of employer injury records, including injury and prevention programs required pursuant to Section 6401.7 of the Labor Code. At the time that an insurance policy is issued and annually thereafter, the insurer shall provide each insured employer with a written description of the consultation services together with a notice that the services are available at no additional charge to the employer.

(c) The insurer shall not charge any fee in addition to the insurance premium for safety and health loss control consultation services.

(d) Each insurer shall submit to the director, in a form prescribed by the director, an annual health and safety loss control plan for targeting employers with the greatest workers' compensation losses and the most significant and preventable health and safety hazards. The plan shall include a budget and identify the insurer's methodology for selecting the employers and the number, type, and size of employers who will be targeted. The plan shall be accompanied by a description of the insurer's safety and health loss control activities for the prior year, including, but not limited to, costs, the number, type, and size of businesses served, and any additional information required by the director. The information provided to the director under this subdivision shall remain confidential except for aggregate statistical data. The director shall develop guidelines to assist insurers to identify the employers with the highest preventable health and safety hazards.

(e) Nothing in this section shall be construed to require insurers to provide loss control services to places of employment that do not pose significant preventable hazards to workers.

Amended in 1995 to read as follows:

Section 11721 Loss control consultation services

An insurer desiring to write workers' compensation insurance shall maintain or provide occupational safety and health loss control consultation services certified by the Director of Industrial Relations pursuant to Section 6354.5 of the Labor Code.

ATTACHMENT B

LABOR CODE SECTION 62.7

Section 62.7 Cal-OSHA Targeted Inspection and Consultation Fund

(a) The Cal-OSHA Targeted Inspection and Consultation Fund is hereby created as a special account in the State Treasury. Proceeds of the fund may be expended by the department, upon appropriation by the Legislature, for the costs of the Cal-OSHA targeted inspection program provided by Section 6314.1 and the costs of the Cal-OSHA targeted consultation program provided by subdivision (a) of Section 6354, and certifying loss control consultation services of workers' compensation insurers pursuant to Section 11741 of the Insurance Code.

(b) The fund shall consist of any money appropriated for these purposes, assessments made pursuant to this section, and fees collected pursuant to Section 11721 of the Insurance Code.

(c) Assessments shall be levied by the director only on all insured employers with a workers' compensation insurance experience rating modification of 1.25 or more and private self-insured employers with an equivalent experience rating of 1.25 or more. The director shall promulgate reasonable rules and regulations governing the manner of collection of the assessment and to determine the equivalent experience rating of 1.25 or more for self-insured employers. The rules shall require the assessment to be paid by employers expressed as a percentage of premium. In no event shall the assessment paid by insured employers be considered a premium for computation of a gross premium tax or agents' commissions. This assessment shall not be continued after the employer's experience modification rating or equivalent modification drops below 1.25.

(d) Amounts assessed pursuant to this section shall not exceed 50 percent of the amounts appropriated from the General Fund for the support of the occupational safety and health program in 1993-94 adjusted for inflation.

(1993 ch. 121 urgency eff. July 16, 1993, 1993 ch. 1241, 1993 ch 1242)

Amended in 1995 to read as follows:

(a) The Cal-OSHA Targeted Inspection and Consultation Fund is hereby created as a special account in the State Treasury. Proceeds of the fund may be expended by the department, upon appropriation by the Legislature, for the costs of the Cal-OSHA targeted inspection program provided by Section 6314.1 and the costs of the Cal-OSHA targeted consultation program provided by subdivision (a) of Section 6354, and for costs related to assessments levied and collected pursuant to Section 62.9.

(b) The fund shall consist of the assessments made pursuant to Section 62.9 and other moneys transferred to the fund.

(1993 ch. 121 urgency eff. July 16, 1993, 1993 ch. 1241, 1993 ch 1242, 1995, ch. 33 urgency eff. June 30, 1995, 1995 ch. 556)

ATTACHMENT C

LABOR CODE SECTION 6314.1

Section 6314.1 Identification of Highest Hazard Industries in State--Targeted Inspection Program

(a) The division shall establish a program for targeting employers in high hazardous industries with the highest incidence of preventable occupational injuries and illnesses and workers' compensation losses. The employers shall be identified from any or all of the following data sources: California Work Injury and Illness Program; Occupational Illness and Injury Survey; Federal Hazardous Employers' List; experience modification and other relevant data maintained and furnished by all rating organizations as defined in Section 11750.1 of the Insurance Code; histories of violations of Occupational Safety and Health Act standards; and any other source deemed appropriate that identifies injury and illness rates.

(b) The division shall establish procedures for ensuring that the highest hazardous employers in the most hazardous industries are inspected on a priority basis. The division may send a letter to the high hazard employers who are identified pursuant to this section informing them of their status and directing them to submit a plan, including the establishment of joint labor-management health and safety committees, within a time determined by the division for reducing their occupational injury and illness rates. Employers who submit plans that meet the requirements of the division may be placed on a secondary inspection schedule. Employers on that schedule shall be inspected on a random basis as determined by the division. Employers who do not submit plans meeting the requirements of the division within the time specified by the division shall be placed on the primary inspection list. Every employer on the primary inspection list shall be subject to an inspection. The division shall employ sufficient personnel to meet minimum federal targeted inspection standards.

(c) The division shall establish and maintain regional plans for allocating the division's resources for the targeted inspection program in addition to the inspections required or authorized in Sections 6309, 6313, and 6320. Each regional plan shall focus on industries selected from the targeted inspection program as well as any other scheduled inspections that the division determines to be appropriate to the region, including the cleanup of hazardous waste sites. All targeted inspections shall be conducted on a priority basis, targeting the worst employers first.

(d) In order to maximize the impact of the regional plans, the division shall coordinate its education, training, and consulting services with the priorities established in the regional plans.

(1993 ch. 121 urgency eff. July 16, 1993)

ATTACHMENT D

LABOR CODE SECTION 6354

Section 6354 Occupational Safety and Health Programs and Services

The division shall, upon request, provide a full range of occupational and health consulting services to any employer or employee group. These consulting services shall include:

(a) A program for identifying categories of occupational safety and health hazards causing the greatest number and most serious preventable injuries and illnesses and workers' compensation losses and the places of employment where they are occurring. The hazards, industries, and places of employment shall be identified from the data system that is used in the targeted inspection program pursuant to Section 6314.1. The division shall develop procedures for offering consultation services to high hazard employers who are identified pursuant to this section. The services may include the development of educational material and procedures for reducing or eliminating safety and health hazards, conducting workplace surveys to identify health and safety problems, and development of plans to improve employer health and safety loss records.

The program shall include a component for reducing the number of work-related, repetitive motion injuries, including, but not limited to, back injuries. The division may formulate recommendations for reducing repetitive motion injuries after conducting a survey of the workplace of the employer who accepts services of the division. The recommendations shall include, whenever appropriate, the application of generally accepted ergonomic and engineering principles to eliminate repetitive motion injuries to workers. The recommendations shall also include, whenever appropriate, training programs to instruct workers in methods for performing job-related movements, such as lifting heavy objects, in a manner that minimizes strain and provides safeguards against injury. The division shall establish model injury and illness prevention training programs to prevent repetitive motion injuries, including recommendations for the minimum qualifications of instructors. The model program shall be made available to employers, employer associations, workers' compensation insurers, and employee organizations on request.

(b) A program for providing assistance in the development of injury prevention programs for employees and employers. The highest priority for the division's consulting services shall be given to development of these programs for businesses with fewer than 250 employees in industries identified in the regional plans developed pursuant to subdivision (b) of Section 6314.1.

(c) A program for providing employers or employees with information, advice, and recommendations on maintaining safe employment or place of employment, and on applicable occupational safety and health standards, techniques, devices, methods, practices, or programs.

(1973 ch. 993 urgency eff. Oct. 1, 1973, 1989 ch. 1369 urgency eff. Oct. 2, 1989, 1993 ch. 121 urgency eff. July 16, 1993, 1995 ch. 903)

ATTACHMENT E

LABOR CODE SECTION 6355

Section 6355 Consultants May Not Issue Citations, Prosecute

If the employer requests or accepts consulting services offered pursuant to Section 6354, the division in providing such services at the employer's employment or place of employment shall neither institute any prosecution under Section 6423 nor issue any citations for a violation of any standard or order adopted pursuant to Chapter 6 (commencing with Section 140) of Division 1. In any instance in which the division representative providing the consulting service finds that the conditions of employment, place of employment, any procedure, or the operation of any machine, device, apparatus, or equipment constitutes an imminent hazard or danger, within the meaning of Section 6325, to the lives, safety, or health of employees, entry therein, or the use thereof, as the case may be, shall be prohibited by the division pursuant to Section 6325. The employer shall not, however, be liable to prosecution under Section 6423, nor shall the division issue any citations or assess any civil penalties, except in any case where the employer fails to comply with the division's prohibition of entry or use, or in any case where the provisions of Section 6326 apply.

(1973 ch. 993 urgency eff. Oct. 1, 1973, 1977 ch. 460, 1993 ch. 121 urgency eff. July 16, 1993)

ATTACHMENT F

LABOR CODE SECTIONS 6357 AND 6719

Section 6357 Adoption of Standards for Ergonomics in the Workplace

On or before January 1, 1995, the Occupational Safety and Health Standards Board shall adopt standards for ergonomics in the workplace designed to minimize the instances of injury from repetitive motion.

(1993 ch. 121 urgency eff. July 16, 1993)

Section 6719 Reaffirmation of Legislative Concern Over Repetitive Motion Workplace Injuries

The Legislature reaffirms its concern over the prevalence of repetitive motion injuries in the workplace and reaffirms the Occupational Safety and Health Standards Board's continuing duty to carry out Section 6357.

(1999 ch. 615)

ATTACHMENT G

8 CCR Section 5110

Group 15. Occupational Noise and Ergonomics, Article 106. Ergonomics, Section 5110. Ergonomics

- (a) Scope and application. This section shall apply to a job, process, operation where a repetitive motion injury (RMI) has occurred to more than one employee under the following conditions:
- (1) Work related causation. The repetitive motion injuries (RMIs) were predominantly caused (i.e. 50% or more) by a repetitive job, process, or operation;
 - (2) Relationship between RMIs at the workplace. The employees incurring the RMIs were performing a job process, or operation of identical work activity. Identical work activity means that the employees were performing the same repetitive motion task, such as but not limited to word processing, assembly or, loading;
 - (3) Medical requirements. The RMIs were musculoskeletal injuries that a licensed physician objectively identified and diagnosed; and
 - (4) Time requirements. The RMIs were reported by the employees to the employer in the last 12 months but not before July 3, 1997.
- (b) Program designed to minimize RMIs. Every employer subject to this section shall establish and implement a program designed to minimize RMIs. The program shall include a worksite evaluation, control of exposures which have caused RMIs and training of employees.
- (1) Worksite evaluation. Each job, process, or operation of identical work activity covered by this section or a representative number of such jobs, processes, or operations of identical work activities shall be evaluated for exposures which have caused RMIs.
 - (2) Control of exposures which have caused RMIs. Any exposures that have caused RMIs shall, in a timely manner, be corrected or if not capable of being corrected have the exposures minimized to the extent feasible. The employer shall consider engineering controls, such as work station redesign, adjustable fixtures or tool redesign, and administrative controls, such as job rotation, work pacing or work breaks.
 - (3) Training. Employees shall be provided training that includes an explanation of:
 - (A) The employer's program;
 - (B) The exposures which have been associated with RMIs;
 - (C) The symptoms and consequences of injuries caused by repetitive motion;
 - (D) The importance of reporting symptoms and injuries to the employer; and
 - (E) Methods used by the employer to minimize RMIs.
- (c) Satisfaction of an employer's obligation. Measures implemented by an employer under subsection (b)(1), (b)(2), or (b)(3) shall satisfy the employer's obligations under that respective subsection, unless it is shown that a measure known to but not taken by the employer is substantially certain to cause a greater reduction in such injuries and that this alternative measure would not impose additional unreasonable costs.

