

FY 2013 Comprehensive Federal Annual Monitoring and Evaluation (FAME) Report

California Division of Occupational Safety and Health (Cal/OSHA)



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I. Executive Summary

A. Summary of the Report

The purpose of this report is to assess the California Occupational Safety and Health Administration (Cal/OSHA) activities for the Fiscal Year (FY) 2013 and its progress in resolving outstanding findings and recommendations from the previous Federal Annual Monitoring Evaluations (FAMES). The major issues discussed in this report include the failure to fill vacant staff positions, the low rate of serious violations, and the long citation lapse time. In addition, the report addresses issues in the investigation of claims of retaliation against workers who raise safety and health concerns, and the accounting of funds received through the federal grant.

Cal/OSHA remains understaffed and, as a result, is challenged to fulfill its important mission. The lack of staffing affects the citation lapse time, the number of inspections conducted, and the response time to complaints. In particular, the number of inspections conducted by current Cal/OSHA staff is well below the federal average. To compound this problem, there has been a steady decrease in inspectors since FY 2011. Although steps are being taken to fill positions, there are still a significant numbers of field compliance staff vacancies.

Cal/OSHA inspections result in a rate of serious, willful or repeat violations significantly lower than the federal average. This suggests that the agency's limited resources are not being applied most efficiently and effectively. It is likely that several factors contribute to this low rate, including the targeting of low hazard industries in the Labor Enforcement Task Force initiative, and the inappropriate designation of non-enforcement activities as inspections in the Integrated Management Information System (IMIS) database. This report recommends that Cal/OSHA examine the cause of the low frequency of these violations and implement corrective actions to improve inspection targeting.

Cal/OSHA experiences a long citation lapse time, the time between the start of an inspection and the issuance of a citation. While many employers abate serious hazards on-the-spot when they are pointed out by a compliance officer, some employers will not abate the hazard until they receive the citation, thus continuing to expose employees to the hazard.

Review of Cal/OSHA's program to protect whistleblowers from retaliation found that documentation of the cases was often not adequate, and that, in four of the nineteen cases examined, that the ultimate conclusion of the investigation was not supported by the evidence.

Finally, Cal/OSHA utilized funds under the grant for activities such as crane permits, pre-job safety meetings and inspections conducted in exempt NAICS codes. In addition, the time spent by Senior Safety Engineers supporting and assisting compliance officers was being allocated against program costs instead of administrative costs.

Many of these serious concerns have been raised in the 2012 and earlier FAMEs, as well as directly with Cal/OSHA leadership by federal OSHA officials. A total of 26 findings and three observations are identified in this FAME Report. Of the 15 findings from the FY 2012 FAME Report, 10 are still outstanding and have been carried over, one was converted to an observation, and four were verified as complete.

B. State Plan Introduction

The Department of Industrial Relations (DIR) administers the Cal/OSHA State Plan. Within DIR, the Division of Occupational Safety and Health (DOSH), which is commonly referred to as Cal/OSHA, is the principal executor of the plan. The Director of DIR and State Designee is Ms. Christine Baker. From October 1, 2012 through September 4, 2013, Ms. Ellen Widess was the Chief of Cal/OSHA. On September 4, 2013, Ms. Juliann Sum was appointed as Acting Chief of Cal/OSHA. Ms. Sum was supported by Ms. Cora Gherga, Acting Deputy Chief of Enforcement, Ms. Deborah Gold, Deputy Chief of Health and Engineering Services, and Ms. Vicky Heza, Program Manager for Consultation Services.

DIR has an independent Occupational Safety and Health Standards Board (OSHSB), which promulgates occupational safety and health standards for the state of California. Seven board members are appointed by the Governor. The Chairperson is Mr. David Thomas and the Executive Director is Ms. Marley Hart.

DIR also has an independent OSHAB that adjudicates contested cases. Mr. Art Carter is the Chairperson and Ms. Kari Johnson is the Executive Director. Under the Labor Commissioner, the Division of Labor Standards Enforcement (DLSE) investigates allegations of discrimination. The Labor Commissioner is Ms. Julie Su and the Deputy Labor Commissioner is Ms. Ethera Clemons.

Occupational Safety and Health Administration (OSHA) funds this plan under grants authorized by Section 23(g) and 21(d) of the Occupational Safety and Health (OSH) Act. The 23(g) grant covers enforcement of private and public sector workers and consultation of public sector employers and the 21(d) Cooperative Agreement covers consultation of private sector employers. The final FY 2013 23(g) grant award for the State Plan totaled \$70,159,837. Of this amount, \$26,274,837 was matched funds and \$17,610,163 was state overmatch.

There are 26 enforcement offices located throughout the State Plan. These offices are separated into six regions, each headed by a regional manager. There are two high hazard units (HHUs) located in Oakland (HHU North) and Santa Ana (HHU South) that cover all high hazard industries, including complaints, fatalities, and accidents. A Process Safety Management (PSM) unit is currently co-located in the Concord District Office. There are two crane units under the Research and Standards Division located in Oakland and Santa Ana whose mission is to assist compliance safety and health officers (CSHOs) by providing technical expertise for cranes and hoisting equipment. They may also serve as expert witnesses. There are also three mining and tunneling offices in the state whose mandate is to inspect tunnels under construction.

C. Data and Methodology

Information from meetings with Cal/OSHA, DLSE, OSHSB, and the Appeals Board were used for this report. Additional information and data referenced in this report were derived from the Computerized State Activity Mandated Measures (SAMMs) dated November 12, 2013; Public Sector Mandated Activities Report for Consultation (Public MARC) dated October 30, 2013; California's FY 2013 State OSHA Annual Report (SOAR); Bureau of Labor Statistics (BLS) from Calendar Year 2012; the FY 2013 23(g) grant; Complaints About State Program Administration (CASPA) investigations; OSHA's Integrated Management Information System (IMIS) reports; case file reviews; and Cal/OSHA's Policy and Procedure (P&P) manual, volume II.

The sample size was derived in accordance with the FY 2013 FAME Guidance. The total population was the number of programmed inspections, un-programmed inspections and complaint investigations, opened and closed during FY 2013. A percentage of the total population for programmed inspections, un-programmed inspections, and complaint investigations was calculated accordingly and applied to the sample size to determine the number of case files to be reviewed. A random numbers table was generated and inspections were selected resulting in 19 programmed inspections, 24 un-programmed inspections, and 54 complaint investigations. In addition, 10 fatality inspection case files opened during FY 2013 were added to the sample for review for a total of 107 case files.

Interviews were conducted with the following: the HHU North's district manager and CSHOs; associate safety engineers from the Crane Certifier Accreditation Unit; and the Concord District Office's district manager and CSHOs. Information regarding the targeting programs came from Region VI's senior engineers, the deputy chief of enforcement, the district manager (PSM Unit), the special assistant to the director (DIR), and the project manager (DIR). In addition, discrimination cases closed in FY 2013 were chosen based on the types of investigator cases, and the age of the case, with respect to variable lapse times.

D. Findings and Recommendations

A total of 26 findings and three observations are identified, 17 of which relate to the enforcement program, and 10 to the discrimination program. Seven findings are related to enforcement measures, such as the low rate of serious citations, high lapse time, and the notification of complainants following an inspection or investigation. Five findings are directly related to grant issues, such as staffing, allotment of time, and the lack of a State Plan internal evaluation system. The remaining findings identified problems with the State Plan change process, the repeat policy, and problems with the documentation and evaluation of the targeting system. The findings related to the discrimination program include several problems with documentation. The remainder of the findings addressed problems with data entry, evidence of screening, effective remedies, taking oral and email complaints, and conducting complete and thorough investigations.

Specific details of the findings and recommendations are provided in Appendix A, observations in Appendix B, and the status of the FY 2012 findings and recommendations in Appendix C.

II. Major New Issues

Fall Protection: OSHA's directive, STD 03-11-002, became effective on June 16, 2011, and State Plans were advised to have a compliance directive on fall protection in residential construction that, in combination with applicable State Plan standards, results in an enforcement program that is at least as effective as OSHA. Cal/OSHA was notified that their standard and enforcement policy on fall protection in residential construction was not as effective as the federal standard. The Standards Board believes the State Plan's residential fall protection standard was as effective as OSHA's; however, they have indicated they are willing to meet with stakeholders to determine whether any changes, updates, or enhancements to the Cal/OSHA standard would be necessary.

Repeat Policy: An advisory meeting was held on March 13, 2014, regarding the revision of the repeat policy which is governed by state regulation 8 CCR 334(d). A change to this regulation must follow the California Administrative Procedures Act. An estimated date of completion will be provided by the State Plan in the near future.

Funding and Staffing Issues: Staffing issues continue to be reviewed with Cal/OSHA. This year's FAME has identified several areas of concern affecting the number of full-time equivalent (FTE) positions within the grant and the resulting non-enforcement inspections entered into IMIS. Resolving the FTE issue will provide an accurate assessment of the number of compliance officers throughout Cal/OSHA. Resolving the IMIS database issue will also provide an accurate account of the number of enforcement inspections the State Plan has actually performed, and the number of workers protected. Resolving the staffing issues will result in being able to better track the use of grant funds as well. These issues are addressed throughout this report and are now the basis of the Public Workers for Environmental Responsibilities (PEER) complaint and through the recent complaint filed with the State Auditor.

III. Assessment of State Plan Performance

1. ENFORCEMENT

a) Complaints

Response Time

Complaint inspections are divided into a serious or non-serious category with a negotiated goal of three workdays to initiate an inspection for alleged serious hazards and 14 workdays for non-serious (SAMM report FY 2013 - SAMM #1). SAMM #1 was designed to track one response time, which resulted in data that was not accurate. Because of the differences in complaint classification, California tracks response times (SAMM report FY 2013 - SAMM #1 and #2) manually. Complaint response times manually tracked indicate that Cal/OSHA's average response time to serious and non-serious complaints were 3.89 and 15.25 days, respectively.

Table 1
Complaints
(SAMM report FY 2013 - SAMM #1 and #2)

	FY 2011	FY 2012	FY 2013	Reference
Days to Initiate Inspection (SAMM #1)	18.65 days	14.93 days	14.36 days	3 workdays (serious) 14 days (non-serious)
Days to Initiate Investigation (SAMM #2)	6.72 days	8.27 days	9.31 days	5 days

Because the State Plan had not yet provided the complaint data tracked at the time of the onsite review, a sample of complaint inspections and investigations (phone/fax) were reviewed to assess response time. Out of the 15 complaint inspections reviewed that were classified as non-serious, eight (53%) were opened beyond the 14 calendar days. In one case file, the complaint alleged hazards involving an unguarded saw and grinder, and was classified as a non-serious complaint. However, the complaint should have been classified as serious. The inspection resulted in two serious and two other-than-serious citations issued.

This is the same finding from the FY 2012 FAME Report (12-01). A strategy of generating reports to track the complaints to correct this finding was not successful and this finding remains open.

Finding 13-01 (12-01, 11-01)

Complaint inspections classified as non-serious were not initiated within the negotiated time of 14 calendar days in 53% of the case files reviewed.

Recommendation 13-01 (12-01, 11-01)

Initiate non-serious complaint investigations within the negotiated timeframe.

Notification of Complainants

SAMM #3 reported that 99.7% of the complainants were notified on time of the results of their complaint. Case file reviews noted that complainants in 49 out of 54 complaint investigations and 23 out of 24 complaint inspections (99.9% of the complainants) were notified of the results of the investigation or inspection. However, response to complainants following investigations remains problematic. Three CASPAs were filed because complainants did not receive response letters following an inspection. Therefore, this observation from the FY 2012 FAME Report (13-01) remains open.

Observation 13-01 (Finding 12-01, 11-02)

Complainants were not consistently notified of the results of the complaint inspections or inquiries.

Federal Monitoring Plan 13-01 (Observation 12-01, 11-02)

OSHA will continue to monitor to determine if these are isolated events or trends.

b) Fatalities

Fatality Response Time

IMIS reports showed that 164 (90%) of the 182 fatalities were responded to within one day. The case file review indicated eight of nine fatalities (88.9%) were responded to within one day. SAMM #21 indicated an overall 90% rate to open inspections within one day.