Note: Authority cited: Sections 142.3 and 6357. Labor Code. Reference: Sections 142.3 and 6357.

ATTACHMENT H

LABOR CODE SECTION 6354.5 (Not as amended by AB 749)

Section 6354.5 Workers' Compensation Insurer to Provide Loss Control Consultation Services; Contents; Submission of Annual Plan

- (a) Any insurer desiring to write workers' compensation insurance shall maintain or provide occupational safety and health loss control consultation services certified by the Director of Industrial Relations. The director may fix and collect fees to recover the costs for certifying the loss control consultation services and receiving and reviewing the annual health and safety loss control plan for identifying employers with the greatest workers' compensation losses and the most significant and preventable health and safety hazards. All fees shall be deposited in the Loss Control Certification Fund, which is hereby created as a special fund in the State Treasury. The moneys in the fund may be expended, upon appropriation by the Legislature, for the purpose of certifying loss control consultation services pursuant to this section. The insurer may employ qualified personnel to provide these services or provide the services through another entity that has been certified by the director as part of the insurer's annual plan.
- (b) The program of an insurer for furnishing loss control consultation services shall be adequate to meet minimum standards prescribed by the director. The services shall include the conduct of workplace surveys to identify health and safety problems, review of employer injury records with appropriate personnel, and development of plans to improve employer health and safety loss records, including injury and prevention programs required pursuant to Section 6401.7. At the time that an insurance policy is issued and annually thereafter, the insurer shall provide each insured employer with a written description of the consultation services together with a notice that the services are available at no additional charge to the employer
- (c) The insurer shall not charge any fee in addition to the insurance premium for safety and health loss control consultation services.
- (d) Each insurer shall submit to the director, in a form prescribed by the director, an annual health and safety loss control plan for targeting employers with the greatest workers' compensation losses and the most significant and preventable health and safety hazards. The plan shall include a budget and describe the insurer's methodology for selecting the employers and the number, type, and size of employers who have the greatest workers' compensation losses and the most significant and preventable health and safety hazards, but nothing in this section shall be construed to require the insurer to identify any employer by name. The plan shall be accompanied by a description of the insurer's safety and health loss control activities for the prior year, including, but not limited to, costs, the number, type, and size of businesses served, and any additional information required by the director. The information provided to the director under this subdivision shall remain confidential except for aggregate statistical data. The confidentiality of information provided to the director under this subdivision shall extend to prohibit the disclosure or release of any information provided to the director under this section to any unit of bureau within the division. The director shall develop guidelines to assist insurers to identify the employers with the highest preventable health and safety hazards.
- (e) Noting in this section shall be construed to require insurers to provide loss control services to places of employment that do not pose significant preventable hazards to workers.
- (f) An exemption, extension or exception to the annual filing requirements specified in subdivision (b) may be granted by the director upon a showing by the insurer that one of the following applies:
- (1) That no new filing is required because there are no material changes to the plan currently on file with the director.
 - (2) That the filing is limited to material changes to the plan on file with the director.
 - (3) That the information necessary for the filing is not yet in the possession of the insurer and that an extension of time for the filing is necessary to enable the insurer to make a full and complete filing.
 - (4) That the insurer has no policy holders in California who meet the appropriate criteria for identification pursuant to the plan currently on file with the director.

(1995 ch. 556)

ATTACHMENT I

LABOR CODE SECTION 62.9

As enacted in 1995:

Section 62.9. Assessments for Inspection and Consultation Fund

(a) The director shall levy and collect assessments from employers in accordance with this section. The total amount of the assessment collected shall be the amount determined by the director to be necessary to produce the revenue sufficient to fund the programs specified by Section 62.7, except that the amount assessed in any year for those purposes, other than pursuant to the initial assessment described in subdivision (e), shall not exceed 50% of the amounts appropriated from the General Fund for the support of the occupational safety and health program for the 1993-94 fiscal year, adjusted for inflation. The director also shall include in the total assessment amount the department's costs for administering the assessment, including the collection process, the cost of credits and reimbursements paid pursuant to subdivision (e), and the cost of reimbursing the Franchise Tax Board for its cost of collection activities pursuant to subdivision (c). The insured employers and private sector self-insured employers that, pursuant to subdivision (b), are subject to assessment shall be assessed, respectively, on the basis of their annual payroll subject to premium charges or their annual payroll that would be subject to premium charges if the employer were insured, as follows:

(A) An employer with a payroll of less than two hundred fifty thousand dollars (\$250,000) shall be assessed one hundred dollars (\$100).

(B) An employer with a payroll of two hundred fifty thousand dollars (\$250,000) or more, but not more than five hundred thousand dollars (\$500,000) shall be assessed two hundred dollars (\$200).

(C) An employer with a payroll of more than five hundred thousand dollars (\$500,000), but not more than seven hundred fifty thousand dollars (\$750,000) shall be assessed four hundred dollars (\$400).

(D) An employer with a payroll of more than seven hundred fifty thousand dollars (\$750,000), but not more than one million dollars (\$1,000,000) shall be assessed six hundred dollars (\$600).

(E) An employer with a payroll of more than one million dollars (\$1,000,000), but not more than one million five hundred thousand dollars (\$1,500,000) shall be assessed eight hundred dollars (\$800).

(F) An employer with a payroll of more than one million five hundred thousand dollars (\$1,500,000), but not more than two million dollars (\$2,000,000) shall be assessed one thousand dollars (\$1000).

(G) An employer with a payroll of more than two million dollars (\$2,000,000), but not more than two million five hundred thousand dollars (\$2,500,000) shall be assessed one thousand dollars, five hundred (\$1500).

(H) An employer with a payroll of more than two million five hundred thousand dollars (\$2,500,000), but not more than three million five hundred thousand dollars (\$3,500,000) shall be assessed two thousand dollars (\$2000).

(I) An employer with a payroll of more than three million five hundred thousand dollars (\$3,500,000) shall be assessed two thousand five hundred dollars (\$2500).

(b)(1) In the manner as specified by this section, the director shall identify those insured employers having a workers' compensation experience modification rating of 1.25 or more, and private sector self-insured employers having an equivalent experience modification rating of 1.25 or more as determined pursuant to subdivision (f).

(2) The assessment required by this section shall be levied annually, on a calendar basis, on those insured employers and private sector self-insured employers, as identified pursuant to paragraph (1), having the highest workers' compensation modification ratings, that the director determines to be required numerically to produce the total amount of the assessment to be collected pursuant to subdivision (a).

(c) The director shall collect the assessment from insured employers as follows:

(1) Upon the request of the director, the Department of Insurance shall direct the licensed rating organization designated as the department's statistical agent to provide to the director, for purposes of subdivision (b), a list of all insured employers having a workers' compensation experience rating modification of 1.25 or more, according to the rating organization's records at the time the list is requested, for policies incepting the year preceding the year in which the assessment is to be collected.

(2) The director shall determine the annual payroll of each insured employer subject to assessment from the payroll that was reported to the licensed rating organization identified in paragraph (1) for the most recent period for which one full year of payroll information is available for all insured employers.

(3) On or before July 16, 1995, for the purposes of the July 1995 assessment, and thereafter not later than March 1 of each year, the director shall provide each insurer with a statement identifying each of its current insured employers subject to assessment, and the amount of the total assessment for which each insured employer is liable. The insurer immediately shall notify each insured employer, in a format chosen by the

LABOR CODE SECTION 62.9, continued

insurer, of the insured's obligation to submit payment of the assessment to the director within 30 days after the date the billing was mailed, and warn the insured of the penalties for failure to make timely and full payment as provided by this subdivision. Each insurer shall report to the director the date on which the notice required by this paragraph was mailed.

(4) In the event an insured employer notifies the insurer that there is a disagreement as to the payment obligation described in paragraph (3), the insurer shall refer the employer to the department and notify the director that the employer has made an objection.

(5) The director shall identify to each insurer any of its insured employers that, within 30 days after the mailing of the billing notice, fails to pay, or object to their assessments. The insurer immediately shall mail to each of these employers a notice of delinquency and a notice of the director's intention to assess penalties, advising that, if the assessment is not paid in full within 15 days after mailing of the notices, the director will levy against the employer a penalty equal to 25 percent of the employer's assessment, and will refer the assessment and penalty to the Franchise Tax Board for collection. The notices required by this paragraph shall be sent by United States first class mail. Each insurer shall report to the director the date on which the notices required by this paragraph were mailed.

(6) If an assessment is not paid by an insured employer within 15 days after the mailing by the insurer of the notices required by paragraph (5), the director shall refer the delinquent assessment and the penalty to the Franchise Tax Board for collection pursuant to Section 19290.1 of the Revenue and Taxation Code.

(d) The director shall collect the assessment directly from private sector self-insured employers. The failure of any private sector self-insured employer to pay the assessment as billed constitutes grounds for the suspension or termination of the employer's certificate to self-insure.

(e)(1) An initial assessment shall be collected in July of 1995, in accordance with subdivision (f) and the provisions of this section governing assessments, except that the initial assessment shall be in an amount sufficient to fund the cost of the program described in Section 62.7 from their inception on July 16, 1993 to December 31, 1995, inclusive, and to fund credits and reimbursements approved by the director under paragraphs (2) and (3).

(2) The director shall credit, against the amount assessed against any private sector self-insured employer under this section, any amount that was paid by that self-insured employer pursuant to Section 62.7 prior to the effective date of this section. The director shall reimburse any private sector self-insured employer who is not subject to the initial assessment described in paragraph (1) in the amount, if any, that was paid by the self-insured employer pursuant to Section 62.7 prior to the effective date of this section.

(3) The director shall reimburse any insurer in the amount of any advance paid by the insurer under regulations that were promulgated prior to the effective date of this section to implement Section 62.7, and the insurer, in turn, shall reimburse those insured employers from whom the advance was collected.

(f) The identification of private sector self-insured employers to be subject to the initial assessment described in subdivision (c) shall be made pursuant to the regulations that were promulgated prior to the effective date of this section to implement Section 62.7. Subsequent to that initial assessment, the director shall rescind those regulations, and shall promulgate regulations implementing this section that include provision for a method of determining experience modification ratings for private sector self-insured employers that is generally equivalent to the modification ratings that apply to insured employers and is weighted by both severity and frequency.

(g) The director shall determine whether the amount collected pursuant to any assessment exceeds expenditures, as described in subdivision (a), for the current year and, subject to subdivision (h), shall credit the amount of any excess to any deficiency in the prior year's assessment or, if there is no deficiency, against the assessment for the subsequent year.

(h) The repayment of the loan that was made to the Cal-OSHA Targeted Inspection and Consultation Fund for the purposes of Section 62.7, and of interest on the loan, is hereby deferred until the director determines that sufficient funds in excess of the requirements of the programs specified by Section 62.7 are available in the fund to make that repayment, except that in no event shall this deferment extend beyond January 1, 1996.

(i)(1) No later than January 1, 1998, the department shall submit to the Joint Legislative Budget Committee a report containing the following information concerning the Cal-OSHA targeted inspection and consultation programs described in Section 62.7:

(A) The number and type of targeted employers inspected.

(B) The number and type of follow-up inspections conducted.

(C) The number and type of violations observed and corrected

(D) The number and type of enforcement actions taken.

(E) The total number of program staff hours expended in enforcement, administration, and support for the programs.

LABOR CODE SECTION 62.9, continued

- (F) An overall assessment of the efficacy of the programs, supported by workplace injury and illness data.
- (2) No later than January 1, 1997, the department shall submit to the Joint Legislative Budget Committee an interim report concerning the information required under paragraph (1), including a preliminary assessment of the efficacy of the programs.
- (k)(1) No later than January 1, 1998, the department shall submit to the Legislature a report addressing one or more alternative methods of funding the Cal-OSHA targeted inspection and consultation programs specified by Section 62.7. The report also shall propose and evaluate one or more alternatives to the use of workers' compensation insurance experience modification ratings for the identification of employers subject to assessment, and alternative methods for determining assessment amounts and collecting the assessments.
- (2) No later than January 1, 1997, the department shall submit to the Legislature an interim report concerning its progress with regard to the report described in paragraph (1), including any tentative findings made by the department concerning alternative methods of funding the Cal-OSHA targeted inspection and consultation programs specified by Section 62.7.
- (□) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

(1995 ch. 33 urgency eff. June 30, 1995)

As amended in 1998 and 1999 to read as follows:

Section 62.9. Assessments for Inspection and Consultation Fund

- (a)(1) The director shall levy and collect assessments from employers in accordance with this section. The total amount of the assessment collected shall be the amount determined by the director to be necessary to produce the revenue sufficient to fund the programs specified by Section 62.7, except that the amount assessed in any year for those purposes shall not exceed 50% of the amounts appropriated from the General Fund for the support of the occupational safety and health program for the 1993-94 fiscal year, adjusted for inflation. The director also shall include in the total assessment amount the department's costs for administering the assessment, including the collection process and the cost of reimbursing the Franchise Tax Board for its cost of collection activities pursuant to subdivision (c).
- (2) The insured employers and private sector self-insured employers that, pursuant to subdivision (b), are subject to assessment shall be assessed, respectively, on the basis of their annual payroll subject to premium charges or their annual payroll that would be subject to premium charges if the employer were insured, as follows:
- (A) An employer with a payroll of less than two hundred fifty thousand dollars (\$250,000) shall be assessed one hundred dollars (\$100).
- (B) An employer with a payroll of two hundred fifty thousand dollars (\$250,000) or more, but not more than five hundred thousand dollars (\$500,000) shall be assessed two hundred dollars (\$200).
- (C) An employer with a payroll of more than five hundred thousand dollars (\$500,000), but not more than seven hundred fifty thousand dollars (\$750,000) shall be assessed four hundred dollars (\$400).
- (D) An employer with a payroll of more than seven hundred fifty thousand dollars (\$750,000), but not more than one million dollars (\$1,000,000) shall be assessed six hundred dollars (\$600).
- (E) An employer with a payroll of more than one million dollars (\$1,000,000), but not more than one million five hundred thousand dollars (\$1,500,000) shall be assessed eight hundred dollars (\$800).
- (F) An employer with a payroll of more than one million five hundred thousand dollars (\$1,500,000), but not more than two million dollars (\$2,000,000) shall be assessed one thousand dollars (\$1000).
- (G) An employer with a payroll of more than two million dollars (\$2,000,000), but not more than two million five hundred thousand dollars (\$2,500,000) shall be assessed one thousand dollars, five hundred (\$1500).
- (H) An employer with a payroll of more than two million five hundred thousand dollars (\$2,500,000), but not more than three million five hundred thousand dollars (\$3,500,000) shall be assessed two thousand dollars (\$2000).
- (I) An employer with a payroll of more than three million five hundred thousand dollars (\$3,500,000) shall be assessed two thousand five hundred dollars (\$2500).
- (b)(1) In the manner as specified by this section, the director shall identify those insured employers having a workers' compensation experience modification rating of 1.25 or more, and private sector self-insured employers having an equivalent experience modification rating of 1.25 or more as determined pursuant to subdivision (e).

LABOR CODE SECTION 62.9, continued

(2) The assessment required by this section shall be levied annually, on a calendar basis, on those insured employers and private sector self-insured employers, as identified pursuant to paragraph (1), having the highest workers' compensation modification ratings, that the director determines to be required numerically to produce the total amount of the assessment to be collected pursuant to subdivision (a).

(c) The director shall collect the assessment from insured employers as follows:

(1) Upon the request of the director, the Department of Insurance shall direct the licensed rating organization designated as the department's statistical agent to provide to the director, for purposes of subdivision (b), a list of all insured employers having a workers' compensation experience rating modification of 1.25 or more, according to the rating organization's records at the time the list is requested, for policies incepting the year preceding the year in which the assessment is to be collected.

(2) The director shall determine the annual payroll of each insured employer subject to assessment from the payroll that was reported to the licensed rating organization identified in paragraph (1) for the most recent period for which one full year of payroll information is available for all insured employers.

(3) On or before September 1 of each year, the director shall determine each of the current insured employers subject to the assessment, and the amount of the total assessment for which each insured employer is liable. The director shall immediately notify each insured employer, in a format chosen by the insurer, of the insured's obligation to submit payment of the assessment to the director within 30 days after the date the billing was mailed, and warn the insured of the penalties for failure to make timely and full payment as provided by this subdivision.

(4) The director shall identify any insured employers that, within 30 days after the mailing of the billing notice, fail to pay, object to, their assessments. The director shall mail to each of these employers a notice of delinquency and a notice of the intention to assess penalties, advising that, if the assessment is not paid in full within 15 days after mailing of the notices, the director will levy against the employer a penalty equal to 25 percent of the employer's assessment, and will refer the assessment and penalty to the Franchise Tax Board for collection. The notices required by this paragraph shall be sent by United States first class mail.

(5) If an assessment is not paid by an insured employer within 15 days after the mailing of the notices required by paragraph (4), the director shall refer the delinquent assessment and the penalty to the Franchise Tax Board for collection pursuant to Section 19290.1 of the Revenue and Taxation Code.

(d) The director shall collect the assessment directly from private sector self-insured employers. The failure of any private sector self-insured employer to pay the assessment as billed constitutes grounds for the suspension or termination of the employer's certificate to self-insure.

(e) The director shall adopt regulations implementing this section that include provision for a method of determining experience modification ratings for private sector self-insured employers that is generally equivalent to the modification ratings that apply to insured employers and is weighed by both severity and frequency.

(f) The director shall determine whether the amount collected pursuant to any assessment exceeds expenditures, as described in subdivision (a), for the current year and shall credit the amount of any excess to any deficiency in the prior year's assessment or, if there is no deficiency, against the assessment for the subsequent year.

(1995 ch. 33 urgency eff. June 30, 1995, 1998 ch. 814 oper. Jan. 1, 2000, 1999 ch. 469)

ATTACHMENT J

TITLE 8, CALIFORNIA CODE OF REGULATIONS, SECTIONS 15600 et seq.

Section 15601.6 Determination of Targeted Inspection Assessment

~~(a) On or before September 1 of each year, the Director shall determine the aggregate amount of the Targeted Inspection Assessment to be collected.~~

~~(b) On or before September 1 of each year, the Director shall determine those self-insured employers subject to the Targeted Inspection Assessment as set forth in Section 15601.7 of these regulations.~~

~~(c) The aggregate amount of this assessment shall be allocated between insured and self-insured employers by applying the proportional allocation methodology set forth in section 15602 of these regulations to the payroll data reported to the Director for those self-insured employers identified as subject to the Targeted Inspection and Consultation Assessment, pursuant to Section 15601.7 of these regulations, and the equivalent payroll data reported for insured employers pursuant to Section 15601.8 of these regulations.~~

Note: Authority cited: Sections 54, 55, 62.5, 62.6 and 62.7, Labor Code. Reference: Section 62.7, Labor Code. Repealed: 1996

Section 15601.7 Determination of Targeted Inspection Assessment

On or before September 1 of each year, the Manager of the Self-Insured Plans shall identify for the Director each Private Self Insurer subject to the Targeted Inspection Assessment as determined below.

(a) The Targeted Inspection Assessment shall apply to each Self Insurer in each grouping set forth in subsection (b) that has a current 1-year average cost per claim, as calculated in subsection (e) below, that is equal to or in excess of the 1.25 figure determined for each grouping in subsection (d) of this section.

(b) The Manager shall categorize all private self insurers into groups for the purpose of calculating the Cal/OSHA assessment. All private self insurers shall be categorized into groups by the first digit of their Standard Industrial Classification Code (SIC Code) as reported on Page 1 of the Self Insurers Annual Report for the reporting period immediately prior to the current budget year. For purposes of such categorization, each private group self insurer shall be considered as a single entity.

(c) For each grouping set forth in subsection (a), the Manager shall calculate from the Self Insurer's Annual Reports submitted by the members in each group for the reporting period immediately prior to the current budget year the following:

- (1) A 3-year total incurred liability reported for all claims for each grouping during claim years 3, 4 and 5 from the Consolidated Liabilities Page of the affected annual reports;
- (2) A 3-year total number of claims reported for each grouping during claim years 3, 4, and 5 from the Consolidated Liabilities Page of the affected annual reports;
- (3) The 3-year average cost per claim for each grouping during claim years 3, 4, and 5 determined by dividing the figure calculated in Subsection (b)(1) by the figure calculated in Subsection (b)(2). This figure shall be the grouping's 3-year historical base average cost per claim.

(d) The Manager shall calculate a figure that will be 1.25 of each grouping's 3-year history average base costs per claim.

(e) For each private self insurer, the Manager shall calculate a current 1-year average costs per claim by dividing the total incurred liability, for year 2 by the total number of claims reported for year 2 as reported in the Self Insurer's Annual reports submitted for the reporting period immediately prior to the current budget year.

Note: Authority cited: Sections 54, 55 and 62.7 Labor Code. Reference: Section 62.7 Labor Code.

History: 1. New section filed 9-6-94 as an emergency; operative 9-6-94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1-4-95 or emergency language will be repealed by operation of law on the following day. 2. Certificate of Compliance as to 9-6-94 order including amendment of first paragraph and subsection (a), (d), and (e), repealer of subsections (b)-(b)(3), and new subsection (b) transmitted to OAL 12-20-94 and filed 2-15-95 (Register 95, No.7). Amended section went into effect 10 November 1997. See Attachment K.

Section 15603.5 Determination of Targeted Inspection and Consultation Assessment Factors

~~(a) The insured employer Targeted Inspection and Consultation Assessment factor shall be determined by dividing the total amount of the insured employer assessment by the total direct written workers' compensation premium as reported to the Director pursuant to Section 15601.8 of these regulations.~~

~~(b) The self-insured employer Targeted Inspections and Consultation Assessment factor shall be determined by dividing the total self-insured Targeted Inspection Assessment by the total amount of workers' compensation indemnity paid under California law by those self-insured employers identified as subject to the assessment during the base year, as determined by the Office of Self-Insurance Plans pursuant to Section 15601.7 of these regulations.~~

Note: Authority cited: Sections 54, 55 and 62.7, Labor Code. Reference: Section 62.7, Labor Code.

History: 1. New section filed 9-6-94 as an emergency; operative 9-6-94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1-4-95 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 9-6-94 order including amendment of section and Note transmitted to OAL 12-20-94 and filed 2-15-95 (Register 95, No.7). Repealed 1996.

Section 15605.5 Collection of Targeted Inspection Assessment From Self-Insured Employers

~~The Targeted Inspection Assessment shall be collected by the Manager from those self-insured employers identified as subject to the Targeted Inspection Assessment in the same manner prescribed by section 15605 of these regulations, except that the determination of the Targeted Inspection Assessment due from each employer identified as subject to the Targeted Inspection Assessment shall be determined by multiplying the self-insured Targeted Inspection Assessment factor by the total amount of workers' compensation indemnity paid and reported on each Self-Insured Employer's Annual Report during the base year for the Targeted Inspection Assessment.~~

Note: Authority cited: Sections 54, 55 and 62.7, Labor Code. Reference: Section 62.7, Labor Code.

History: 1. New section filed 9-6-94 as an emergency; operative 9-6-94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1-4-95 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 9-6-94 order including amendment of section and Note transmitted to OAL 12-20-94 and filed 2-15-95 (Register 95, No.7). Repealed in 1996.