In the SAMM report, there were 18 fatalities which were not responded to within one day. Three of the 18 fatalities were not opened within one day. Of the remaining 15, several were not fatalities but were serious injuries which turned into fatalities. In one of the cases, the inspection was opened prior to it becoming a fatality which would contribute to an exaggerated response time on the SAMM. The remainder of the fatalities not responded to within one day were due to the employer reporting the fatality several months later and the State Plan entering the date of the fatality into the database versus the date they were notified of the fatality. According to the SOAR, 95.5% of fatalities were responded to within one day.

Four of nine case files (44.4%) reviewed indicated final fatality letters were not sent to the next-of-kin notifying them of the results of the inspection. An interview with one district manager indicated a lack of knowledge that letters were required to be sent out to the next-of-kin.

Finding 13-02 (12-02, 11-05 and 10-03)

Final letters notifying the next-of-kin of the results of the fatality inspection were not sent in 44.4% of the case files reviewed.

Recommendation 13-02 (12-02, 11-05 and 10-03)

Final letters shall be sent to the next-of-kin after completion of the investigation as required by P&P Manual C-170 and 170A, Section D.6.f.

c) Targeting and Programmed Inspections

Inspection Targeting

A special study of the targeting program was conducted and is addressed in detail under Section 7, Special Studies – State Plan Targeting Programs. A total of 7,431 safety and health inspections were conducted which met the goal of 7,350 inspections (SAMM report FY 2013 - SAMM #17). The number of safety inspections conducted (5,773) was 4% less than the goal of 6,000 safety inspections, but the number of health inspections (1,658) exceeded the goal of 1,300.

Serious, Willful, and Repeat Violations

IMIS data indicated serious, willful, or repeat violations were cited in 26.7% of programmed safety inspections and 9.1% of programmed health inspections (see Table 2). This is a slight increase from the previous fiscal period, but remained lower than the national average. The cause of the low percent of serious, willful, or repeat violations cited could be attributed to a combination of factors such as: entering into IMIS in-compliance inspections that were not covered under OSHA enforcement activities, targeting programs that are not identifying or reaching high hazard industries, or issues with classification of hazards. This finding was identified in the FY 2012, FY 2011, and FY 2010 FAME Reports and corrective action was reportedly taken to develop better lists that would eliminate in-compliance inspections that resulted from establishments that were out of business or inactive. The FY 2012 FAME Report also noted that high hazard industry inspections, such as in tunneling, were yielding low numbers of inspections with serious, willful, or repeat violations (six out of 313 programmed inspections). However, corrective actions taken have not had any impact on the results and this finding (12-03, 11-07 and 10-07) remains open.

Table 2
Percent Programmed Inspections with Serious/Willful/Repeat Violations
(SAMM report FY 2013 - SAMM #8)

	FY2011	FY 2012	FY 2013	National Data
Safety	20.73%	20.86%	26.73%	57.0%
Health	6.21%	8.22%	9.09%	53.7%

Finding 13-03 (12-03, 11-07 and 10-07)

The percent of programmed inspections with serious, willful, or repeat violation was significantly lower than the national average, 26.73% vs. 57.0% for safety and 9.09% vs. 53.7% for health.

Recommendation 13-03 (12-03, 11-07 and 10-07)

Determine the cause of the low number of programmed inspections with serious, willful, or repeat violations, and implement corrective actions to ensure serious hazards are identified and eliminated.

The percentage of inspections that were in compliance was 32.6% for safety inspections and 43.5% for health inspections (SAMM report FY 2013 - SAMM #20). Although the in compliance rate for safety inspections was higher than the reference/standard of 29.1%, it was within the acceptable range of $\pm 20\%$. However, the rate for health inspections was higher than the reference/standard of 34.1%. This indicates that inspection resources are not being focused on those workplaces where workers are exposed to hazards. This relates to the low rate of inspections with serious, willful, or repeat violations cited and are related to targeting issues noted in the special study.

Finding 13-04

The percentage of health inspections that were in compliance was 43.5% which was higher than the reference/standard of 34.1%.

Recommendation 13-04

Ensure health inspection resources are spent in workplaces that are exposing workers to hazards by implementing corrective action to ensure inspections are conducted in the most hazardous worksites.

d) Citations and Penalties

Definition of Serious Violations

Cal/OSHA has not incorporated the new definition of serious violation into their P&P manual, but CSHOs are reportedly using the new definition of serious violation when issuing citations. Based on this information, Finding 12-04 (11-08) can be changed to an observation since this is an administrative matter to update their P&P manual to incorporate the new definition of serious violations and does not impact the issuance of citations. However, the rate of serious violations cited continues to be low and could indicate that the classification is not being correctly followed and bears monitoring.

Observation 13-02 (12-04, 11-08)

The new definition of serious violation was not incorporated into their P&P manual and applied.

Federal Monitoring Plan 13-02 (12-04, 11-08)

OSHA will continue to monitor the progress towards updating the manual as well

as track whether the updated policy is being used presently. Citation lapse time is measured by the number of workdays from the opening conference of an inspection to the issuance of the citation. The average time to issue a citation continued to be an issue with an average of 72.5 days for safety inspections and 76.0 days for health inspections (SAMM report FY 2013 - SAMM #23). The citation lapse time is well above the reference/standard of 43.4 days for a safety inspection and 57.0 days for a health inspection.

Prior to issuing a serious citation, AB 2774 requires that employers be notified and given at least 15 days to respond. Although this could increase the citation lapse time, it should be noted that on average, less than one (0.61) serious citation is issued per inspection so this may not have a great impact on the long citation lapse time. This practice of delaying the issuance of citations is concerning to OSHA and will be further examined as it appears to delay the abatement of violations which places workers at increased risk of death or serious injury or illness. This was identified in the FY 2012 FAME Report (Finding 12-02) and remains open.

Finding 13-05 (Observation 12-02, 11-41)

The citation lapse time was 72.5 days for safety inspections and 76.0 days for health inspections and was above the reference/standard of 43.4 days for a safety inspection and 57.0 days for a health inspection.

Recommendation 13-05 (12-02, 11-41)

Work with district and regional managers to improve citation lapse time.

Since FY 2011, the average number of serious, willful, or repeat violations issued per inspection has increased from 0.55 to 0.61, but is significantly lower than the national data of 2.0. The average number of violation per inspection for other-than-serious citation remains steady at 2.53, which is significantly higher than the national data of 0.88 (see Table 3). This imbalance indicates that inspections are not being conducted in the industries or workplaces with the highly hazardous conditions and is related to the targeting issues noted in the Special Study.

Citation classification could also be negatively impacted by district managers having to defend contested citations in front of the Administrative Law Judge (ALJ), due to the lack of attorneys used to represent the contested cases in court. The district managers do not have training to properly defend these cases nor do they feel comfortable in front of the ALJ and the opposing attorney. When proposing citations and penalties, it was reported that the “path of least resistance” is sometimes chosen to avoid testifying in front of the ALJ which has a direct effect on how citations are classified.

Table 3
Average Number of Violations per Inspection (SAMM #9)

	FY 2011	FY 2012	FY 2013	Reference
S/W/R	0.55	0.59	0.61	2.04
Other	2.71	2.67	2.53	0.88

In FY 2010, the repeat policy was identified as not as effective as OSHA’s policy, since it did not consider the employer’s inspection history throughout the state. In FY 2011 and 2012, no action was taken to change the policy. In FY 2013, efforts were initiated to change the repeat policy. Classification of violations as Repeat is determined by Title 8 CCR Section 334(d)). The change in the regulation to correct the finding of this report must comply with the State’s rulemaking requirements under the California Administrative Procedures Act. This is a repeat finding from the FY 2012 FAME Report and remains open until the regulation that requires this action is changed.

Finding 13-06 (12-05, 11-42, and 10-09)

When determining repeat violations, Cal/OSHA did not consider the employer’s enforcement history statewide. Instead, the employer history was only considered with each of the six regions as indicated in Cal/OSHA’s P&P manual, C-1B.

Recommendation 13-06 (12-05, 11-42, and 10-09)

Consider employer history statewide when citing repeat violations.

Penalties assessed continued to be the highest in the nation and significantly exceeds the national three-year data in all categories. Table 4 is a new measure and shows the average current penalty per serious violation based on the number of workers that are controlled by the establishment with smaller employers receiving a higher discount than larger employers.

Table 4
Average Current Penalty per Serious Violation (SAMM #18)

No. of Workers	FY 2013	National Three-Year Data
1-251+	\$6264.25	\$1446.80
1-25	\$3937.28	\$1139.90
26-100	\$6896.55	\$1427.50
101-250	\$8503.20	\$1954.90
251+	\$9343.42	\$2494.80

e) Abatement

According to SAMM #6, 97.8% of the abatement was verified in the private sector in a timely manner and 100% of public sector abatement had a timely verification. No specific problems were noted with abatement during the onsite.

A total of 2,442 (32.8%) of inspections issued had serious violations. The State Plan requires that at least 20% of those inspections with serious violations, and where the employer did not comply with the order or where the violations were

abated, will require a follow-up inspection. Using the latest IMIS report from December 19, 2013, there were 221 open non-contested cases with incomplete abatement. A total of 52 follow-up inspections were conducted. Follow-up inspections are useful to ensure abatement if there is a problem with abatement verification.

f) Worker and Union Involvement

Where a union exists in the workplace, Cal/OSHA must hold an opening and closing conference with the union. The worker representative has the right to participate in all phases of the inspection. During the inspection, to gain a better understanding of the operations, Cal/OSHA will interview the workers. The worker has the right to refuse to be interviewed.

Data indicated that Cal/OSHA either involved the worker representative or interviewed workers in 100% of their inspections. However, on-site records reviewed for verification did not support that data. On-site records indicated that five of 19 inspections (26.31%) where the union was on-site were not involved in the opening conference nor were workers interviewed.

Finding 13-07 (12-06, 11-11, and 10-10)

Worker representatives were not involved in the opening conference nor were workers interviewed in five of 19 inspections reviewed.

Recommendation 13-07 (12-06, 11-11, and 10-10)

An opening conference shall be held with the union either jointly with the employer or separately and properly documented. Worker interviews shall be conducted and documented.

2. REVIEW PROCEDURES

a) Informal Conferences

If the employer does not file an appeal with OSHAB, an informal conference will be attempted within 10 working days following the issuance of the citation. If the informal conference cannot be held within 10 working days, the reasons for this shall be documented in the case file, and an informal conference will be held at the earliest opportunity. If an appeal is filed with OSHAB, an informal conference can be held up to the day of the appeal hearing.

As indicated by the State Indicator Report (SIR), Cal/OSHA had fewer violations vacated (1.7% versus OSHA's 7.1%), fewer violations reclassified (0.5% versus OSHA's 5.6%), and retained the penalty in more inspections than OSHA (68% versus OSHA's 60.7%) in private sector inspections.

b) Formal Review of Citations

An employer has 15 working days to file an appeal with the OSHAB. The OSHAB may accept an appeal after the 15 working days if the employer can show good cause. Good cause means circumstances beyond one's control that could not have been reasonably anticipated. An employer may withdraw and terminate the appeals proceedings. At least 30 days prior to the hearing, OSHAB will send out a notice of hearing to the parties involved. The employer is responsible for notifying workers of the pending hearing by posting the notice near the site of the alleged violation, in a conspicuous place, or where the workers report or carry out their duties. The ALJ will file a written determination within 35 days after the hearing. Any party to an appeal has the right to petition OSHAB to reconsider an order or decision of an ALJ.

Any party to an appeal who disagrees with a decision after reconsideration or the denial of a petition for reconsideration may apply to the California Superior Court for a writ of mandate pursuant to the Code of Civil Procedure section 1094.5.