Section 15607.5 Collection of Targeted Inspection Assessment From Insured Employers

~~(a) Together with the collection of the Workers' Compensation Administration Revolving Fund Assessment and the State Fraud Investigation and Prosecution Surcharge, every insurer shall additionally collect the Targeted Inspection Assessment required by this Article and Labor Code Section 62.7.~~

~~(b) The assessment shall be collected by applying the Targeted Inspection Assessment Factor to the direct written premium in effect for those policies with an inception date on or after January 1 of the year of the assessment with a workers' compensation experience modification of 1.25 or greater. The assessment factors in effect on the inception date of the policy shall be used to calculate the separate charges relative to that policy, including any additional or return premium.~~

~~(c) The amount of the Targeted Inspection shall be rounded to the nearest whole dollar, and shown in the policy as "Cal/OSHA Targeted Inspection Assessment (amount)".~~

~~(d) The experience rating modification in effect at the inception of the policy shall be conclusively presumed to be final for purposes of the assessment. No change in, or challenge to, an employer's experience rating modification during the policy period for the policy subject to assessment shall affect the insurer's liability for that policy year's assessment, or the amount thereof. However, if an employer demonstrates to the Division that the Department of Insurance's designated licensed rating organization has determined that the employer should not have been subject to an experience modification of 1.25 or greater, the Division shall refund that policy year's assessment to the employer.~~

~~(e) The insurer shall include on the annual report required by section 15606 of these regulations, the data set forth in subsection (c) of section 15606 for the Targeted Inspection Assessment to the same fashion as is required for the Workers' Compensation Administration Revolving Fund Assessment and the State Fraud Investigation and Prosecution Surcharge.~~

~~(f) The insured employer's separate charges calculated under subsection (a) above shall be collected in full with the initial payment of standard premium. If additional premium becomes due under the policy, the final amount of the separate charges shall be adjusted with the final premium bill for the policy.~~

Repealed 1996.

ATTACHMENT K

TITLE 8, CALIFORNIA CODE OF REGULATIONS, SECTIONS 15600 et seq.

Section 15601.7 Determination of Self-Insured Employers Subject to the Targeted Inspection Assessment

On or before September 1 of each year, the Manager of the Self-Insured Plans shall identify for the Director each Private Self Insurer subject to the Targeted Inspection Assessment as determined below.

(a) The Targeted Inspection Assessment shall apply to each Self Insurer in each grouping set forth in subsection (b) that has a current 1-year average ~~cost per claim~~ number of indemnity claims per 100 employees, as calculated in subsection (e) below that is equal to or in excess of ~~the 125~~ 125 percent of the 3 year base figure determined for each grouping in subsection (d) of this section.

(b) The Manager shall categorize all private self insurers into groups for the purpose of calculating the Cal/OSHA assessment. All private self insurers shall be categorized into groups by the first digit of their Standard Industrial Classification Code (SIC Code) as reported on Page 1 of the Self Insurers Annual Report for the reporting period immediately prior to the current budget year. For purposes of such categorization, each private group self insurer shall be considered as a single entity. The Manager may correct the SIC Code reported for cause or where the Manager believes an error was made by the self insurer in designating their SIC Code on the Annual Report.

(c) For each SIC Code grouping set forth in subsection (a), the Manager shall calculate the average historical number of indemnity claims per 100 employees from the Consolidated Liabilities page of the full year Self Insurer's Annual Reports submitted by the members in each SIC Code group for the 3 year reporting period immediately prior to the current 1-year period used to calculate the individual self insurer's indemnity claims per 100 employees budget year the following:

- ~~(1) A 3-year total incurred liability reported for all claims for each grouping during claim years 3, 4 and 5 from the Consolidated Liabilities Page of the affected annual reports;~~
- ~~(2) A 3-year total number of claims reported for each grouping during claim years 3, 4, and 5 from the Consolidated Liabilities Page of the affected annual reports;~~
- ~~(3) The 3-year average cost per claim for each grouping during claim years 3, 4, and 5 determined by dividing the figure calculated in Subsection (b)(1) by the figure calculated in Subsection (b)(2). This figure shall be the grouping's 3-year historical base average cost per claim.~~

(d) The Manager shall calculate a figure that will be ~~1.25~~ 125 percent of each SIC Code grouping's 3 year historical average ~~base cost per claim~~ number of indemnity claims per 100 employees.

(e) For each private self insurer, the Manager shall calculate ~~a current 1-year average costs per claim by dividing the total incurred liability, for year 2 by the total number of claims reported for year 2 as reported in the Self Insurer's Annual reports submitted for the reporting period immediately prior to the current budget year~~ an individual 1-year number of indemnity claims per 100 employees, using information reported by each self-insurer on its last full year Self-Insurer's Annual Report submitted for the reporting period immediately prior to the current budget year. In this calculation, the manager shall divide the total number of indemnity claims reported in the most recent claim year by the total number of California employees reported, with the result multiplied by 100. Any self-insurer with less than 100 total employees shall be considered to have 100 employees for purposes of this calculation.

Note: Authority cited: Sections 54, 55, 62.7 and 67.9 Labor Code. Reference: Section 62.7 and 62.9 Labor Code. 8 CCR Section 1506.7 went into legal effect on 10 November 1997.

ATTACHMENT L

Article 6. Workers' Compensation Loss Control Consultation Services, Annual Health and Safety Loss Control Plan--Requirements and Procedures

Section 339.1 Scope and Application

This Article applies to all insurers and insureds as defined in section 339.3.

Section 339.2 Effective Dates and Start-up Procedures

(a) This article shall take effect immediately, except for section 339.4 which shall take effect on April 1, 1994.

(b) Provisional Certification Periods.

(1) Provisional certification shall be granted by the Division for a period of 120 days upon receipt by the Loss Control Consultation Certification Unit of an application which complies, at a minimum, with the requirements of 339.7(b) and (c)(1) through (3).

(2) The Division may extend an insurer's provisional certification for an additional period of up to 120 days if the volume of applications received results in the Division's inability to process the insurer's application within the 120 day period.

(c) Certification Periods.

(1) The first period of certification shall include the period of provisional certification and shall last for one year unless extended by the Division for the purposes of evenly distributing the workload associated with the ongoing processing of applications for recertification.

(2) All subsequent certification shall last for a period of one year.

Section 339.3 Definitions

(a) "Annual Plan" means the insurer's annual health and safety loss control plan.

(b) "Budget" means a description of anticipated expenditures to be incurred in providing loss control consultation services to targeted employers as described by the insurer's annual plan, including the amount of funds allocated, the categories of services to be funded, and the amount of funding budgeted for each category.

(c) "Director" means the Director of the Department of Industrial Relations or an authorized representative.

(d) "Division" means the Division of Occupational Safety and Health.

(e) "Employer" means any insured.

(f) "Insured" means any person or entity other than a person or entity which has received a certificate of consent to self-insure pursuant to Labor Code Section 3700(b), which has secured workers' compensation insurance from an insurer.

(g) "Insurer" means any entity licensed by the California Department of Insurance to write workers' compensation insurance coverage.

(h) "Loss control" means reduction of exposure to workers' compensation losses and control of significant preventable health and safety hazards to workers.

(i) "Loss control consultation services" means assistance in recognizing, evaluating, and controlling significant preventable health and safety hazards and other potential sources of workers' compensation losses. Loss control consultation services consist of services provided by an insurer only to those employers to which the insurer has extended workers' compensation coverage.

(j) "On-site consultation" means observation of an insured's work operations to determine the existence of significant preventable health and safety hazards, including, where appropriate, monitoring of hazardous physical, chemical, and biological agents.

(k) "Significant preventable health and safety hazards" means those hazards which are capable of being controlled by the employer and which have the potential to substantially affect the frequency and severity of workplace injuries and illnesses and workers' compensation losses.

(L) "Targeted employer" means an employer selected by the insurer to receive loss control consultation services, based on the criteria set forth in section 339.11. This term does not include any part of the employer's operations which is outside of California.

NOTE: Where the employer has more than one worksite, "targeted employer" means only those worksites selected by the insurer to receive loss control consultation services based on the criteria set forth in section 339.11.

(m) "Workers' compensation insurance" means only that workers' compensation insurance provided under the laws and regulations of the State of California. This term does not include excess reinsurance or any form of homeowner's insurance.

(n) "Workplace survey" means an evaluation of an insured's work operations which can consist of a comprehensive on-site consultation or any other procedure which effectively identifies significant preventable health and safety hazards to workers.

Section 339.4 Provision of Loss Control Consultation Services

(a) Every insurer issuing or maintaining a workers' compensation insurance policy covering any employer's current or future operations shall maintain or provide loss control consultation services certified by the Division in accordance with this Article.

NOTE: Insurers may elect to provide all or part of their loss control consultation services through another entity; e.g., consultants, insurance groups or health care organizations, to the extent that the services to be provided meet the requirements of this section. However, such an election shall not alter the insurer's responsibility to maintain certification and to direct and control the provision of all loss control consultation services required by this Article.

(b) At the time the insurance policy is issued, and annually thereafter, the insurer shall provide to each of its insureds a written description of the insurer's loss control consultation services, including a notice stating that the services are available at no additional charge to the insured. The following statement shall be included with the notice: "Workers' compensation insurance policyholders may register comments about the insurer's loss control consultation services by writing to: State of California, Department of Industrial Relations, Division of Occupational Safety and Health, P.O. Box 420603, San Francisco, CA 94142."

(c) The insurer shall not charge the employer any fee in addition to the insurance premium for the provision of loss control consultation services.

(d) Targeted Employers.

(1) The insurer shall provide loss control consultation services to all targeted employers, which, at a minimum, shall include the following;

(A) Effective evaluation of the employer's operations, including:

1. Comprehensive on-site consultation for each targeted employer identified by the insurer's annual plan
2. Discussions with management, and with permission of the employer, non-management personnel; and
3. Review with appropriate personnel of relevant records, including, but not limited to, the employer's log and summary of injuries and illnesses maintained pursuant to section 14301 and the employer's section 3203 injury and illness prevention program;

(B) Identification of the factors most related to the losses experienced by the employer; including:

1. First aid and other emergency or post-injury response procedures;
2. Workplace health and safety hazards;
3. Management policy and practices related to loss control;
4. The effectiveness with which company loss control policy is communicated among management personnel and between management and non-management personnel;
5. The effectiveness of training;
6. The extent and nature of worker participation in health and safety promotion efforts;
7. The adequacy of recordkeeping;
8. The adequacy of the employer's section 3203 injury and illness prevention program.

(C) Formulation of recommended loss control measures, including specification of those critical to reduction of the employer's losses or potential for losses;

(D) A written report detailing the consultation provided; the findings of the consultation; and all loss control measures formulated pursuant to subsection (d)(1)(C); and

(E) Ongoing evaluation of the targeted employer to determine the impact of the consultation on the employer's loss control experience.

(2) The insurer shall maintain records of all loss control consultation services provided to targeted employers for 4 years and shall make those records available to the Division upon request.

(e) Non-targeted Employers. Loss control consultation services available upon request to non-targeted employers shall, at a minimum, include the following:

(1) A workplace survey, including discussions with management, and, where appropriate, non-management personnel with permission of the employer;

(2) Review of injury records with appropriate personnel; and

(3) Development of a plan to improve the employer's health and safety loss control experience, which shall include, where appropriate, modifications to the employer's section 3203 injury and illness prevention program.

Exception: An insurer may, but is not required, to provide loss control consultation services to any insured whose place of employment does not pose significant preventable health and safety hazards to workers. Criteria for determining that a place of employment does not pose significant preventable health and safety hazards must be clearly identified in the annual plan.

Section 339.5 Requirements for Certification and Recertification of Loss Control Consultation Services.

- (a) Certification lasts for a period of one year, except as specified by section 339.3. To apply for certification or recertification, an insurer must submit a completed application and all supporting documentation as required by section 339.7.
- (b) To qualify for certification and recertification the insurer shall demonstrate that: (1) The insurer has developed and is prepared to implement an annual plan which meets the requirements of section 339.6; and (2) The insurer has the capability to deliver effective loss control consultation services meeting the requirements of section 339.4. Such a demonstration shall include, but not be limited to, each of the following:
- (A) Identification of each entity supplying loss control consultation personnel, if consultation services are to be provided by personnel other than employees of the insurer;
- (B) A description of the categories, the number in each category, and the individual qualifications, including professional licenses and certification, of the personnel who will be providing loss control consultation services.
- (C) A detailed description of the services to be provided by each of the personnel and the types of industrial activities and settings with which their services will be associated, together with an explanation of how these personnel are qualified to address these activities and settings.
- (D) An estimate of:
1. The number of on-site consultations the insurer's loss control consultation personnel will provide for the coming certification year, specifying what portion will consist of consultations to targeted employers;
 2. The average number of hours to be spent on each on site consultation, not including preparation and travel time; and
 3. The number of workplace surveys not consisting of on-site consultation to be provided for the coming certification year, including the average amount of time to be spent per survey.
- (c) To maintain certification, the insurer shall notify the Division of any substantial change in the information provided to obtain certification from the Division and shall cooperate with any audit or request for information by the Division to determine the effectiveness of the loss control consultation services by the insurer.
- (d) The Division shall provide written notice to the insurer of any findings of deficiency related to the loss control consultation services audited by the Division, and any corrective actions deemed necessary to retention of the insurer's certification by the Division.

Section 339.6 Annual Health and Safety Loss Control Plan.

- (a) Every insurer seeking certification or recertification shall submit an annual plan as required by section 339.7(c)(5).
- (b) The annual plan shall detail the insurer's program objectives for delivering loss control consultation services to those insureds selected as targeted employers, and shall include, at a minimum, the following:
- (1) A budget;
 - (2) The methodology used by the insurer to select targeted employers;
NOTE: Section 339.11 contains guidelines for selecting targeted employers.
 - (3) One-year and three-year loss reduction goals for targeted employers;
 - (4) Size, type and identity of each targeted employer for the coming year; and
 - (5) A description of the loss control consultation services provided to targeted employers during the previous year; including:
 - (A) Identity of targeted employers served and a summary of the services provided to each;
 - (B) Total expenditures for all targeted employers served;
 - (C) Evaluation of the effectiveness of the consultation provided; including the extent to which the previous year's loss reduction goals were met for targeted employers and an analysis of any failure to meet such goals; and
 - (D) A list of all employers to whom loss control consultation services have been provided through an entity other than the insurer or the insurance group to which the insurer belongs. The list shall include the identification and qualifications of the personnel who provided the consultation services.
- (c) The plan shall demonstrate that the insurer has reliably identified as targeted employers those of its insureds who have the greatest workers' compensation losses and most significant preventable health and safety hazards, and that the insurer's loss control consultation services will effectively serve the needs of targeted employers.
- (d) The Division shall maintain the confidentiality of all information provided by the plan, except for aggregate statistical data.

Section 339.7 Application for Certification or Recertification of Loss Control Consultation Services.

- (a) Applications may be obtained from the Loss Control Consultation Services Certification Unit of the Division.
 - (b) The application (Form LCC-1, 10-94) shall be lodged with the Loss Control Consultation Services Certification Unit and shall be accompanied by the required application fee.
 - (c) The application shall provide, be accompanied by, or be supplemented with the following items:
 - (1) Names under which the applicant is authorized to write workers' compensation insurance.
 - (2) Name and address of the insurer's employee directly responsible for administering insurer's loss control consultation services;
 - (3) Proof of the authorization from the California Department of Insurance to write workers' compensation insurance within the State of California;
 - (4) Documentation demonstrating the insurer's capability to deliver loss control consultation services as described by section 339.5(b)(2);
 - (5) A copy of the insurer's annual plan
 - (6) Any additional information requested by the Division, if reasonably necessary to evaluate the insurer's suitability for certification consistent with the requirements of this Article.
 - (d) Within 30 business days of receipt of an application for certification the Division shall inform the applicant in writing that the application is either complete and accepted for filing, or that the application is deficient and requires supplementation with additional information or documentation.
 - (1) An application shall be deemed complete if it is in compliance with the requirements of this section.
 - (2) A notice that the application is deficient shall explain what specific information or documentation is required to complete the application.
- NOTE: If the volume of applications received results in the Division's inability to process the insurer's start-up application for certification in compliance with the 30-business-day period, the Division may extend the period for up to 120 days. Where such an extension is made by the Division, the insurer's period of provisional certification shall be deemed extended by an equal amount of time pursuant to section 339.2(b).
- (e) Within 30 business days of the date of acceptance for filing of a completed application, the Division shall issue to the applicant:
 - (1) A Notice of Certification which includes the date of expiration of the certification and specifies any conditions which attach to retention of the certification; or
 - (2) A Notice of Denial of Certification, accompanied by a written explanation of the reasons for the denial.

Section 339.8 Fees for Certification and Recertification of Loss Control Consultation Services.

- (a) The fee per application for certification and recertification of loss control consultation services shall be the greater of \$100.00 or 0.0125 percent of the amount (i.e., the amount multiples by 0.0001250 of the applicant's direct written premiums reportable on the latest calendar year "Call for California Workers' Compensation Experience" the applicant has filed with the Workers' Compensation Insurance Rating Bureau of California.
 - (b) All application fees collected pursuant to this article shall be deposited in the Cal/OSHA Targeted Inspection and Consultation Fund, as provided in section 62.7 of the Labor Code.
- NOTE: The Division may increase the insurer's certification fee on a prorata basis to compensate for any extension of the insurer's certification period beyond one year which is granted by the Division pursuant to section 339.2(c)(1) of this Article.

Section 339.9 Denial of Certification or Recertification.

- (a) The Division shall deny certification or recertification if the insurer does not satisfy the requirements of this Article.
- (b) An applicant denied certification may:
 - (1) Reapply by submitting a new application together with a new application fee; or
 - (2) Appeal for reconsideration to the Director.
- (c) Any applicant who wishes to appeal a denial of certification shall lodge with the Division, within 10 working days of receipt of the Notice of Denial, a written notice of the applicant's intent to appeal.
 - (1) The Director shall hold a hearing, at the Division's headquarters offices or such other location as the Director may designate, within five working days of the appeal.
 - (2) At the hearing, the insurer shall have the burden of establishing qualification for certification.
- (d) The Director shall issue a decision within 10 days of the hearing. The Director's decision shall be final. A final decision by the Director may not be appealed except as provided for by law.
- (e) The Insurance Commissioner shall be notified of every final decision by the Director to deny certification.

Section 339.10 Revocation, Suspension or Attachment of Conditions to Certification.

(a) The Division may at any time, upon a showing of good cause and after notice and an opportunity to be heard, revoke, suspend or attach conditions to the retention of, any certification issued pursuant to this article. Good cause shall be deemed to exist if the Division establishes that the insurer has substantially failed to meet or comply with the requirements of this article.

(b) Notice of the Division's intent to take any adverse action with respect to a certification shall be in writing and served at least fifteen days in advance of the hearing. Service shall be deemed complete if notice of the hearing is sent by certified mail or hand delivered to the address shown on the application form. The notice shall specify the action intended to be taken by the Division and the reasons for the action in sufficient detail to allow the insurer to prepare for the hearing.

(c) The hearing shall be held at the Division's Headquarters offices or at such other location as may be designated by the Director, and shall be conducted by the Chief or Deputy Chief of the Division.

(d) The insurer may appeal any adverse action to the Director in the same manner as provided for appeal of denial of certification by section 339.9(c) and (d) and the filing of an appeal shall stay the adverse action until the issuance of a final decision by the Director.

(e) The Insurance Commissioner shall be notified of every final decision by the Director to suspend or revoke certification.

Section 339.11 Guidelines for Selecting Targeted Employers.

(a) Section 339.6(b)(2) requires the insurer's annual plan to include a methodology for selecting targeted employers and section 339.6(c) requires the annual plan to demonstrate that the insurer has reliably identified as targeted employers those of its insureds who have the greatest workers' compensation losses and most significant preventable health and safety hazards, and that the insurer's loss control consultation services will effectively serve the needs of targeted employers.

(b) The Division will review the annual plan to determine the effectiveness of the insurer's targeting methodology. Targeting methodology may be different depending on the insurer and the type of insureds served, but shall utilize an effective combination of any of the following factors, or similar factors:

- (1) Type, number, and rate of occupational injuries and illnesses;
- (2) Number of workers' compensation claims, or injuries and illnesses, per payroll or premium dollar;
- (3) Severity of workers' compensation claims, or injuries and illnesses, per payroll or premium dollar;
- (4) Experience modification rating, or other ways of comparing the employer's loss experience to similar employers;
- (5) Data from the insurer's previous evaluations of the employer; and
- (6) Cal/OSHA citation history.

Exception: Other information, e.g., direct written premium per employer or the number of employees per employer, may be used as additional factors to be considered in selecting targeted employers. However, such information shall not be used in a manner which results in exclusion of those insureds who have the greatest workers' compensation losses and most significant preventable health and safety hazards.

ATTACHMENT M

ANALYSIS OF EMPLOYER EXPERIENCE WITH THE LOSS CONTROL CERTIFICATION PROGRAM, AND FINANCIAL IMPACT ON INSURERS, AS REPORTED BY INSURERS FOR PREMIUM YEARS 1998 AND 1999

INTRODUCTION

California Insurance Code 11721 and Labor Code 6354.5 require workers' compensation insurers to maintain or provide loss control services to their policyholders certified by the Director of Industrial Relations. California Code of Regulations, Title 8, §339.1 through §339.11 was promulgated to implement the provisions of the statutes. Insurers are required to submit annual plans that contain the insurer's methodologies used to select insured employers with the greatest workers compensation losses and the most significant preventable health and safety hazards. Insurers are further required to identify the employers selected, describe the types of services delivered to the employers and to provide an evaluation of the effectiveness of the services delivered.

The purpose of the 1993 legislation which mandated certification of insurer loss control programs was to assure California employers that loss control services would be available and be provided at no additional cost above that charged to them as premiums. This analysis is an attempt to demonstrate the degree to which insurers have participated in this state mandated program and to quantify, where possible, the impact of these services on the loss experience of those employers identified by insurers as most in need of those services.

Since its inception in 1994, the Loss Control Certification Unit (LCCU) in the Division of Occupational Safety and Health, has been charged with the administration of this program. The LCCU has been receiving and gathering information from insurers. The existing regulation allowed the information reported by insurers to be both objective and subjective. The information "required" was not consistent across insurer groups because the regulation permitted insurer choice in selection methodologies and flexibility in reporting information to the Division. The statute does not give the Division authority to independently verify the data reported by insurers. For the purposes of this analysis, the insurer generated data is assumed to be valid and true.

Please refer to the "**Analysis Design**" section of this report for details of the criteria established for this study. The ultimate goal of the data review is to monitor the effectiveness of the Loss Control Certification Program and its effectiveness in carrying out its mission. However, due to a continuing lack of comparability of insurer reported data, tests of statistical validity cannot be reliably applied to the data contained in this analysis.

In 1998, the Division recognized a need to revise the regulation. A Regulatory Advisory Committee was created to propose changes to existing regulation. In support of this process, the LCCU staff undertook a study to objectively assess the information in its possession and make a preliminary analysis of the available data. That report, "**Sample Summary of Insured Employers' Experience with the Loss Control Certification Program, As Reported by Their Insurers,**" was published in January of 2000. That summary studied a representative sample of twenty (20) insurer groups for plan years 1994 through 1997. Where applicable, results from that "Summary" have been included to provide continuity and comparison. This up-date will provide analysis of information submitted by all certified insurers for the premium years of 1998 and 1999. In 1999, the advisory committee met again to

further revise the regulations. Revisions are undergoing review by the DOSH legal unit prior to being set for public hearing.