OSHAB consists of three members appointed by the governor for staggered four-year terms. One member is selected from the field of management, one from the field of labor, and one from the general public. The chairman is selected by and serves the governor. OSHAB vacated 21.3% of violations in the private sector and vacated 12.2% in the public sector. OSHA reclassified violations 10.4% for private sector employers and 6.7% for public sector employers. There was no difference in penalty retention between the private and public sector employers (47.3% private versus 47.5% public sector). Cal/OSHA retained the total initial penalty 83.17% of the time for non-contested violations which surpasses the national data of 66% (SAMM #24).

3. STANDARDS AND FEDERAL PROGRAM CHANGES (FPCs)

a) Standards Adoption

The OSHSB is the only agency that can promulgate occupational safety and health standards for California. When a new or revised standard undergoes changes, OSHSB requests an advisory opinion from OSHA. OSHA reviews the new or revised standard to ensure it is at least as effective as the federal regulation and issues a response. The Hazard Communication-Globally Harmonized System of Classification standard was divided into a safety and a health component. The health component was adopted, but the safety component is still outstanding and overdue (see Table 5). The Advisory Opinion noted that two sections of Title 8 needed to be adopted.

The FY 2012 FAME Report identified a finding regarding employer payment for Personal Protective Equipment. The P&P manual was updated to allow issuance of a citation. Finding 12-07 was completed

**Table 5
Status of 2012 Federal Standards Adopted**

Federal Standard	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
29 CFR 1910, 1915, 1917, 1918, 1926 Hazard Communication- Globally Harmonized System of Classification (03/26/2012)	05/01/2012	Yes	No	09/26/2012	Still Pending
Updating OSHA Standards based on National Consensus Standards; Head Protection (11/16/2012)	12/05/2012	Yes	No	07/16/2013	07/01/2013

The response time to Federal Program Changes (see Table 6) significantly improved by assigning a senior safety engineer to oversee this process. Due to the impact of this corrective action, responses are being submitted timely and FY 2012 Finding 12-08 can be considered completed. However, the adoption of FPCs have not been timely.

OSHA directive STD 03-11-002 became effective on June 16, 2011, and State Plans were advised to have a compliance directive on fall protection in residential construction that, in combination with applicable State Plan standards, results in an enforcement program at least as effective as OSHA's. Cal/OSHA standards and enforcement policies on fall protection in residential construction raised several concerns, such as the varying trigger height for fall protection and lack of clarity on which heights apply to residential construction, lack of a cohesive standard or compliance policy and the requirements for fall protection plans. On May 28, 2013, a letter was sent to Cal/OSHA requesting a detailed analysis of California's fall protection standards and enforcement policies for residential construction. On August 16, 2013, the OSHSB responded that the State Plan's residential fall protection standard was as effective as OSHA's standard, but indicated that they are willing to meet with stakeholders to determine whether any changes, updates, or enhancements to the Cal/OSHA standard would be necessary. To date, no such meeting has taken place. This is an ongoing issue.

As discussed above under Section 1.d. Citations and Penalties, revision of the repeat policy continued with an advisory meeting held on March 13, 2014. The policy is projected to be finalized and posted to the website by September 2014.

Observation 13-03

Standards and Federal Program Changes that provide equivalent protection to

workers, such as GHS, have not been adopted within the time frame required.

Federal Monitoring Plan 13-03

Monitor to ensure electrical equipment in hazardous (classified) locations is heard in October 2014 at the Standards Board meeting.

**Table 6
Status of Federal Program Changes (FPCs) Adoption**

FPC Directive/Subject	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
CPL 02-00-148 Field Operations Manual (03/26/2009)	06/04/2009	Yes	No	09/26/2009	(4/22/2010) Pending revised FOM per OSHA's comments to original submission
CPL 02-00-148 Revisions to FOM November 2009 (11/09/2009)	04/22/2010	Yes	No	05/09/2010	Still Pending
CPL 02-00-150 Revisions to Field Operations Manual - April 2011 (04/22/2011)			No	10/22/2011	
CPL 02-01-051 2011 443 Confined Spaces in Shipyards (05/20/2011)	03/28/2013	No	N/A	N/A- adoption not required	N/A
CPL 02-03-004 2012 544 Section 11(c) Appeals (09/12/2012)	1/1/2013	Yes	No	N/A- adoption not required	N/A
CPL 02-01-054 Inspection & Citation Guidance for Roadway and Highway Construction Work Zones (10/16/2012)	12/28/2012	Yes	Yes	N/A – adoption not required	06/01/2013
CPL 02-13-01 Site-Specific Targeting 2012 (SST-12) (01/04/2013)	4/10/2013	No	N/A	N/A – adoption not required	N/A
CPL 03-00-017 National Emphasis Program	8/15/2013	Yes	No	12/20/2013	12/20/2013

Occupational Exposure to Isocyanates (06/20/2013)					
CPL 02-00-155 Federal Program Change Memo for OSHA Instruction CPL 02-00-155 (09/06/2013)	11/05/2013	No	No	N/A-adoption not required	02/18/2013

b) OSHA/State Initiated Changes

**Table 7
Status of Federal/State Initiated Changes**

Rulemaking	Public Hearing Date	Effective Date
Elevated Locations-Guardrail Exception for Portable Amusement Rides	October 18, 2012	April 1, 2013
Horizontal Pull Saw (Radial Arm Saw) Guarding	December 12, 2012	April 1, 2013
OSHA Direct Final Rule-Head Protection	January 17, 2013	July 1, 2013
Airborne Contaminants: Ethylene	January 17, 2013	October 1, 2013
Aerosol Transmissible Diseases Respirator Exception	February 21, 2013	October 1, 2013
The Securing of Poles During Removal Operations	February 21, 2013	July 1, 2013
Strap-on Foot Protectors	March 21, 2013	
Hoisting, Use of Cribbing, ASME Reference Correction	March 21, 2013	July 1, 2013
Working on (Dismantling) Pressurized Pipe	April 18, 2013	October 1, 2013
Laboratory Accreditation for Diacetyl Analysis	April 18, 2013	October 1, 2013
Scope and Application-Ship Building	April 18, 2013	October 1, 2013
Fire Control, Update of References to NFPA 13 Standard, Installation of Sprinkler Systems	May 16, 2013	October 1, 2013
Internal Combustion Engine-Driven Equipment (Technical Amendments)	June 20, 2013	October 1, 2013
Airborne Contaminants: N-Methylpyrrolidone	July 18, 2013	April 1, 2014
Cranes and Derricks in Construction-Underground and Demolition	July 18, 2013	April 1, 2014
Powered Industrial Trucks-Excessive Loads	August 15, 2013	Pending
Airborne Contaminants: Naphthalene	August 15, 2013	Pending
Safe Patient Handling	September 19, 2013	Pending

The Bakery Oven Standard was passed in May 2009 and OSHA’s review deemed that the standard was not as effective as the federal standard. Discussions between the OSHSB and OSHA have been on-going in trying to resolve this difference. This finding was identified in the FY 2012 and FY 2011 FAME Reports (12-09) and has not been resolved. The finding was amended to include other State-initiated changes that have not been resolved.

The OSHSB was notified of a discrepancy within Title 8, standards regarding certification of cranes, in which Section 5021 applies only to cranes greater than three tons. OSHSB is aware of this issue and is in the process of working to amend Section 5021.

Finding 13-08 (12-09, 11-17, and 10-23)

State-initiated rulemaking promulgated standards were not at least as effective as OSHA standards, such as the Bakery Oven and Crane load testing.

Recommendation 13-08 (12-09, 11-17 and 10-23)

Ensure standards are at least as effective as OSHA standards and initiate actions to update deficient standards.

4. VARIANCES

Cal/OSHA grants temporary variances while the OSHSB grants permanent variances. No temporary variances and two permanent variances were granted (see Table 8).

**Table 8
Permanent Variances Granted**

File Number	Applicant Company Name	Docketing Date	Safety Order	Section	Subject	Decision
12-V-162	Barnard Impregilo Healy Joint Venture	August 20, 2012	General Industry	6090(d)	Manual Control for Decompression	Granted
13-V-052	United States Cold Storage of California	March 5, 2013	General Industry	3272(e)	Aisle Width for Industrial Trucks	Granted

5. PUBLIC WORKER PROGRAM

A total of 463 inspections were conducted in the public sector (6.23%) of the total number of inspections, exceeding the projection of 420 inspections (see Table 9). There was no program to target state or local agencies and most of these

inspections were un-programmed inspections. Penalties were assessed against state and local agencies as they were for private employers.

Table 9
Percentage of Total Inspections in Public Sector (SAMM #11)

FY 2011	FY 2012	FY 2013	FY 2013 State Plan Average (Three Years)
6.85%	6.85%	6.23%	6.8%

6. DISCRIMINATION PROGRAM

DLSE investigates claims of whistleblower retaliation for reporting occupational safety and health issues under Cal Labor Code §6310 and §6311, along with many other anti-retaliation statutes. Out of the 20 investigators which make up DLSE’s Retaliation Complaint Investigation (RCI) unit, five are used exclusively for §6310 and §6311 investigations. The other 15 investigators investigate retaliation filed under other statutes and are not covered under the grant. During the first half of FY 2013, there were two supervisors for the five investigators, with one supervisor covering Northern California and the other Southern California. In roughly the second half of FY 2013, there were two different supervisors for the same five investigators. Although the remaining 15 DLSE investigators typically do not investigate discrimination cases, they could be assigned one if the claim included a discrimination allegation (which is rare).

In addition to a DLSE Policies and Interpretations Manual, the RCI unit uses the RCI Manual issued March 2009, that sets forth general procedures from complaint intake and docketing to conducting an investigation, report writing, hearing in certain cases, making a determination, appeal process and referral to legal in case a violation is found, to closing the file. The RCI Manual is not specific to §6310 and §6311, but contains general procedures DLSE uses to investigate more than 31 anti-retaliation code sections under DLSE’s jurisdiction. The RCI unit also references an earlier RCI draft Manual, issued in July 2005, which includes case law specific to §6310 and §6311 cases. The RCI Manual resembles OSHA’s WIM issued in 2003, but has not been updated to be in line with the current Whistleblower Investigation Manual (WIM), issued in September 2011, nor has it been submitted for approval.

Finding 13-09

DLSE did not update its RCI Manual and/or Policies and Interpretations Manual in line with OSHA’s updated WIM.

Recommendation 13-09

DLSE should update its RCI Manual and/or Policies and Interpretations Manual to ensure that its policies and procedures are at least as effective as OSHA's and submit to OSHA for approval.

Several internal training sessions were conducted, including: a one day Worker Interview Skills course in May 2012, a one day Mediation, Conflict Resolution and Negotiation Skills course in May 2012, a one day Forms Training in September 2012, a two day Retaliation Complaint Investigation training in December 2012, a half-day IMIS Training in March 2013, and a one day Retaliation Complaint Investigator Update Training in December 2013. Although DLSE does not send investigators handling discrimination cases to OSHA's two-week Basic Whistleblower Investigations course (#1420), DLSE's internal training sessions teach the same basic skills. These training sessions were given to all 20 DLSE investigators with references to the §6310 and §6311 statutes to highlight specific requirements, legal standards, and applicable case law. This finding in the FY 2012 FAME Report (12-14 and 11-40) has been corrected and closed.

Based on the types of cases closed, nine dismissed/non-merit, eight settled other, and two withdrawn cases were reviewed. The one litigation/merit case requested was unavailable for review. In six of the 19 cases reviewed, the date a written complaint was received was recorded in IMIS as the filing date, rather than the postmark date of the complaint. As discussed in OSHA's WIM Chapters 2(IV) and 5(VII), and the RCI Manual 2.3(J) and 2.4(C), the date a complaint is filed is the date of the postmark, facsimile transmittal, email communication, telephone call, hand-delivery, delivery to a third-party commercial carrier, or in-person filing. The State Plan's policy was to record the filing date as the date received for cases filed by mail.

In six of the 19 cases reviewed, the incorrect determination was recorded in IMIS. Four of these six cases were coded as settled when they should have been coded as settled other. Two of the six cases were coded as withdrawn when they should have been coded as dismissed/non-merit. According to the OSHA's IMIS User Guide and WIM Chapter 6(IV)(C and D), this information should be correct. It should be noted that RCI Manual 4.9 does not distinguish between "settled" and "settled other," although it does delineate the difference between withdrawn and dismissed.

As of March 4, 2014, six out of 319 cases filed from 2004 through 2007 appeared to have been closed, but were still showing as open in IMIS. This was part of the finding from the FY 2012 FAME Report (12-12 and 11-36) and has been verified as corrected.

It appeared that administratively closed cases were inputted, tracked, and appropriately documented in IMIS. This finding from the FY 2012 FAME Report (12-13 and 11-38) has been corrected and closed.

Since OSHA was not able to review any recommended merit cases, it could not determine if the complainant's remedies in merit cases were accurately entered. This finding from the FY 2012 FAME Report (12-12) cannot be verified as corrected and remains open.

Finding 13-10 (12-12 and 11-36)

Information regarding discrimination cases was not accurately entered into IMIS, such as the filing dates, and case determination, as required by the WIM Chapters 2(IV), 5(VII), and 6(IV)(C and D), OSHA's IMIS User Guide, and RCI Manual 2.3(J), 2.4(C), and 4.9.

Recommendation 13-10 (12-12 and 11-36)

DLSE should follow their procedures and OSHA's procedures to ensure that discrimination case information are accurately entered into IMIS.

Of the 19 cases reviewed, three cases lacked evidence that the complaint had been screened for the presence of a *prima facie* claim of retaliation, timelines, and jurisdiction, as required by the WIM Chapters 2(II)(A), 3(III), 3(VI)(D)(3), and 3(VI)(L)(1), and RCI Manual 2.3(A) 2.5(D), 3.2(A), and 3.4(J). Supervisors reportedly always screen newly filed complaints but do not complete a screening memo or take notes. If a supervisor contacts the complainant in writing to request additional information, the additional information is kept in the file.

Finding 13-11

Discrimination case files did not contain evidence of screening, as required by WIM Chapters 2(II)(A), 3(III), 3(VI)(D)(3), and 3(VI)(L)(1), and RCI Manual 2.3(A) 2.5(D), 3.2(A), and 3.4(J).

Recommendation 13-11

DLSE should follow its own procedures and OSHA's procedures to ensure evidence of screening is included in the discrimination case file.

Almost all 19 cases reviewed showed that the complaint had been filed in writing. According to the WIM Chapter 2(II), a complaint can be filed orally or in writing and no particular form of complaint is required. The RCI Manual 2.2 indicates that workers who file orally will be directed to fill out their complaints in writing using DLSE Form 205 and that there are no procedures in place accept complaints by facsimile or email.

According to DLSE, if a worker contacts the reception line about whistleblower issues, the caller is referred to the website and Form 205. However, DLSE explained that if the caller specifically states that he or she wants to file a whistleblower complaint via the phone, staff will accept the oral complaint, and will usually reduce it to writing on the complaint form. In this situation, the filing date is the date of the call. DLSE said that for complaints that arrive by facsimile or email, the filing date is the date received by DLSE.

It could not be verified by OSHA if there was policy guidance indicating that orally filed complaint would be reduced in writing if the worker requested it or if complaints sent in by fax or email would be accepted. Rather, it appears from DLSE's manual and website that workers must still file their complaints in writing by using DLSE's approved Form 205. This finding from the FY 2012 FAME Report (12-11 and 11-35) could not be verified as completed and remains open.

Finding 13-12 (12-11 and 11-35)

The RCI Manual 2.2 discouraged accepting orally filed, faxed, and emailed discrimination complaints, in violation of WIM 2.2.

Recommendation 13-12 (12-11 and 11-35)

The RCI Manual should be changed to indicate that discrimination complaints will be accepted if orally filed, faxed, or emailed.

Two of the cases reviewed were docketed even though the complainants did not allege that they had been retaliated against for raising occupational safety and health issues. In the third case reviewed, the claim was docketed prior to the investigator determining whether equitable tolling applied to justify an untimely filed case. This did not affect the integrity of the investigations; however, these cases may have been properly screened out as they failed to meet threshold elements. Supervisors should review screening documentation to ensure proper screening.

One case, dismissed for failure to show an adverse action, did not have documentation of interviews. The WIM Chapter 3(III), (VI)(D)(3), (VI)(E)(10), (VI)(H)(5), (VI)(L)(1), and RCI Manual 3.4(D), (D)(8), (E)(1), (F)(3 and 4), and (J) requires that all interviews be documented in the file. In three cases, there was no documentation of a closing conference. These three cases were all dismissal/non-merit cases. The WIM Chapter 5(V)(C) requires that all interviews be documented in the case file and that closing conferences be documented. The RCI Manual 3.4(I)(1) gives discretion for the investigator to choose whether to conduct a closing conference in a dismissed case. However, if a closing conference is conducted, it should be documented in the file, per RCI Manual 3.4(J). This was a finding in the FY 2012 FAME Report (12-10 and 11-24) and remains open.

Finding 13-13 (12-10 and 11-24)

There was no documentation in the discrimination case file of the complainant interview, relevant witness interview(s), or closing conference, as required by WIM Chapters 3(III), (VI)(D)(3), (VI)(E)(10), (VI)(H)(5), (VI)(L)(1), 5(V)(C) and RCI Manual 3.4(D), (D)(8), (E)(1), (F)(3 and 4), II(1), and (J).

Recommendation 13-13 (12-10 and 11-24)

DLSE should follow their procedures and OSHA's procedures to ensure there is documentation in the case file of the complainant interview, relevant witness interview(s), and the closing conference.

There were three cases where the investigation was incomplete. In one case, a document submitted in Spanish was not translated into English, making review of the document difficult and potentially affecting the investigation. In another case, there was no documentation showing that any investigation was conducted even though the case was dismissed. In a third case, the investigator dismissed the case for a lack of employer knowledge and nexus even though the complainant and relevant company witnesses were not interviewed. In that case the investigator appeared to have relied solely on one third party witness interview and submissions from both parties to reach the conclusion. The WIM Chapter 3(VI)(B through I) and RCI manual 3.4 (B through I) require complete investigations.

Finding 13-14

Complete and thorough discrimination investigations were not conducted, as required by WIM Chapter 3(VI)(B through I) and RCI manual 3.4 (B through I).

Recommendation 13-14

DLSE should follow their procedures and OSHA's procedures to ensure that discrimination investigations are complete.

There were three cases where closing letters were not sent. In one case, which was dismissed for the Complainant's lack of cooperation, there is no evidence that closing letters were sent to the parties. In another case which was dismissed for unknown reasons, there was no documentation that closing letters were sent to the parties. The third case, which was dismissed for being untimely, did not contain evidence that closing letters were sent to the parties. The WIM Chapter 5(V)(E) and RCI Manual 4.2 (A through K) requires that closing letters be sent to the parties for all dismissed/non-merit cases.

Finding 13-15

Dismissed/non-merit discrimination cases did not contain documentation that closing letters were sent to the parties, as required by The WIM Chapter 5(V)(E) and RCI Manual 4.2 (A through K).

Recommendation 13-15

DLSE should follow their procedures and OSHA's procedures to ensure that there is documentation in the case file that closing letters were sent to the parties.

Neither the RCI Manual nor DLSE's training materials discuss the availability of punitive damages, although they discuss the availability of other damages such as compensatory damages for pain and suffering. The WIM Chapter 6(D) requires that punitive damages be explored where the company's conduct is motivated by evil motive or intent, or when it involves reckless or callous indifference to the rights of the worker. It should be noted that while Section 11(c), like §6310 and §6311, does not expressly authorize punitive damages, federal courts have long interpreted Section 11(c) as allowing for punitive damages (see, for example, Perez v.

Renaissance Arts and Education, Inc. dba Manatee School for the Arts, et al., LEXIS 141752 (M.D. Florida, September 30, 2013; and Reich v. Skyline Terrance, Inc. 977 F. Supp. 1141 (N.D. Okla. 1997). According to DLSE, while there is no express authority in the Labor Code and no case on point, DLSE believes it has authority to seek punitive damages in appropriate actions when it files a civil court claim under Labor Code Section 98.7.

Finding 13-16

DLSE's Manual and training materials did not have procedures to ensure that punitive damages were available under §6310 and §6311.

Recommendation 13-16

Create procedures in the manual and training materials that ensure punitive damages are available where appropriate, when filing meritorious cases in civil court.

There were two cases where there was no documentation that appeal rights were mentioned to the Complainant during the closing conference. The WIM Chapters 3(III), (VI)(K)(3), (VI)(L)(1), and 5(IV)(C) require that investigators inform Complainants of their appeal rights during closing conferences and also requires that such conversations be documented in the file. OSHA is not aware that the RCI Manual contains such a requirement. This did not affect the integrity of the investigations as appeal rights are also provided in closing letters; however investigators should be briefed to ensure they cover all appeal rights and to document such conversations in the case file.

There were two cases where there was no documentation that Complainants were advised that they would be giving up appeal rights if they withdrew their complaints prior to DLSE accepting their withdrawals. The WIM Chapter 4(IV)(1) requires that investigators inform Complainants that they will be foregoing appeal rights if they withdrew their complaint and also requires that such conversations be documented in the file. The RCI Manual does not appear to include this direction. This did not affect the integrity of the investigations, but investigators should be briefed to cover all appeal rights and to document such conversations.

Report Writing

In four of the cases reviewed, the ultimate conclusion was not supported by the evidence. As discussed above, one case was dismissed for failure to show an adverse action but lacked any evidence to support the finding. Another case was dismissed for the Complainant's apparent lack of cooperation, but there was no evidence to support this conclusion. The third case was dismissed but there was no evidence in the file showing why a dismissal was warranted. As discussed above, in the fourth case, the investigator concluded that employer knowledge and nexus were not found and dismissed the case as a result. However, the investigator largely relied on management statements instead of interviewing management witnesses to test the company's defense. The WIM Chapter 5(IV)(B) and RCI Manual 4.2(B)(1 and 2)

requires that the recommended determination be supported by evidence within the file.

Finding 13-17

The conclusion in discrimination cases was not always supported by the evidence in the case file, as required by the WIM Chapter 5(IV)(B) and RCI Manual 4.2(B)(1 and 2).

Recommendation 13-17

DLSE should follow their procedures and OSHA's procedures to ensure that there is documentation in the case file that supports the conclusion.

In four of the 19 cases reviewed, a final report, or IMIS report in lieu of a final report, was not included in the case file. According to OSHA's "Revised Whistleblower Disposition Procedures," final reports are required for dismissed/non-merit and for litigation/merit cases (see WIM Chapter 5(IV)(B)), abbreviated final reports can be submitted for cases that are dismissed without investigation (e.g. untimely complaints or those where no prima facie allegation is made), while no final reports are required for settled, settled other, and dismissal/non-merit cases where the Complainant stops cooperating in the investigation (an IMIS report is allowed for such cases). One case which was dismissed for a failure to show an adverse action did not include a final report. Another case was dismissed for unknown reasons but failed to include a final report. Similarly, a settled other and a withdrawal case did not include an IMIS report in lieu of a final report within the file. The RCI Manual 4.2 (A through C) requires that the investigator always prepare a report, along with other documents, at the conclusion of an investigation.

Finding 13-18

A final report, or IMIS report in lieu of a final report, was not included in the case file, as required by OSHA's WIM Chapter 5(IV)(B) and "Revised Whistleblower Disposition Procedures," and RCI Manual 4.2 (A through C) in 4 out of 19 cases reviewed.

Recommendation 13-18

DLSE should follow their procedures and OSHA's procedures to ensure that a final report, or IMIS report in lieu of a final report, be included in the case file.

There were five cases where either the final report or the IMIS report submitted in lieu of the final report did not cite to exhibits. The WIM Chapter 5(IV)(B) requires that final reports cite to exhibits, while OSHA's "Revised Whistleblower Disposition Procedures" requires that exhibits be cited in the IMIS reports submitted in lieu of the final report. This did not affect the integrity of the investigations but would improve the final reports. The RCI Manual 4.2 (A through C) does not require that final reports cite to exhibits within the case file.