FINDINGS

This compilation of insurer data for targeted employers and its assessment by the LCCU demonstrate that the Loss Control Certification Program continues to meet its statutory mandate. While the regulation does not require the form and format for the reporting of insurer data, objective reports by insurers and the analysis by the LCCU of objective insurer records, indicate that insurers have successfully identified populations of insured employers with substantive workers' compensation losses and significant preventable health and safety hazards. Data further attests that insurer's loss control services, when delivered to targeted employers, has a positive impact on the reduction of workers' compensation losses. This analysis further supports opportunities for improvement in the program through regulatory revisions.

The Analysis further finds that:

- In each of the two years covered in this study, 298 insurance companies were certified to provide loss control services to their insured employers. It is significant that, in light of intense competition, under pricing, and the substantial increase in insurer losses, these certified insurers have made available loss control services to employers identified as having the greatest workers' compensation losses and the most significant preventable workers' compensation hazards. While it is not possible to quantify the effect of this mandated program on the availability of loss control services from insurers, its impact on availability and the provision of those services should not be underestimated.
- Loss control services delivered to targeted employers has a significant positive impact on targeted employers' workers' compensation losses. The Sample Summary reported that in earlier years of the program, first year loss reductions had been achieved for a significant percentage of targeted employers. This analysis reports that those achievements continue and remain consistently high. Individual insurer reports of target employer loss reductions range from 0% to 100%, however, within the two extremes, the range falls between a low of 12.50% to high of 90.14%. The results for employers, remaining insured for the first year of an insurer certification cycle, indicate that over 70% of target employers achieved reductions in either frequency of claims, or reductions in dollar losses. This continuing analysis indicates that loss reductions by target employers are consistent across all sizes of insurers, selection methodologies, and categories of employer operations.
- Costs to insurers to identify their policyholders with the greatest losses and significant hazards, and to provide services directed toward the causes of those losses, are reasonable and do not present an undue burden on insurers. The expenditures by insurers for administration of this program and for the provision of mandated service to target employers has remained consistent at 0.07% to 0.08% of insurer direct written workers' compensation premium. While costs as a percent of insurer reported loss control budgets varies among certified insurers, the overall expenditures continue to be less than 10%. Were all insurers to report total budgets for service to all California insureds, the percentage of expenditures for this program would be substantially less.

- The regulation does not require insurers to use a common methodology to select an identifiable segment of insured employers. Selection methodologies used by insurers continue to vary widely. Employers with the greatest workers' compensation losses and the most significant preventable health and safety hazards have not been consistently identified, either from year to year, or from insurer to insurer.
- Insurers have attempted to refine selection methodologies to more accurately reflect insured employers' more recent loss experience. By the application of these methodologies, the actual number of targeted employers has declined. Targeting employers for a three year period also reduces the population of eligible targeted employers in insurer book of business for a given year.
- Neither the statute nor current regulations require a specific format for insurers to report employer loss reductions achieved as a result of loss control services provided. Insurers report frequency and severity reductions relative to loss reduction goals established in certified annual plans. Therefore, the Division is unable to quantify either loss reductions by individual employer or by the aggregate of all loss reductions reported for all target employers.
- The high turnover in policyholders due to the competition caused by open rating reduces the capability to track improvements in loss reductions by individual employer. Non-renewal of targeted employer policies in the first year of insurer annual plans continues to hover around 30%. This movement of employers from one insurer to another and from one selection methodology to another renders any measurement of the lasting effect of loss control services on employer long term loss experience impossible.
- The loss control regulations give no specific authority to the Division to enforce insurer delivery of loss control services within employer policy periods. Insurers canvas their book of workers' compensation policies once per year, and select employers who meet their methodology at that time. Large numbers of targeted employers selected to receive service in insurer annual plans, non-renew their coverage before loss control services can be provided.

Note: Regulatory changes, currently undergoing legal review, have been proposed to remedy a number of these issues.

ANALYSIS DESIGN

Each insurer is required by statute and regulation to submit an Annual Plan covering twelve months identified as the Certification Period. Each Annual Plan certified for the Loss Control Certification Unit recording year, April 1 to March 31 of the succeeding year for 1998 and 1999 were identified. Direct written premiums were verified by the "Call for Workers' Compensation Experience," the report by the insurer to the Workers' Compensation Rating Bureau (WCIRB), which reports the direct written premium of the insurer. Premium reports from each submittal were further verified by the annual report of the WCIRB entitled "Premium Income List of Bureau Members." Budgets data and expenditure information were derived from those insurer certified annual plans most closely related to the direct written premium for the WCIRB premium years of 1998 and 1999.

The data retrieved from the annual plans are information submitted by insurers to justify certification of loss control consultation programs. Budget data, expenditures, target employers selected, target

employers non-renewed, and the loss reductions by target employers were retrieved as reported by each insurer. Data from each applicable insurer annual plan for the WCIRB premium years was entered into a data base and analyzed using simple statistical functions: count, total and average. Statistical tests were attempted for some data, but the divergence of data points were deemed too disparate to reach a statistically valid conclusion. (Analyses of Slope or Intercept by Least Squares Analysis determined that no variable was highly correlated to Direct Written Premium for the data elements.)

The scope of this analysis was to measure:

- The costs to insurers relative to direct written premium, and to measure what, if any, variances in costs were accrued by insurers according to their relative market share of workers' compensation premium for the two years under consideration;
- The impact of open rating and the competitive marketplace upon turnover of insured employer policies as exemplified by the rate of turnover or retention of coverage for target employers;
- The loss reductions, either in frequency of claims reported, or in the severity of dollar losses reported by target employers at the end of their policy period identified in the insurers certified Annual Plan, and to measure what, if any, variances occurred in target employer loss reductions by insurers relative to market share of workers' compensation premium.

Evaluation of insurer compliance to the service mandates of the regulations for 1998 and 1999 has not been fully completed by the LCCU and is beyond the scope of this analysis.

In each of the premium years studied, eight (8) insurers submitted Annual Plans, certified by the Division, in which there were no direct written premiums reported to the WCIRB. For the purposes of this analysis, these insurers were excluded, since they had neither premium, target employers, nor loss reductions. Further, there remain active annual plans which have been merged into other insurer plans, but for which there were no new budgets or new target employers for the years in question. Data from these plans were also excluded from this analysis.

The remaining active annual plans from which the data for this analysis was derived numbered 105 insurer or insurer groups, covering 298 insurance companies for premium year 1998, and 100 annual plans covering 298 insurance companies for premium year 1999. The reduction in plans studied from 1998 to 1999 reflect the continuing consolidation, mergers, and acquisitions occurring in the California workers' compensation market. All active plans in which the insurer accrued direct written premium for WCIRB premium years 1998 and 1999 were studied for this analysis.

RESULTS

The following information is developed from data submitted by certified insurers in their Annual Plans corresponding with premium years 1998 and 1999 as reported to the Workers' Compensation Insurance Rating Bureau (WCIRB). Direct Written Premium reported to and by the WCIRB is the one data element which is independently verifiable and not subject to qualifying factors. Data reviewed by this study may have been reported to the Division by insurers in Annual Plans identified as other than

1998 or 1999, however every attempt was made to clarify that the budgets, expenditures, and results correspond with the 1998 and 1999 insurer direct written premiums.

Table 1

Non-Renewals

Premium Year	New Target Employers	End Year Employers	Percent (%) Non-Renewed
1998	3,449	2,528	27%
1999	2,522	1,500	40%
Combined	6,001	4,028	32%
Sample Summary	2,624	1,627	38%

Figures in **Table 1** apply only to targeted employers but reflect the high turnover in carrier books of business as a whole. New target employers are those identified for the first time in an annual plan. End year, or remaining employers, are those new target employers still insured at the end of the insurers certification cycle. Turnover is significant when any attempt is made to measure the effectiveness of loss control services by individual employer. An employer's loss reductions cannot be measured by an insurer when a policy is non-renewed within a given certification period. Significant numbers of employers non-renewed their policies before loss control services were provided. Targeted employers remain in the program for a three-year period. Tracking of long term loss reductions by individual employer is most difficult with this high degree of turn over.

Table 2 describes the costs to insurers for providing loss control services as reported in annual plans. Budget data are submitted in advance of certification, while expenditures are reported after a plan year is completed. The regulations are not clear in their requirement for insurer reporting of budgets. The report of anticipated allocations varies by insurer. Insurers budget for loss control services in many different ways. Some insurers report only those monies to be spent in service to target employers, while others report monies to be spent for all loss control services to their population of insured. The Division has encouraged insurers to report their budgets for all loss control services to more accurately measure the true costs of the Loss Control Certification Program to insurers. A majority of insurers are now reporting their budgets for all California loss control services.

Table 2

Budget Allocations, Expenditures / Direct Written Premiums

Year	Direct Written Premium	Loss Control Budget	Percent of DWP	Target Emp Expenditure	Percent (%) of DWP
1998	\$6,605,421,915	\$64,177,017	0.97%	\$5,276,999	0.079%
1999	\$6,728,620,601	\$60,523,825	0.89%	\$5,060,209	0.075%
Combined	\$13,334,042,516.00	\$124,712,441	0.93%	\$10,337,208	0.077%
Sample Summary					0.10 % to 0.07%

Loss Control Budgets are expressed for providing service to all California insureds. The target employer expenditures, reported in insurer Annual Plans, expressed in **Table 2** as a percentage of Direct Written Premium (DWP) have declined from one tenth of one percent in 1994 to a relative constant expenditure of less than eight hundredths of one percent.

The regulations require insurers to report in their Annual Plans the costs expended in providing mandated loss control services to targeted employers. The regulation has been interpreted by the Division to require the insurer to report all costs associated with the provision of these services. **Table 3** records these expenditures as reported by insurers. For insurers who underwrite more than workers' compensation, the expenditures may include expenses for service to target employers involving more than one line of coverage.

Table 3

Target Expenditures / Loss Control Budgets			
Year	Budget for All California	Target Employer	Percent (%) of California Budget
1998	\$64,177,017	\$5,276,999	8.22%
1999	\$60,523,825	\$5,060,209	8.36%
Combined	\$124,712,441	\$10,337,208	8.28%
Sample Summary			14% to 8.4%

Employers are targeted for service until three-year loss reduction goals are measured. The pool of eligible targeted employers is reduced as employers are targeted each year for a three-year period. Regulation requires on-site consultations only during the first year of selection in an annual plan. Subsequent services are to be provided based on the need of the employer and the evaluation of the effectiveness of the services provided. Reported expenditures may include costs of services provided to previously targeted employers during a given certification cycle. The **Sample Summary** reported that the ratio of expenditures for servicing targeted employers to total insurer loss control expenditures declined 40% from 14% in start up costs of the program in 1994 to 8.4% in 1996.

The regulation requires insurers to report an evaluation of effectiveness of service to targeted employers. **Table 4** describes this information as reported by insurers as reductions in the total claims or ratio of claims for targeted employers, and/or the reduction of incurred workers' compensation dollar losses for targeted employers. Insurers may report this data as aggregate data for their group of targeted employers in a particular year, and/or by the changes in loss experience of individual target employers. In retrieving data for this analysis the loss experience of each targeted employer was evaluated where ever possible. Where aggregate summaries of loss experience was provided by the insurer, individual employer loss experience was reviewed to verify loss reductions as provided in insurer Annual Plans.

Table 4

Target Employer Loss Reductions

Year	Remaining Target Emp	Target Employer Loss Reductions	Percent (%) Loss Reduction
1998	2,528	1,786	70.65%
1999	1,500	1,101	73.40%
Combined	4,028	2,887	71.67%
Sample Summary Reported for 1997, 75.5% frequency, 29.3% Severity Loss Reductions			

Insurers are required to establish loss reduction goals for their targeted employers. Annual Plans continue to report both subjective and objective goals for these employers. Rather than attempt to compare the goal accomplishment on such varied objectives, **Table 4** records those targeted employers who actually achieved either reductions in the frequency of claims, or the reductions in workers' compensation costs at the end of the first year of targeting. These results more accurately reflect the effectiveness of loss control services provided to targeted employers after the first year of targeting.