Three cases which settled with no-rehire clauses did not include documentation in the case files showing that the investigator interviewed the Complainant to ensure that he/she was not frozen out of his/her industry in the locality where he/she lived, as required by the WIM Chapter 6(IV)(E)(5). The RCI Manual does not appear to require this or something similar. This did not affect the integrity of these investigations; however, supervisors should review settlements to ensure they are in accordance with the WIM.

Two cases which settled privately contained what appeared to be impermissible gag orders to protected activity. The cases did not contain documentation that the investigator asked the parties to insert curing language required in the WIM Chapter 6(IV)(E)(2 and 3) before approving the settlement. The RCI Manual does not appear to include a similar requirement. This did not affect the integrity of the investigations; however, supervisors should review settlements to ensure they are in accordance with the WIM.

In seven of the 19 cases reviewed, case file organization was not in line with the requirements of the WIM Chapter 6(III) and RCI Manual 3.2(A and B). Many of these cases had no organization and were not assembled in any logical fashion. Five of the eight remaining cases reviewed were not technically organized in the manner prescribed in the WIM, but were generally easy to review and organized in a logical fashion. Although this did not affect the integrity of the investigations, it would improve the case files and would aid the review process.

In 16 of the 19 cases reviewed, the statutory time period to conclude the investigation was exceeded, however, 29 CFR 1977.16 allows for situations where this time period can be extended.

Eighteen percent of §6310 and §6311 discrimination investigations were completed within 90 days. Of the 193 cases closed, 23% were meritorious cases, Table 10. The average number of calendar days for investigators to complete investigations was 312 days.

Table 10
Status of 11(c) Investigations Completed within 90 Calendar Days
(SAMMs #13 and #14)

Percent of 6310 and 6311 Investigations Completed within 90 days	FY 2011	FY 2012	FY 2013	National Average of State Plans (FY 2011 – FY 2013)
Completed within 90 Days	4%	17%	18%	55%
Merit Cases	14%	22%	23%	20%

7. SPECIAL STUDY – STATE PLAN TARGETING PROGRAMS

Development of Targeting Programs

Employers are targeted through the High Hazard List, Special Initiatives (such as Heat Illness or Permit Confined Spaces) and Mandated Programs (such as Process Safety Management, Mining and Tunneling, Crane Permits, and the Labor Enforcement Task Force). Three National Emphasis Programs (NEPs) were adopted and include Isocyanates, Primary Metals, and Chemical Industries. In addition, there are five Local Emphasis Programs (LEPs) which include Region Plan, Permit, Tunnel, Carcinogen Registry, and Compliance Assistance. OSHA's directive, CPL 04-00-001, Procedures for Approval of Local Emphasis Programs, was not adopted and standardized criteria was not used for targeting. The senior safety engineer and regional manager from Region VI; the deputy chief for enforcement, legal, medical unit; the Cal/OSHA Chief; and the deputy chief for research and standards are involved in developing the targeting programs.

High Hazard List: The targeting program for industries on the High Hazard List are developed from data obtained from the Division of Workers Compensation, Bureau of Labor Statistics (BLS), Workers Compensation Insurance Rating Bureau, Hazard Evaluation System and Information Service (HESIS), and sentinel events. Industries with a Days Away, Restricted, and Transferred (DART) rate of twice the rate of the private sector or greater than 4.0 will be added to the High Hazard List. All employers in the industries on the High Hazard List are then added to the targeting list in alphabetical order. The targeting is then randomized with the first 100 selected for inspections sent to the two HHU district managers. Deletions may be made if an establishment had a comprehensive inspection within the previous three years. The Region VI senior engineer maintains the targeting list electronically and updates the information based on feedback from the HHU district managers.

Special Initiatives: The Heat Illness Prevention initiative is developed very differently than what is used for the High Hazard Industries.

The Heat Illness Prevention Special Initiative targets employers in the construction and agriculture industries and started in 2007. Agriculture employers are targeted based on the time of year (i.e., a harvesting season during the summer months) and geographic location. A targeting list is not generated, and employer selection is subjective. Compliance staff are given a geographic location to cover and they select every nth employer, where n could be any number and there is no specific reason for selecting it. There is an outreach component for the Heat Illness Prevention Special Initiative Program that includes speeches, booths, radio announcements, and on the Cal/OSHA website. In addition, a standard and defensible mechanism for selecting employers that is legally defensible should be developed.

Mining and Tunneling: The Labor Code 7953 mandates that employers obtain a permit for underground tunnel work prior to starting. Tunnels under construction are then inspected at least six times per year, or every two months. The three mining and tunneling offices had rates of 78.04%, 81.53%, and 95.83% for inspections that were in compliance and no violations identified or cited. During the case file review, six of the 19 program planned cases reviewed were actually pre-job requests from employers for tunneling permits. OSHA does not consider these as enforcement inspections as there is no work activity being inspected, but are more suited to be classified as compliance assistance. In addition, a review of the case file for one of these pre-job inspection requests, violations were identified, but no citations were issued, no referral was made, and there was no documentation in the file that these violations were corrected.

Crane Permitting: The Crane Unit staff issue tower crane permits, audit companies that certify cranes, assist CSHOs by providing technical expertise for cranes and hoisting equipment, and conduct random audits of crane operators and cranes in the field. They may also serve as expert witnesses. In IMIS, 60 inspections had the optional code of “tower crane,” classification of “permit,” and were marked as program planned inspections. There were no violations in any of the 60 inspections. The case files reviewed indicated four of the 19 programmed planned inspections were “hazardous employment permit” inspections and no violations were cited. These are inspections done by the Crane Certifier Accreditation Unit which result in a crane permit. If the crane unit engineers observe a hazard, they refer the case to a compliance officer. OSHA does not consider these permit inspections to be enforcement inspections as there is no work being done and no workers exposed. The on-site review also found one complaint regarding crane operations that was submitted to a district office and handled as an inquiry. The complaint should have been classified as a formal complaint, which should have resulted in an inspection in accordance with P&P manual, C-7.

Finding 13-19

Inspections conducted to issue permits for underground tunneling and cranes were entered as enforcement inspections when there was no enforcement component.

Recommendation 13-19

Do not enter non-enforcement inspections into IMIS.

PSM: Targeting programs for high hazard industries and facilities subject to the PSM regulation fall under the PSM Unit. A source list of facilities covered by the PSM regulation was developed from a variety of databases such as Environmental Protection Agency Right to Know Network, California Department of Food and Agriculture-Fertilizing Materials Inspection Program, IMIS database, referrals from the Certified Unified Program Agencies (CUPA), local air districts, union representatives, and other public information source. The district manager selects every nth employer on the list for inspection, where n is any number. Facilities

that have been inspected within the past three years are placed on the follow-up list. The type of facilities selected depends upon the industry makeup. For example, the district manager will divide the number of facilities within a category by the total number of facilities covered under PSM to obtain the percentage for that category. The district manager will take from the industry-specific list the number of establishment based on the percentage. The targeting list is maintained electronically and is updated by the district manager. At the end of the fiscal year, the district manager will print out the inspection list along with the types of violations and will analyze the results.

Labor Enforcement Task Force (LETF): The LETF targets the underground economy and is a joint effort by Cal/OSHA, DLSE, Economic Development Department (EDD), and the Contractor State Licensing Board. The targeting program for LETF started in 2012 and was developed by a special assistant to the director, DIR. The industries targeted under this program include construction, garment, automotive, agriculture, restaurants, manufacturing, and wholesale warehouses. Information from various databases in other agencies, complaints that are e-mailed to or posted on the internet, and stakeholders input, is used to develop a target list of employers. This list is sent to EDD to ensure the establishment is still operating and participating agencies and delete employers inspected within the past year. The participating agencies inspecting the establishment will cover issues under their purview.

Each participating agency tracks the inspections within their division. Inspection assignments are the responsibility of the participating agency. Once completed, the inspection results are transmitted to DIR and entered into a database. DIR will review and analyze the data in the database. DIR will breakdown the data by industry, agencies, violations, etc. They will also look at geographic trends and review the available resources. Goals are established based upon each division's strategic plan. Each division is responsible to evaluate if the targeting program has met their goals. DIR conducts training for participating agencies to understand the targeting program and there is a bi-weekly call. DIR will participate in outreach events to inform employers and workers of their rights, and has contracted with UC Berkeley to assist in their outreach efforts.

Finding 13-20

Methods used for targeting high hazard industries for inspections and establishing targeting lists were not always documented and did not demonstrate that legal requirements were met and that specific neutral criterion were used.

Recommendation 13-20

Develop and document defensible targeting methods and programs that meet the legal requirement that demonstrate sites are selected according to an administrative plan containing specific neutral criteria such as selection, scheduling cycles, criteria for deletion or addition of sites, and frequency of selection.

Evaluation of the Targeting Program

HHU: The HHU North conducted 101 programmed planned inspections and HHU South conducted 182 inspections. Out of the total 1,192 violations cited, 563 (47%) of those were serious. Given that HHUs are targeting high hazard industries with DART rates greater than 4.0, one would expect the inspections with serious hazards would be higher than 40 or 50 percent. Since all establishments in industries with a DART rate greater than 4.0 are included in one list before randomizing, inspections are not always conducted in the industries with the highest rates and most hazardous conditions. The targeting program needs to be evaluated to ensure high hazard establishments with the most serious hazards are being inspected.

Heat Illness Prevention Initiative: The effectiveness was evaluated on inspection goals, the injury and illness and fatality rates, compliance rate, and analyzing trends by a management team. For example, 2,500 heat inspections were projected, and 2,986 heat inspections were conducted, surpassing their goal. During this fiscal year, Cal/OSHA did not meet their goal in regards to lowering the fatality rate for heat related deaths. IMIS data showed that a total of 3,840 inspections were conducted under the Heat Illness Prevention initiative. Of these, 1,005 inspections were programmed planned which resulted in 31% having a serious, willful, or repeat violation cited. Only 15% of the total citations issued were classified as serious, willful, or repeat. All enforcement offices conduct these inspections during the summer months. The data shows that the majority of inspections are not finding serious hazards. Given that a great amount of resources were expended during the “heat sweeps,” the program should be evaluated to determine if there are other strategies to get to the sites that have the most serious hazards.

PSM: Under the PSM targeting program, the district manager generated and reviewed the results of the past year, comparing it with the previous years. The data was analyzed for trends such as the type of violations, if the numbers of accidents are decreasing, and complaint issues. The PSM targeting program is tied to the strategic plan to conduct a certain amount of Program Quality Verification inspections, to participate in a specified number of outreach activities, to ensure 100% of non-contested serious, willful, and repeat violations have been abated, and to reduce or maintain the fatality and serious injury rates at covered facilities. Taking all of the above factors into consideration, the district manager formulated a conclusion and determined if the program was successful and effective.

LETTF: The enforcement statistics from the LETTF targeting program was reviewed. If hazards were not found, then the focus was shifted to another industry. DIR gathered the information from all of the participating agencies conducted an evaluation of the overall program. However, each agency was responsible for conducting an evaluation of their portion of the program. Within

Cal/OSHA, it appeared no one evaluated the effectiveness of this targeting program. Some of the NAICS codes for the industries covered under this program are on the appropriations and exemption list. Federal grant matched funds cannot be used for programmed safety inspections for employers with less than 10 workers in these industries. If inspections are done in exempt industries, only non-matching grant funds can be used and an appropriate mechanism to track this must be in place. It should also be noted that these NAICS codes are on the appropriations and exemptions list due to injury rates below the national average for their industry. Targeting low hazard industries is not a good use of resources. Overall, 37.68% or 349 of the total inspections (926) contained at least one serious violation. Given the low percentage of inspections with serious violations, and the resources expended, DIR needs to evaluate the program to determine if this is a good use of resources. This has to be weighed with providing protection to low wage, immigrant, non-English speaking workers which are usually associated with these industries.

Labor Code 6330 directs the Chief, Cal/OSHA to submit an annual report by March 1st to the division's High Hazard District Offices. The report covers the fund expenditures, total amount of penalties collected, inspections conducted and citations issued, and the amount of contractors referred to the Contractor's State Licensing Board. However, mandated evaluation is not extended to other programs such as LETF, Heat Illness Prevention Initiative, or Permit Required Confined Space Initiative. Evaluations of these programs are done at management's request and are not done on a consistent basis.

Finding 13-21

The targeting program data was not evaluated for effectiveness in reducing injuries, illnesses and deaths, on a consistent basis.

Recommendation 13-21

Develop procedures and criteria for the analysis of targeting program data pertaining to the violations, percent serious violation, other-than-serious, and in-compliance rate to determine the overall effectiveness of targeting programs.

**8. COMPLAINTS ABOUT STATE PROGRAM ADMINISTRATION
(CASPs)**

Six CASPs were filed this fiscal year: one regarding the handling of a whistleblower complaint and five regarding the handling of enforcement complaints. The Whistleblower-related CASPA is closed with all corrective actions completed. Of the five enforcement-related CASPs, closing letters have been sent for four of five complaints, and corrective action was received for one of those complaints. Corrective actions are due from the State Plan for the remaining four CASPs from FY 2013. CASPA activity is tracked in the Automated Tracking System (ATS).

9. VOLUNTARY COMPLIANCE PROGRAM

Cal/OSHA’s Consultation Service, P&P manual, D-64 describes their policy and procedures regarding the Voluntary Protection Program (VPP). It has incorporated the various VPP Memorandums into the P&P, D-64. Nine new VPP sites joined the program while 18 existing participants had their establishments renewed. In the construction industry, two new participants joined the program, and four establishments were renewed. In the grant application, Cal/OSHA indicated they would add two new VPP sites for general industry and construction. Cal/OSHA exceeded this goal. As of February 2014, there are 74 participants in Cal/VPP. Lastly, four workshops were held to promote Cal/VPP.

10. PUBLIC SECTOR ON-SITE CONSULTATION PROGRAM

Cal/OSHA projected 25 public sector consultation initial visits in the grant application and completed a total of 29 visits (28 initial visits and one follow-up). Twenty-seven of 28 visits were in high hazard establishments, Table 11. The Public Sector On-Site Consultation Office is staffed with one Associate Safety Engineer, and one Associate Safety Engineer-Industrial Hygiene located in Oakland, California. The Public Sector Office reports to the Oakland Area Manager.

**Table 11
Initial Visits in High Hazard Establishments (Public MARC 1)**

	FY 2011	FY 2012	FY 2013
	90.32% (28/31)	100% (28/28)	96.43% (27/28)

The consultants verified all serious hazards within 14 days of the correction date. There were no hazard not verified corrected and no hazards were referred to enforcement, Table 12.

**Table 12
Verification of Serious Hazards (Public MARC 4)**

	FY 2011	FY 2012	FY 2013
Verified Corrected within 14 days of Correction Date (MARC 4A)	100% (27/27)	100% (42/42)	100% (37/37)
Not Verified Corrected within 14 days of Correction Date (MARC 4B)	0% (0/27)	0% (0/42)	0% (0/37)
Referred to enforcement (MARC 4C)	0% (0/27)	0% (0/42)	0% (0/37)

11. STATE PLAN ADMINISTRATION

The final FY 2013 23(g) grant provided \$26,274,837 in federal funds. Due to sequestration, the federal award was reduced by \$1,143,963, which was added to the State Plan's over match and resulted in a total grant of \$70,159,837.

There were 16 internal training classes and 93 out-service classes held. The State Plan has restricted travel outside of California, so internal training classes were developed which are equivalent to the courses provided by OTI.

The current benchmark for safety and health compliance officers is 334 safety and 471 health inspectors. The FY 2013 grant provided funding for 163.91 safety compliance officer FTE and 61.77 health compliance officer FTEs, for a total of 225.68 FTE on board. This equates to the number of compliance staff that spent their time in direct program activities conducting inspections which is a substantial difference from the benchmark and compares to a total of 229.7 FTE on board last fiscal year.

While the program is currently under an Operational Status Agreement, final 18(e) approval under the Act cannot be attained without meeting the benchmarks. More importantly, the average number of inspections conducted by the current staff is well below the federal average. As of August 15, 2013, there were 206.65 compliance officer FTEs on board. This is a decrease from FY 2013. There has been a steady decrease from FY 2011 for a total loss of 25 compliance officer FTEs. Although steps are being taken to fill positions, a significant number of vacancies remain for field compliance staff. This was identified as a finding in the FY 2012 FAME Report and remains open.

Finding 13-22 (12-15)

Funded staffing positions remained vacant.

Recommendation 13-22 (12-15)

Take action to fill vacant positions. Develop a staffing plan to ensure positions authorized and funded by OSHA in the annual grant are filled.

The 23(g) grant funds authorize positions for compliance staff that spend time in direct program activities conducting inspections include senior safety engineers, associate safety engineers, assistant safety engineers, and technicians. Associate engineers in the Crane Certifier Accreditation Unit are conducting inspections to issue crane permits. This is not an OSHA enforcement activity, cannot be funded by the grant, and should not be entered into IMIS. If a violation is observed, a referral is made to the district office to conduct the inspection.

Associate engineers in the Mining and Tunneling Unit conduct pre-job safety meetings that are entered into IMIS as an enforcement inspection. These meetings are mandated by the Labor Code and shall be conducted before work can start. These are not considered OSHA enforcement inspections, cannot be funded by the grant and should not be entered into IMIS.

Finding 13-23

Time spent by compliance staff conducting activities outside the scope of the 23(g) grant was being funded by the grant.

Recommendation 13-23

Remove all non-covered activities and associated time from the grant, such as permitting inspections and pre-tunnel inspections.

Inspections conducted in exempt NAICS must be tracked so these inspections, not allowed to be paid for by federal funds can be funded out of the state overmatch. Verification of funding must be maintained and provided to OSHA when requested.

Finding 13-24

Inspections conducted in exempt NAICS were not tracked separately, as required by the grant instructions.

Recommendation 13-24

Ensure there is a tracking mechanism in place that verifies all activities in exempt NAICS are paid out of state overmatch funds.

Time spent by senior safety engineers, who provide technical assistance and guidance to CSHOs on inspections, needs to be tracked separately from time spent on actual inspection activity. Time spent on OJTs and OJEs are considered program time but is not time attributable to benchmark positions. The IMIS data indicates few senior safety engineers are conducting inspections.

Finding 13-25

Time spent by Senior Engineers supporting and assisting CSHOs was allocated towards the safety and health compliance officer FTE benchmark.

Recommendation 13-25

Monitor the time Senior Engineers spend assisting CSHOs with inspections versus the time they spend actually performing inspection work in the field.

Cal/OSHA inputs their inspection data into IMIS. Cal/OSHA does not have a formal internal evaluation program. Management will review and discuss significant, high profile, or fatality inspection case files prior to issuing citations.

Finding 13-26

There was no Internal Evaluation Program as required by the Restrictions and Conditions of the grant.

Recommendation 13-26

Develop and implement an effective internal self-audit program.

IV. Assessment of State Plan Progress in Achieving Annual Performance Goals

Strategic Goal#1

Secure safe and healthy workplaces, particularly in high-risk industries, and improve workplace safety and health through enforcement and consultative assistance.

Performance Goal #1-1: Target the mobile workforce to reduce fatalities and occupational injuries and illnesses in construction and agriculture by reducing and eliminating hazards in these industries.

Results: Cal/OSHA conducted 2,132 construction and 1,142 agriculture inspections in FY 2013. From those 2,132 construction inspections, Cal/OSHA issued 1,897 serious citations. Agriculture employers received 1,050 serious citations. The percentage of serious violations for construction and agriculture employers increased from 83% to 89% and from 81% to 92% respectively.

Outcome: Cal/OSHA established an outcome measure of: 1) reducing fatalities in construction and agriculture by two percent as compared to the previous three years; 2) reducing the incidence rate for total recordable occupational injury and illness cases per 100 full-time workers for construction and agriculture by 0.1; and 3) ensuring a 95% abatement of non-contested serious hazards found in construction and agriculture inspections.

The construction fatality rate increased when compared to the previous three-year average (56 versus 52). The fatality rate in agriculture decreased from 40 to 36 when compared to the previous three-year average. The injury and illness rate for construction decreased when compared to the previous three-year average from 3.9 to 3.6. However, agriculture's injury and illness rate increased from 4.7 to 5.3.

Cal/OSHA had mixed results this fiscal year. They did not achieve its goal of reducing the construction fatality rate or the total recordable injury rate for agriculture, but did achieve its goal of reducing the fatality rate in agriculture and total recordable injury rate in the construction industry. Cal/OSHA also achieved its goal of verifying serious violations were abated in 95% of the cases where a serious violation was issued in non-contested cases.

Performance Goal #1-2: To reduce injuries, illnesses and fatalities in selected high hazard industries with a goal of removing the industry from the High Hazard List due to decreased injury and illness rates.

Results: The High Hazard Unit conducted 382 of the projected 400 inspections. All three inspections were conducted under the National Emphasis Program (NEP) for primary metals.

Outcome: Cal/OSHA did set a goal to abate non-contested serious hazards in 95% of the inspections and did achieve this goal, verifying 100 % of non-contested S/W/R violations were abated.

Cal/OSHA wanted to increase the percentage of serious, willful, and repeat violations by at least 10% when compared to the previous fiscal year for programmed inspections conducted by the HHU. This goal was not achieved for safety inspections. Health inspections conducted by both HHU did see a 10% increase in serious, willful, and repeat violations when compared to the previous fiscal year.

Performance Goal #1-3: To reduce fatalities and occupational injuries and illnesses in refineries and other industries which fall under the requirements of the PSM standard.

Results: Thirty-six Program Quality Verification (PQV) inspections were conducted by Cal/OSHA at petroleum refineries. Cal/OSHA also participated in 10 outreach/compliance assistance activities.

Outcome: Cal/OSHA accomplished their goals to conduct 30 PQV inspections and participate in nine outreach/compliance assistance activities. Cal/OSHA also set a goal of ensuring 95% of non-contested serious hazards was abated and exceeded that goal with a reported 100% of non-contested serious, willful, and repeat violations abated. Cal/OSHA attributed one serious injury/illness to violations of the PSM standard.

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

Performance Goal #2-1: To raise awareness of heat illness prevention among workers and employer groups in outdoor places of employment.

Results: Cal/OSHA conducted 1,923 construction and 1,063 agriculture inspections for heat hazards. Cal/OSHA participated in approximately 210 outreach events where heat illness prevention was discussed and distributed over 4,000 outreach materials on heat illness prevention.

Outcome: Cal/OSHA ensured 95% of inspections with non-contested heat hazards were abated, surpassing their goal of ensuring 90% of inspections with heat hazards were abated. The preliminary numbers indicated three heat-related deaths. This was above the baseline average of 2.3 heat fatalities for calendar year 2010-2012. A total of 51.56% of all Cal/OSHA inspections were related to heat hazards.

Performance Goal #2-2: To promote and interact with high-risk worker organizations about workplace safety and health.

Results: Cal/OSHA distributed over 15,000 publications and flyers at outreach activities in Spanish, Mandarin/Chinese, and Hmong languages. Cal/OSHA also updated 14 existing publications, e-tools, and training materials. Four of these publications were translated into a different language. The Cal/OSHA Pocket Guide for the Construction industry was updated and is available on the website in English and Spanish. The Heat

Illness Prevention e-tool was translated into Spanish and was made available on the Cal/OSHA website. Lastly, 14 additional existing educational materials online were updated and four of these materials were translated into Spanish.

Outcome: Cal/OSHA has successfully updated publications, e-tools, and educational materials into different languages to reach the Asian and Hispanic populations.

Performance Goal #2-3: To promote voluntary compliance by offering employers a variety of partnerships including recognition and exemption programs.

Results: Nine new Voluntary Protection Program (VPP) sites were added and 18 employers renewed their participation in VPP. Two new Cal/VPP construction sites were added and four sites were renewed. Four workshops were held in FY 2013 to promote Cal/VPP.