Summary Data By Insurer Direct Written Premium

Certified insurers were divided into four groups according to their reported direct written premiums. An analysis was performed to determine the variance, if any, in budgets, expenditures, and loss reductions of target employers by premium size of insurers. The grouping of insurers was not intended to create groups equal in size, but rather to indicate insurers relative to their market share of workers' compensation premium. Expenditures are reported for the provision of service to target employers. As indicated, the premium groups are identified in the following tables by the maximum premiums accrued for each group. For example, the 25M group represents those insurers with reported premiums from 1 million to 25 million dollars in premiums for the year.

Table 5

1998 Summary Data

G R O U P	Total All Insurers	Direct Written Premium	Total California Budget	Total Target Employer Budget	Total Expended	Total New Target Employers	Total Remaining Target Employers	Total Target Remaining Emp with Loss Reduction
1-1M	37	\$11,689,400	\$3,370,872.50	\$442,289	\$260,264.00	42	26	20
	35.24%	0.18%	5.25%	7.36%	4.93%	1.22%	1.03%	1.12%
1M- 25M	37	\$333,844,500	\$5,256,578.00	\$881,936.00	\$636,415.50	324	216	150
	35.24%	5.05%	8.19%	14.67%	12.06%	9.39%	8.54%	8.40%
25M - 200M	20	\$1,765,414,205	\$17,051,684.00	\$2,231,893.00	\$2,087,350.00	1,119	790	526
	19.05%	26.73%	26.57%	37.12%	39.56%	32.44%	31.25%	29.45%
200M+	11	\$4,494,473,810	\$38,497,882.00	\$2,457,178.00	\$2,292,970.00	1,964	1,496	1,090
	10.48%	68.04%	59.99%	40.86%	43.45%	56.94%	59.18%	61.03%

Data in **Table 5** reflects premiums, budgets and expenditures across all sizes of insurers when compared to the whole for 1998. Insurers in the \$25 million to \$200 million premium range produce 5.05% of all premiums, and have incurred 12.06% of target employer loss control expenditures. The \$200 million plus group have produced 68.04% of all premiums and incurred 43.45% of total loss control expenditures. This correlation should not necessarily be construed as an indication that larger insurers spend less on service to target employers. The size and complexity of the target employers and their service requirements dictate the expenditures needed.

Table 6

1998 Costs, Loss Reduction by Insurer Direct Written Premium
--

Group	Number	Percent (%) DWP Expended	Remaining Target Employer	Target Employer Loss Reduction
1M	37	2.23%	61.90%	76.92%
25M	37	0.19%	66.67%	69.44%
200M	20	0.12%	70.60%	66.58%
200M+	11	0.05%	76.17%	72.86%

This analysis in **Table 6** compares data by group, not to the whole. As the premium size of insurers increase, the expenditures for target employer loss control service as a percentage of direct written premium decrease. This relationship reflects the larger base of workers' compensation premiums against which insurers apply the Loss Control Certification Program costs. Insurers are not required to select a set percentage of their insureds, but rather those employers identified as having the greatest workers' compensation losses and most significant hazards.

While the largest insurers tend to retain more of their target employers through the first year in the program, the smallest insurers achieved a higher percentage of target employers with loss reductions. This may also indicate that the smaller carriers tend to insure smaller employers with less complex problems which have lead to workers' compensation losses.

Table 7

1999 Summary Data

G R O U P	Total All Insurers	Direct Written Premium	Total California Budget	Total Target Employer Budget	Total Expended	Total New Target Employers	Total Remaining Target Employers	Total Target Remaining Emp with Loss Reduction
1M	24	\$9,871,212	\$921,348.00	\$337,468.00	\$246,912.00	35	21	15
	24%	0.15%	1.52%	4.95%	4.88%	1.39%	1.40%	1.36%
25M	42	\$322,931,262	\$4,933,351.00	\$767,393.94	\$548,069.06	288	205	142
	42%	4.80%	8.15%	11.27%	10.83%	11.42%	13.67%	12.90%
200M	24	\$2,056,134,258	\$18,844,921.00	\$3,316,845.00	\$2,228,068.00	1,216	612	488
	24%	30.56%	31.14%	48.69%	44.03%	48.22%	40.80%	44.32%
200M+	10	\$4,339,683,869	\$35,824,205.00	\$2,390,341.00	\$2,037,160.00	983	662	456
	10%	64.50%	59.19%	35.09%	40.26%	38.98%	44.13%	41.42%

Data in **Table 7**, again reflects the costs, budgets and expenditures across all sizes of insurers when compared to the whole for 1999. Of significance in this analysis is the fact that there are five (5) fewer insurers/insurer groups whose data is evaluated, indicating the consolidation of carriers within the industry. Also of note, the mix, that is the movement of insurers from one group to another, confirms the changes and volatility of the workers' compensation market.

Table 8

1999 Costs, Loss Reduction by Insurer Direct Written Premium

Group	Number	Percent (%) DWP Expended	Remaining Target Employer	Target Employer Loss Reduction
1M	24	2.50%	60.00%	71.43%
25M	42	0.17%	71.18%	69.27%
200M	24	0.11%	50.33%	79.74%
200M+	10	0.05%	67.34%	68.88%

Like Table 6, the figures in **Table 8** compare the data of each group to itself. The expenditures for target loss control service still remains relatively constant within each group. Fluctuations in the retention rates of target employers by group may be an indication of changes to more restrictive underwriting practices in 1999 by a number of insurers. While the mix of insurer size and retention's

vary, the percentage of target employers who have achieved loss reductions for the first year remains high.

Table 9

**Combined 1998 and 1999 Costs,
Loss Reduction by Insurer Direct Written Premium**

Group	Number	Percent (%) DWP Expended	Remaining Target Emp	Target Emp Loss Reduction
1M	41	2.35%	61.04%	74.47%
25M	51	0.18%	68.79%	69.36%
200M	26	0.11%	60.04%	72.33%
200M+	12	0.05%	73.23%	71.64%

The combined data in **Table 9** reflects the movement of premium size within the industry. An insurer may have been a member of one group in 1998 and because of premium changes been reported in another group for 1999. With considerable movement between groups, the data remains remarkably consistent. There is minimal variance between 1998, 1999 and the combined groups in any element studied. The only significant variant is reflected in the 200M group of insurers. The reduction of the retention ratio from 1998 to 1999, of 20 points, affected the combined ratio for this group. The same group saw a 13% increase in target employers achieving loss reductions from 1998 to 1999.

Another factor to be considered is the varied selection methodologies utilized by insurers in all groups and changes in those methodologies from one year to the next. While each insurer selects a population of its insureds for loss control services under this program, there are wide variations in the criteria used for selection. Despite these variances and methodology changes from year to year, target employers experiencing loss reductions remain consistently high.

RECOMMENDATIONS

This Analysis demonstrates that the Loss Control Certification Program has met, and continues to meet, the mandates of its implementing statute. The analysis further substantiates that improvements should be made to the program to more accurately identify a more consistent population of employers that should be targeted, to reduce the administrative burden on insurers, and to ensure standardized data reporting to permit the Division to accurately measure the effectiveness of the program. This analysis provides additional support for recommendations made by the earlier **Sample Summary** report.

The findings of the Analysis suggest the following recommendations:

- Rulemaking begun in 1998, continued in 1999 and 2000, should move forward in light of these findings to improve the effectiveness of the program and to further implement the mandate of the legislature. Revisions to the regulations currently undergoing legal review should be set for public hearing and adoption by the earliest possible date.

- Selection methodologies should be uniform for all insurers to assure that an identified population of employers with the greatest workers' compensation losses and most significant preventable health and safety hazards is consistently and reliably identified. Employers that meet regulatory methodologies should be selected irrespective of who their individual insurer may be. Uniform selection methodologies will allow tracking of loss reductions by employer despite change of insurers.

Adoption of uniform methodologies will render the prospective identification of targeted employers unnecessary. Targeted employers will be identified and serviced by policy year as policies renew.

- A standard data base should be used by insurers against which employers' loss experience is to be measured. Workers Compensation Rating Bureau data should be utilized both as the basis for selection methodology thresholds, and to validate the effectiveness of loss control services provided by insurers. Workers' Compensation Insurance Rating Bureau data is insurance data, derived from insurer reports, and available to all member insurers. The existing regulation should be revised to require the use of Workers' Compensation Rating Bureau data as the basis for the selection of targeted employers. A standard base of comparison will make the data submitted by insurers and collected by the Division consistent and verifiable. Reporting by the Division on the effectiveness of the Loss Control certification will be more statistically reliable when standard data elements are used.
- To reduce the administrative burden on insurers, revise the regulation to remove those current annual plan elements that will no longer be necessary when uniform selection methodologies are adopted. Such elements include the prospective list of targeted employers, the estimate of the numbers of on-site consultations to be provided to targeted employers in the upcoming certification cycle, the estimate of the number of surveys without on-site consultation scheduled for the upcoming cycle, and the precise budget allocations for the provision of loss control services to all targeted employers to be identified and serviced in the upcoming reporting cycle.

Revise the existing regulation to specify the type and format of information to be reported to the LCCU.

ATTACHMENT N

Authorized and Filled DOSH Positions Supported by Funding Based on the 1993 Workers' Compensation Reform Legislation and the 1995 Amendments

Authorized and filled DOSH positions supported by funding based on the 1993 Workers' Compensation Reform Legislation, it's 1995 amendments, and FY 1999-00 Finance Letter (No. FL-6) Augmentation.

	Number Originally Authorized	Additional Positions FY95/96 BCP	Eliminated Positions FY96/97 BCP	Net Authorized	Number Filled
LOSS CONTROL CONSULTANT CERTIFICATION (LCCU)					
Research Manager II (Reclassified to Loss Control Cert. Unit Manager)	1	-	-	1	-
Senior Industrial Hygienist	1	-	-	1	0
Senior Safety Engineer	1	-	-	1	1
Assoc. Gov. Program Analyst (3 Reclassed to Loss Control Plan Evaluator)	1	3	-	4	1
Office Technician (1 Reclassed to Office Assistant)	1	1	-	1	1
Office Assistant	1	-	-	1	1
TOTAL - LCCU	6	4	0	9	7
TARGETED CONSULTATION UNIT					
Regional Manager	1	-	-	1	0
Area Manager	3	-	-	3	3
Senior Industrial Hygienist	1	-	-1	0	-
Associate Industrial Hygienist (Reclassified to Nurse Consultant II)	20	-	-5	12	10
Associate Safety Engineer (Reclassified to Assistant Safety Engineer)	21	-	-9	12	11
Assoc. Gov. Program Analyst	1	-	-1	0	-
Research Writer	1	-	-1	0	-
Health Education Consultant I (Reclassified to Staff Services Analyst)	1	-	-	-	-
Staff Services Analyst (Reclassified to Information Systems Tech.)	1	-	-	-	-
Office Technician	3	-	-1	1	1
Office Assistant (Reclassified to Management Services Tech.) (Reclassified to Secretary) (Reclassified to Stenographer) (Reclassified to Statistical Methods Analyst II)	11	-	-	4	4
				1	1
				1	0
				2	1
			-1	-	-
TOTAL - TARGETED CONSULTATION	64	0	-20	41	34