Outcome: Cal/OSHA's goal was to add one new employer to VPP and this goal was surpassed. Cal/OSHA did not reach their goal of renewing 22 employers in VPP. Cal/OSHA did add one new construction employer to Cal/VPP construction which was their goal. They fell short of renewing six sites into Cal/VPP construction. Cal/OSHA wanted to hold at least one workshop to promote the Cal/VPP program and surpassed their expectations by holding four workshops.

Strategic Goal #3:

Maximize Cal/OSHA's effectiveness and enhance public confidence. **Performance Goal #3-1:** To respond effectively to mandates so that workers are provided full protection under Cal/OSHA by timely issuance of citations so that hazards could be timely corrected.

Results: On a monthly basis, Cal/OSHA generated the citation pending report and worked with CSHOs to identify less complicated cases with the goal of issuing the citation as soon as possible. A total of 38% of serious, repeat, and willful violations cited were abated during the inspection which is an increase from 33% last fiscal year.

Outcome: Cal/OSHA has indicated that AB 2774 has increased their citation lapse time due to the 15 days an employer must be given to respond to a serious citation. From the SAMM data, an average of 0.61 serious, willful, and repeat violations was issued per inspection. AB 2774 requires Cal/OSHA to notify the employer prior to issuing a serious citation. The employer is allowed 15 days to respond back to the Cal/OSHA. Since the average serious, willful and repeat violations per inspection is less than one (0.61), the 15 days allowed under AB 2774 cannot be the cause for the increased lapse time.

Serious, willful, and repeat violations cited that were abated during the inspection increased from 33% to 38%. SAMM #23 indicates Cal/OSHA's lapse time for both safety and health inspections are above the national averages. According to the SOAR, Cal/OSHA's citation lapse time increased when compared to FY 2012 data for health and safety inspections. This goal was not achieved. Increased lapse time has been addressed in Section III (d) and Finding 13-05.

Performance Goal #3-2: Respond effectively to mandates so that workers are provided full protection under Cal/OSHA by timely response to work-related fatality/catastrophe reports.

Results: Cal/OSHA ran fatality reports to monitor response times. The average response time for a fatality was 0.4 workdays. A total of 95.5% of fatalities were responded to within one day.

Outcome: According to IMIS, Cal/OSHA responded to 90% of fatalities within one day from data collected on September 30, 2013. According to Cal/OSHA, 95.5% of fatalities were responded to within one day. More detail on the response to fatalities is provided in Section III (d).

V. Other Special Measures of Effectiveness and Areas of Note

There were no other areas of note during this fiscal period.

Appendix A – New and Continued Findings and Recommendations
FY 2013 California State Plan Comprehensive FAME Report

FY- Rec #	Finding	Recommendation	FY 2012
13-01	Complaint inspections classified as non-serious were not initiated within the negotiated time of 14 calendar days, in 53% of the case files reviewed.	Initiate non-serious complaint investigations within the negotiated timeframe.	12-01
13-02	Final letters notifying the next-of-kin of the results of the fatality inspection were not sent in 44.4% of the case files reviewed.	Final letters shall be sent to the next-of-kin after completion of the investigation as required by P&P Manual C-170&170A, Section D.6.f.	12-02
13-03	The percent of programmed inspections with serious, willful or repeat violation was significantly lower than the national average, 26.73% vs. 57.0% for safety and 9.09% vs. 53.7% for health.	Determine the cause of the low number of programmed inspections with serious, willful, or repeat violations and implement corrective actions to ensure serious hazards are identified and eliminated.	12-03
13-04	The percentage of health inspections that were in compliance was 43.5% which was higher than the reference/standard of 34.1%.	Ensure health inspection resources are spent in workplaces that are exposing workers to hazards by implementing corrective action to ensure inspections are conducted in the most hazardous worksites.	NA
13-05	The citation lapse time was 72.5 days for safety inspections and 76.0 days for health inspections and was above the reference/standard of 43.4 days for a safety inspection, and 57.0 days for a health inspection.	Work with District and Regional Managers to improve citation lapse time.	Observation 12-02

Appendix A – Status of FY 2013 Findings and Recommendations
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13-06	When determining repeat violations, Cal/OSHA did not consider the employer’s enforcement history statewide. Instead, employer history was only considered with each of the six regions as indicated in Cal/OSHA’s P&P Manual, C-1B.	Consider employer history statewide when citing repeat violations.	12-05
13-07	Worker representatives were not involved in the opening conference nor were workers interviewed in five of 19 inspections reviewed.	An opening conference shall be held with the union either jointly with the employer or separately and properly documented. Worker interviews shall be conducted and documented.	12-06
13-08	State-initiated rulemaking promulgated standards were not at least as effective as OSHA standards, such as the Bakery Oven and Crane load testing.	Ensure standards are at least as effective as OSHA standards and initiate actions to update deficient standards.	12-09
13-09	DLSE did not update its RCI Manual and/or Policies and Interpretations Manual in line with OSHA’s updated WIM.	DLSE should update its RCI Manual and/or Policies and Interpretations Manual to ensure that its policies and procedures are at least as effective as OSHA’s and submit to OSHA for approval.	NA
13-10	Information regarding discrimination cases was not accurately entered into IMIS, such as the filing dates, and case determination, as required by the WIM Chapters 2(IV), 5(VII), and 6(IV)(C and D), OSHA’s IMIS User Guide, and RCI Manual 2.3(J), 2.4(C), and 4.9.	DLSE should follow their procedures and OSHA’s procedures to ensure that discrimination case information is accurately entered into IMIS.	12-12

Appendix A – Status of FY 2013 Findings and Recommendations
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13-11	Discrimination case files did not contain evidence of screening, as required by WIM Chapters 2(II)(A), 3(III), 3(VI)(D)(3), and 3(VI)(L)(1), and RCI Manual 2.3(A) 2.5(D), 3.2(A), and 3.4(J).	DLSE should follow their procedures and OSHA’s procedures to ensure evidence of screening is included in the discrimination case file.	NA
13-12	The RCI Manual 2.2 discouraged accepting orally filed, faxed, and emailed discrimination complaints, in violation of WIM 2.2	The RCI Manual should be changed to indicate that discrimination complaints will be accepted if orally filed, faxed, or emailed.	12-11
13-13	There was no documentation in the discrimination case file of the complainant interview, relevant witness interview(s), or closing conference, as required by WIM Chapters 3(III), (VI)(D)(3), (VI)(E)(10), (VI)(H)(5), (VI)(L)(1), 5(V)(C) and RCI Manual 3.4(D), (D)(8), (E)(1), (F)(3 and 4), II)(1), and (J).	DLSE should follow their procedures and OSHA’s procedures to ensure there is documentation in the case file of the complainant interview, relevant witness interview(s), and the closing conference.	12-10
13-14	Complete and thorough discrimination investigations were not conducted, as required by WIM Chapter 3(VI)(B through I) and RCI manual 3.4 (B through I).	DLSE should follow their procedures and OSHA’s procedures to ensure that discrimination investigations are complete.	NA
13-15	Dismissed/Non Merit discrimination cases did not contain documentation that closing letters were sent to the parties, as required by The WIM Chapter 5(V)(E) and RCI Manual 4.2 (A through K).	DLSE should follow their procedures and OSHA’s procedures to ensure that there is documentation in the case file that closing letters were sent to the parties.	NA

Appendix A – Status of FY 2013 Findings and Recommendations
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13-16	DLSE’s Manual and training materials did not have procedures to ensure that punitive damages were available under §6310 and §6311.	Create procedures in the Manual and training materials that ensure punitive damages are available where appropriate when filing meritorious cases in civil court.	NA
13-17	The conclusion in discrimination cases was not always supported by the evidence in the case file, as required by the WIM Chapter 5(IV)(B) and RCI Manual 4.2(B)(1 and 2).	DLSE should follow their procedures and OSHA’s procedures to ensure that there is documentation in the case file that supports the conclusion.	NA
13-18	A final report, or IMIS report in lieu of a final report, was not included in the case file, as required by OSHA’s WIM Chapter 5(IV)(B) and “Revised Whistleblower Disposition Procedures,” and RCI Manual 4.2 (A through C) in 4 out of 19 cases reviewed.	DLSE should follow their procedures and OSHA’s procedures to ensure that a final report, or IMIS report in lieu of a final report, be included in the case file.	NA
13-19	Inspections conducted to issue permits for underground tunneling and cranes were entered as enforcement inspections when there was no enforcement component.	Do not enter non-enforcement inspections into IMIS.	NA
13-20	Methods used for targeting high hazard industries for inspections and establishing targeting lists were not always documented and did not demonstrate that legal requirements were met and that specific neutral criterion were used.	Develop and document defensible targeting methods and programs that meet the legal requirement that demonstrate sites are selected according to an administrative plan containing specific neutral criteria such as selection, scheduling cycles, criteria for deletion or addition of sites, and frequency of selection.	NA

Appendix A – Status of FY 2013 Findings and Recommendations
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13-21	The targeting program data were not evaluated for effectiveness in reducing injuries, illnesses and deaths, on a consistent basis.	Develop procedures and criteria for the analysis of targeting program data pertaining to the violations, percent serious violation, other-than-serious, and in-compliance rate to determine the overall effectiveness of targeting programs.	NA
13-22	Funded staffing positions remained vacant.	Take action to fill vacant positions. Develop a staffing plan to ensure positions authorized and funded by OSHA in the annual grant are filled.	12-15
13-23	Time spent by compliance staff conducting activities outside the scope of the 23(g) grant was being funded by the grant.	Remove all non-covered activities and associated time from the grant, such as permitting inspections and pre-tunnel inspections.	NA
13-24	Inspections conducted in exempt NAICS were not tracked separately, as required by the grant instructions.	Ensure there is a tracking mechanism in place that verifies all activities in exempt NAICS are paid out of state overmatch funds.	NA
13-25	Time spent by Senior Engineers supporting and assisting CSHOs was being allocated towards the Safety and Health Compliance Officer FTE benchmark.	Monitor the time Senior Engineers spend assisting CSHOs with inspections versus the time they spend actually performing inspection work in the field.	NA
13-26	There was no Internal Evaluation Program as required by the Restriction and Conditions of the grant.	Develop and implement an effective internal self-audit program.	NA

Appendix B – Observations Subject to Continued Monitoring
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FY-OB #	Observation	Federal Monitoring Plan	FY 2012
13-01	Complainants were not consistently notified of the results of the complaint inspections or inquiries.	OSHA will continue to monitor to determine if these are isolated events or trends.	12-01
13-02	The new definition of serious violation was not incorporated into their P&P Manual and applied.	OSHA will continue to monitor the progress towards updating the manual as well as track whether the updated policy is being used presently.	12-04
13-03	Standards and Federal Program Changes that provide equivalent protection to workers, such as GHS, have not been adopted within the time frame required.	Monitor to ensure electrical equipment in hazardous (Classified) locations is heard in October 2014 at the Standards Board meeting.	NA

Appendix C – Status of FY 2012 Findings and Recommendations
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FY 12- Rec #	Finding	Recommendation	State Plan Response/Corrective Active	Completion Date	Current Status
12-01 (11-01)	Complaint investigations were not being initiated within three working days for serious hazards or fourteen calendar days for other-than-serious complaints in 6% of case files reviewed.	An opening conference shall be held within three working days for serious complaints and 14 calendar days for other-than-serious complaints.	In FFY 2012, we designed a method to track separately the handling of serious and other-than-serious complaints. We then determined that statewide, the average number of days to open an inspection for a serious complaint was 5.51 days and the average number of days to open an inspection for an other than-serious complaint was 13.66 days. Of the four regions that receive the greatest numbers of complaints, two regions met the state mandate and two did not. The two not meeting the mandate have undergone personnel changes, and we continue to monitor and train the staff in those regions and offices to improve complaint response time.	September 2013	Open Finding 13-01
12-02 (11-05)	One of two case files reviewed, a final letter, indicating the results of the investigation, was not mailed to the next-of-kin.	Final letters shall be sent to the next-of-kin after completion of the investigation.	Cal/OSHA recently developed a form letter to be mailed to next-of-kin indicating the results of a fatality investigation and added the letter to the Cal/OSHA Policy and Procedure Manual; section P&P C-170 (Accident Investigation).	December 2013	Open Finding 13-02
12-03 (11-07)	The percent of programmed inspections with serious, willful or repeat violation is significantly lower	Improve targeting of programmed inspections to reach high hazard workplaces.	Cal/OSHA is entering into an agreement with other state agencies to be able to access fuller, up-to-date data for targeting purposes.	March 2014	Open Finding 13-03

Appendix C – Status of FY 2012 Findings and Recommendations
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	than the national average.				
12-04 (11-08)	Cal/OSHA’s policy on classifying violations does not ensure violations that would be considered “Serious” under the Federal Field Operations Manual (FOM) are classified as Serious.	Cal/OSHA needs to incorporate the new definition of a serious violation into their policy and procedures manual.	Cal/OSHA has performed rulemaking to implement AB 2774 (codified at Labor Code section 6432). The new regulation is being submitted to the Office of Administrative Law for approval prior to going into effect. After the regulation goes into effect, we will change the Policy and Procedure Manual accordingly.	September 2014	Observation 13-02
12-05 (10-09 and 11-42)	When determining Repeat Violations, Cal/OSHA does not consider the employer’s enforcement history statewide. Instead, employer history is only considered within each of the six regions (refer to Cal/OSHA’s policies and procedures C-1B, page 14).	Consider employer history statewide when citing repeat violations.	DIR has requested assistance from OSHA’s Office of State Programs to identify the criteria used by other State Plans for determining repeat violations. Discussions will continue after receiving that information.	On going	Open Finding 13-06
12-06 (11-11)	In three of the case files reviewed, the Union was present at the work site but was not involved in the	An opening conference shall be held with the Union either jointly with the employer or separately, and properly	After completing training of all managers, Cal/OSHA reviewed its case files (conducted an audit). The results showed greatly improved compliance: over 98% compliance out of 60 case	September 2014	Open Finding 13-07

Appendix C – Status of FY 2012 Findings and Recommendations
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	opening conference and in three cases, union involvement was not properly documented.	documented.	files.		
12-07 (11-15)	The Employer Payment for Personal Protection Equipment issue has not been resolved.	OSHSB needs to resolve the issue regarding Employer Payment for Personal Protective Equipment.	The incorrect sentence in the Policy and Procedure Manual (P&P C-6), which stated that an order to take special action may be issued to require an employer to pay for safety devices, was removed because the proper procedure is to issue a citation.	June 6, 2013	Completed
12-08 (11-16)	Cal/OSHA has been late in responding to 6 out of 13 Federal Program Changes and did not respond to 3 out of 13 Federal Program Changes.	Cal/OSHA needs to respond by the due date to all Federal Program Changes.	Cal/OSHA continues to collaborate with OSHA and has made significant progress in the current fiscal year. Cal/OSHA has assigned one Senior Engineer to manage the FPCs, and has responded to all of the outstanding FPCs.	October 2013	Completed
12-09 (11-17)	State-initiated rulemaking that promulgated a standard on Bakery Ovens was deemed not to be at least as effective as OSHA standards.	Ensure standards are at least as effective as OSHA standards and initiate actions to update deficient standards.	The Occupational Safety and Health Standards Board responded on this issue in a letter dated September 3, 2010, addressed to Mr. Ken Atha, OSHA Regional Administrator. The letter set forth reasons that the bakery oven inspection monitoring requirements in section 4530 of our General Industry Safety Orders are at least as effective as, if not more effective than, those contained in section 1910.263 of title 29 of the federal regulations. We are still awaiting a response.	December 2013	Open Finding 13-08

Appendix C – Status of FY 2012 Findings and Recommendations
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12-10 (11-24)	DLSE was not documenting their discrimination case files to support their findings in all cases, including failing to include notes of interviews and closing conferences conducted.	Investigators shall document the discrimination case file to support their findings, including, but not limited to, including notes of interviews and closing conferences.	This was not a statewide issue but occurred in only a few instances. Staff has been directed to enter all supporting notes in the case file including the details of the closing conference.	December 2013	Open Finding 13-13
12-11 (11-35)	The RCI Manual discourages DLSE from accepting orally filed, faxed, and emailed 6310 and 6311 discrimination complaints.	DLSE shall amend the RCI Manual to allow Whistleblower complainants to file 6310 and 6311 complaints orally, by fax, and by e-mail.	This policy has been changed and the manual is being updated. The manual is not a public document; therefore the public is not discouraged from making oral, fax, or email complaints.	April 2014	Open Finding 13-12
12-12 (11-36)	DLSE is not closing all cases in IMIS that have closed. As a result, IMIS does not reflect the number of discrimination cases DLSE actually closed in FY 2011 and hundreds of likely closed cases have remained open in IMIS for years. DLSE also improperly coded	DLSE shall properly close all closed discrimination cases, record the filing date as the date the complainant contacts DLSE, and indicate the complainant's remedies in merit cases. It is also recommended that (1) DLSE review all currently pending cases and close them out in IMIS as appropriate (2) establish a procedure to appropriately	Staff received IMIS training in 2013 and all cases are being updated and closed in IMIS. As time permits, staff is closing cases from previous years that were closed in DLSE's database and not in IMIS.	January 2014	Open Finding 13-10

Appendix C – Status of FY 2012 Findings and Recommendations
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	some discrimination cases that DLSE did close in IMIS, recorded the wrong filing date in several cases, and did not accurately indicate the complainant’s remedies in merit cases.	close out all discrimination cases in IMIS once DLSE issues findings or a closing letter, and (3) ensure Senior Deputy Labor Commissioners and staff are trained in IMIS entry and closure to allow Senior Deputy Labor Commissioners the ability to review DLSE’s IMIS data entry for accuracy and completeness.			
12-13 (11-38)	DLSE does not input, track, or document administratively closed discrimination cases in IMIS.	DLSE shall input, track, and document administratively closed discrimination cases in IMIS.	Same as above.	Ongoing	Completed
12-14 (11-40)	DLSE investigators and Senior Deputy Labor Commissioners need formal basic training for investigating 6310 and 6311 whistleblower retaliation complaints.	DLSE investigators and Senior Deputy Labor Commissions shall attend OSHA’s 1420 Basic Whistleblower Investigations course.	DLSE conducted its own training of staff in January 2013. DLSE staff cannot attend Fed OSHA 1420 Basic training because it is held outside of California.	January 2013	Completed
12-15	Sixteen percent of staffing positions funded by the FY	Fill staffing positions prior to the end of the grant year and ensure a	To fully fill staffing positions, DIR and Cal/OSHA are working with Administration to address overall budget	September 2014	Open Finding 13-23

Appendix C – Status of FY 2012 Findings and Recommendations
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	2012 Grant were vacant.	staffing plan is developed to continue to meet future positions authorized and funded by OSHA in the annual grant.	issues. We are also exploring methods to reduce internal inefficiencies.		
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Appendix D – FY 2013 State Activity Mandated Measures (SAMM) Report
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OSHA is in the process of moving operations from a legacy data system (IMIS) to a modern data system (OIS). During FY 2013, OSHA case files were captured on OIS, while State Plan case files continue to be processed through IMIS. The SAMM, which is native to IMIS, is not able to access data in OIS, which impacts OSHA's ability to process SAMM standards pinned to national averages (the collective experience of State Plans and OSHA). As a result, OSHA has not been able to provide an accurate reference standard for SAMM 18, which has experienced fluctuation in recent years due to changes in OSHA's penalty calculation formula. Additionally, OSHA is including FY 2011 national averages (collective experiences of State Plans and OSHA from FY 2009-2011) as reference data for SAMM 20, 23 and 24. OSHA believes these metrics are relatively stable year-over-year, and while not exact calculations of FY 2013 national averages, they should provide an approximate reference standard acceptable for the FY 2013 evaluation. Finally, while SAMM 22 was an agreed upon metric for FY 2013, OSHA was unable to implement the metric in the IMIS system. OSHA expects to be able to implement SAMM 22 upon the State Plan's migration into OIS.

U.S. Department of Labor				
Occupational Safety and Health Administration State Activity Mandated Measures (SAMMs)				
State: California			FY 2013	
SAMM Number	SAMM Name	State Data	Reference/Standard	Notes
1	Average number of work days to initiate complaint inspections	14.36	(Negotiated fixed number for each State Plan) – 3	State data taken directly from SAMM report generated through IMIS.
2	Average number of work days to initiate complaint investigations	9.31	(Negotiated fixed number for each State Plan) – 1	State data taken directly from SAMM report generated through IMIS.
4	Percent of complaints and referrals responded to within 1 work day (imminent danger)	100%	100%	State data taken directly from SAMM report generated through IMIS.
5	Number of denials where entry not obtained	0	0	State data taken directly from SAMM report generated through IMIS.
9a	Average number of violations per inspection with violations by violation type	0.61	SWR: 2.04	State data taken directly from SAMM report generated through IMIS; national data was manually calculated from data pulled from

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U.S. Department of Labor				
Occupational Safety and Health Administration State Activity Mandated Measures (SAMMs)				
State: California			FY 2013	
SAMM Number	SAMM Name	State Data	Reference/Standard	Notes
9b	Average number of violations per inspection with violations by violation type	2.53	Other: .88	both IMIS and OIS for Fiscal Years (FY) 2011-2013.
11	Percent of total inspections in the public sector	6.23	5%	State data taken directly from SAMM report generated through IMIS.
13	Percent of 11c Investigations completed within 90 calendar days	13.37	100%	State data taken directly from SAMM report generated through IMIS.
14	Percent of 11c complaints that are meritorious	21.39	24.8% meritorious	State data taken directly from SAMM report generated through IMIS: national data was pulled from webIMIS for FY 2011-2013.
16	Average number of calendar days to complete an 11c investigation	33.32	90 Days	State data taken directly from SAMM report generated through IMIS.
17	Planned vs. actual inspections – safety/health	5773/1658	(Negotiated fixed number for each State Plan) – 6000/1350	State data taken directly from SAMM report generated through IMIS; the reference standard number is taken from the FY 2013 grant application.
18a	Average current serious penalty – 1-25 Workers	a. 3937.28		State data taken directly from SAMM report generated through IMIS; national data is not available.
18b	Average current serious penalty – 26-100 Workers	b. 6896.55		
18c	Average current serious penalty – 101-250 Workers	c. 8503.20		
18d	Average current serious penalty – 251+ Workers	d. 9343.42		

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U.S. Department of Labor				
Occupational Safety and Health Administration State Activity Mandated Measures (SAMMs)				
State: California			FY 2013	
SAMM Number	SAMM Name	State Data	Reference/Standard	Notes
18e	Average current serious penalty – Total 1 – 250+ Workers	e. 6264.25		
19	Percent of enforcement presence	1.19%	National Average 1.5%	Data is pulled and manually calculated based on FY 2013 data currently available in IMIS and County Business Pattern data pulled from the U.S. Census Bureau.
20a	20a) Percent in Compliance – Safety	Safety – 32.63	Safety – 29.1	State data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and OSHA for FY 2009-2011.
20b	20b) Percent in Compliance – Health	Health – 43.54	Health – 34.1	
21	Percent of fatalities responded to in 1 work day	90%	100%	State data is manually pulled directly from IMIS for FY 2013
22	Open, Non-Contested Cases with Abatement Incomplete > 60 Days			Data not available.
23a	Average Lapse Time – Safety	72.55	43.4	State data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and OSHA for FY 2009-2011.
23b	Average Lapse Time – Health	75.96	57.05	
24	Percent penalty retained	83.17	66	State data taken directly from SAMM report generated through IMIS; current national

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Occupational Safety and Health Administration State Activity Mandated Measures (SAMMs)				
State: California			FY 2013	
SAMM Number	SAMM Name	State Data	Reference/Standard	Notes
				data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and OSHA for FY 2009-2011.
25	Percent of initial inspections with employee walk around representation or employee interview	100%	100%	State data taken directly from SAMM report generated through IMIS.