	Number Originally Authorized	Additional Positions FY95/96 BCP	Eliminated Positions FY96/97 BCP	Net Authorized	Number Filled
TARGETED INSPECTION UNIT					
Regional Manager	1	-	-	1	1
Public Health Medical Officer II (Reclassified to Staff Services Manager I) (Reclassified to Principal Safety Engineer)	1	-	-	-	-
Principal Safety Engineer	1	-	-1	0	-
Industrial Relations Counsel II	1	-	-1	0	-
Senior Industrial Hygienist (Reclassified to District Manager)	3	-	-1	0	-
Senior Safety Engineer (Reclassified to District Manager)	2	-	-	2	2
Associate Safety Engineer (Reclassified to Assistant Safety Engineer)	15	-	-2	1	1
Associate Industrial Hygienist (Reclassified to Assistant Industrial Hygienist)	10	-	-3	9	6
Assoc. Gov. Program Analyst (Reclassified to Research Analyst I)	1	-	-	2	2
Statistical Methods Analyst II (Reclassified to Staff Services Analyst)	1	-	-	1	1
Personnel Services Specialist II	1	-	-1	-	-
Accountant I (Specialist)	1	-	-	1	1
Staff Services Analyst (Reclassified to Instrument Technician III) (Reclassified to Associate Programmer Analyst)	2	-	-	1	1
Office Technician (Reclassified to Secretary)	4	-	-1	1	1
Office Assistant (Reclassified to Senior Typist Legal)	6	-	-	3	3
				1	1
				7	5
				2	1
OSH APPEALS BOARD					
Hearing Officer I	2	-	-1	1	1
Senior Typist Legal	1	-	-0.5	0.5	0.5
TOTAL - TARGETED INSPECTION UNIT	53	0	-11.5	45.5	37.5
DOSH SUBTOTAL	123	4	-31.5	95.5	78.5
High Hazard Program positions authorized per FY 1999-00 Finance Letter #FL-6					
<u>DOSH</u>					
District Manager	1	-	-	1	1
Associate Safety Engineer (Reclassified to Assistant Safety Engineer)	7	-	-	6	1
Associate Industrial Hygienist (Reclassified to Assistant Industrial Hygienist)	8	-	-	1	1
Office Assistant	3	-	-	6	0
				2	2
				3	1
<u>OSH Appeals Board</u>					
Hearing Officer	1	-	-	1	0
Senior Typist Legal	0.5	-	-	0.5	0
SUBTOTAL	20.5	-	-	20.5	6
DOSH GRAND TOTAL	143.5	4	-31.5	116	84.5

Discrepancy between Net/Authorized vs. Number/Filled positions in some classifications is due to the movement of staff between units in response to workload demands

ATTACHMENT O

Targeted Inspection and Consultation Program Consolidated Financial Statement

Targeted Inspection & Consultation Program Financial Statement (Dollars rounded to nearest thousand)

	FY 93-94 (1-1-94 to 6-30-94) (Actual)	FY 94-95 (Actual)	FY 95-96 (Actual)	FY 96-97 (Actual)	FY 97-98 (Actual)	FY 98-99 (Actual)
Loss Control Certification Program						
EXPENDITURES						
Loss Control Certification Program	\$190,000	\$437,000	\$480,000	\$663,000	\$642,000	\$778,000
REVENUE						
ASSESSMENTS						
<u>Fund 096</u>						
Cash Collected	\$1,068,000 <u>1/</u>	\$901,000 <u>2/</u>	\$305,000 <u>3/</u>	\$0	\$0	\$0
Accounts Receivable	\$0	\$0	\$0	\$0	\$0	\$0
Sub Total	\$1,068,000	\$901,000	\$305,000	\$0	\$0	\$0
<u>Fund 284</u>						
Cash Collected	-	-	\$502,000 <u>4/</u>	\$520,000 <u>5/</u>	\$247,000 <u>6/</u>	\$806,000
Accounts Receivable	-	-	\$0	\$0	\$0	\$0
Income From Surplus Money Invest.	-	-	\$8,000	\$19,000	\$28,000	\$75,000
Sub Total	-	-	\$510,000	\$539,000	\$275,000	\$881,000
TOTAL ASSESSMENT REVENUE	\$1,068,000	\$901,000	\$815,000	\$539,000	\$275,000	\$881,000
ANNUAL BALANCE	\$878,000	\$464,000	\$335,000	-\$124,000	-\$367,000	\$103,000
CUMULATIVE BALANCE	\$878,000	\$1,342,000	\$1,677,000	\$1,553,000	\$1,186,000	\$1,289,000

Targeted Inspection & Consultation Prog.

EXPENDITURES						
Targeted Inspection	\$1,291,000	\$2,617,000	\$2,027,000	\$3,637,000	\$4,207,000	\$3,189,000
Targeted Consultation	\$634,000	\$1,845,000	\$1,942,000	\$2,367,000	\$1,947,000	\$2,971,000
Total Expenditures	\$1,925,000	\$4,462,000	\$3,969,000	\$6,004,000	\$6,154,000	\$6,160,000
General Fund Loan Repayment			\$4,354,000 <u>7/</u>	\$0	\$0	\$0
GRAND TOTAL EXPENDITURES	\$1,925,000	\$4,462,000	\$8,323,000	\$6,004,000	\$6,154,000	\$6,160,000
REVENUE (Fund 096)						
ASSESSMENTS						
<u>Insured Employers</u>						
Cash Collected	\$0	\$729,000	\$11,739,000	\$6,486,000	\$6,605,000	\$7,837,000
Accounts Receivable	\$0	\$0	\$496,000	\$227,000	\$303,000	\$181,000
Sub Total	\$0	\$729,000 <u>8/</u>	\$12,235,000	\$6,713,000	\$6,908,000	\$8,018,000
Refund to Insured Employers	-	-	-\$729,000 <u>8/</u>	-	-	-
Total Insured Employers	\$0	\$729,000	\$11,506,000	\$6,713,000	\$6,908,000	\$8,018,000

Self-Insured Employers			-	-		
Cash Collected	\$0	\$826,000	\$116,000	\$183,000	\$276,000	\$242,000
Accounts Receivable	\$0	\$0	\$0	\$0	\$5,000	\$0
Sub Total	\$0	\$826,000 ^{9/}	\$116,000	\$183,000	\$281,000	\$242,000
Refund to Self-Insured Employers	-	-	-\$582,000 ^{9/}	-	-	-
Total Self-Insured Employers	\$0	\$826,000	-\$466,000	\$183,000	\$281,000	\$242,000
Loan	\$4,000,000	\$0	\$0	\$0	\$0	\$0
Income From Surplus Money Invest.	-	\$65,000	\$92,000	\$148,000	\$126,000	\$140,000
TOTAL ASSESSMENT REVENUE	\$4,000,000	\$1,620,000	\$11,132,000	\$7,044,000	\$7,315,000	\$8,400,000
ANNUAL BALANCE	\$2,075,000	-\$2,842,000	\$2,809,000	\$1,040,000	\$1,161,000	\$2,240,000
CUMULATIVE BALANCE	\$2,075,000	-\$767,000	\$2,042,000	\$3,082,000	\$4,243,000	\$6,483,000

Footnotes

- 1/ During FY 1993-94, Loss Control Certification Program revenue of \$1,068,000 was deposited into Targeted Inspection & Consultation Fund (#096) in accordance with Workers' Comp Reform Legislation.
- 2/ During FY 1994-95, Loss Control Certification Program revenue of \$901,000 was deposited into Fund 096 in accordance with Workers' Comp Reform Legislation.
- 3/ During FY 1995-96, Loss Control Certification Program revenue of \$305,000 was deposited into Fund 096 in accordance with Workers' Comp Reform Legislation.
- 4/ During FY 1995-96, SB 1051 (Chapter 556, Statutes of 1995) created the Loss Control Certification Fund (#284) to receive insurer fees related to the Loss Control Certification Program.
- 5/ The Loss Control Certification Fund assessment period is 12 months running from April to March the following year. The \$520,000 revenue collected in FY 1996-97 represents the portion of the April 1996 to March 1997 assessments collected during FY 1996-97.
represents the portion of the April 1998 to March 1999 assessment collected during FY 1997-98.
- 7/ General Fund loan repayment is comprised of loan of \$4,000,000 plus \$354,000 in interest paid on the loan.
- 8/ Initial FY 1994-95 Insured Employers assessment collection of \$729,000 was refunded to Insured Employers during FY 1995-96 and revised method of calculating assessments was instituted as a result of SB 996 (Chapter 33, Statutes of 1994).
- 9/ From the initial FY 1994-95 Self-Insured Employers assessment collection of \$826,000, \$582,000 was refunded to Self-Insured Employers during FY 1995-96 and revised method of calculating assessments was instituted as a result of SB 996 (Chapter 33, Statutes of 1994).

Revenue collections are displayed on a cash basis.

ATTACHMENT P

SAMPLE TICF ASSESSMENT INVOICE AND OFFER LETTER

Dear California Employer:

RE: 2001 BILLING NOTICE FOR Cal/OSHA TARGETED INSPECTION AND CONSULTATION FUND

Enclosed is your 2001 Cal/OSHA Targeted Inspection and Consultation Fund (TICF) Assessment Billing Notice. Reforms of the California workers' compensation insurance system passed by the California Legislature in 1993 and 1995 require the Division of Occupational Safety and Health ("Cal/OSHA") to identify on or before 1 September of each year all insured employers having a workers' compensation experience modification rating (ExMOD) of 125% or greater (in the previous policy year) and levy an assessment on those employers to support the Cal/OSHA targeted inspection and consultation programs.

Based on data reported by your workers' compensation insurance carrier for the policy year 2000, you are a California employer with an ExMOD of 125% of greater and are subject to the 2001 TICF Assessment.

The amount you have been assessed for the 2001 TICF Assessment is based upon your payroll subject to workers' compensation insurance for the policy year 1998 as reported by your workers' compensation insurance carrier to the Workers' Compensation Insurance Rating Bureau (WCIRB).

The amount of assessment you owe in turn is based on the payroll range schedule below, as set forth in Labor Code Section 62.9(a).

<u>WORKERS' COMPENSATION PAYROLL RANGE</u>			<u>ASSESSMENT AMOUNT</u>
Less	than	\$250,000	\$ 100
\$250,000	to	\$500,000	\$ 200
\$500,001	to	\$750,000	\$ 400
\$750,001	to	\$1,000,000	\$ 600
\$1,000,001	to	\$1,500,000	\$ 800
\$1,500,001	to	\$2,000,000	\$1,000
\$2,000,001	to	\$2,500,000	\$1,500
\$2,500,001	to	\$3,500,000	\$2,000
\$3,500,001	and	above	\$2,500

Please remit a check for the full amount of the 2001 TICF Assessment to the "Department of Industrial Relations, Fund 096.01" and send it to the following address:

Department of Industrial Relations
Accounting -- TIC Fund 096.01
P.O. Box 420603
San Francisco, CA 94142-0603

Be sure to include the 2001 Billing Notice Number on your check so that you may be properly credited for your payment. If you dispute your 1998 payroll amount or your 2000 ExMOD as reported to the WCIRB by your workers' compensation insurance carrier, please contact your insurance carrier (or previous insurance carrier if you have changed carriers recently) to verify your 1998 payroll and 2000 ExMOD data.

If your own workers' compensation insurer determines that the payroll and/or ExMOD contained in this Billing Notice are in error, please contact the Department at telephone number (415) 703-5110 and have your insurer mail the revised payroll and/or ExMOD information to the following address:

Cal/OSHA TICF Assessment Unit
P.O. Box 420603
San Francisco, CA 94142

California Labor Code Section 62.9(c)(5) and (6) provide that if you do not pay your 2001 Assessment in full and in a timely manner, the Department of Industrial Relations will levy against you a penalty equal to 25% of your 2000 TICF Assessment and will then refer your assessment and penalty to the California Franchise Tax Board for collection of a non-tax debt pursuant to Section 19290.1 of the California Revenue and Taxation Code.

If you should have any questions regarding your 2001 TICF Assessment, please call the Cal/OSHA TICF Assessment Unit at (415) 703-5110.

I encourage you to arrange for assistance in identifying and eliminating the hazards causing your elevated ExMOD by calling the High Hazard Consultation Program at (559) 454-0615. If you are an employer with a significantly elevated ExMOD (i.e., 200% or greater), you will be contacted by a consultant from the High Hazard Consultation Program.

Sincerely,

John Howard
Chief