

FY 2014 Follow-up Federal Annual Monitoring and Evaluation (FAME) Report

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



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**Prepared by:
U. S. Department of Labor
Occupational Safety and Health Administration
Region IX
San Francisco, CA**



Contents

I. Executive Summary	3
A. State Plan Activities, Themes, and Progress	3
B. State Plan Introduction	3
C. Data and Methodology	4
D. Findings and Observations	5
II. Assessment of State Plan Performance	6
A. Major New Issues	6
B. Assessment of State Plan Progress in Achieving Annual Performance Goals	7
C. Highlights from the State Activity Mandated Measures (SAMM)	12
III. Assessment of State Plan Corrective Actions	13

Appendices

Appendix A – New and Continued Findings and Recommendations.....	A-1
Appendix B – Observations Subject to New and Continued Monitoring.....	B-1
Appendix C – Status of FY 2013 Findings and Recommendations.....	C-1
Appendix D – FY 2014 State Activity Mandated Measures (SAMM) Report....	D-1

I. Executive Summary

A. State Plan Activities, Themes, and Progress

The purpose of this report is to assess California's Occupational Safety and Health (Cal/OSHA) activities for the previous year (FY 2014) and its progress in resolving outstanding recommendations from the FY 2013 Federal Annual Monitoring and Evaluating (FAME) report. The Division of Occupational Safety and Health (DOSH), commonly known as Cal/OSHA, is the agency responsible for protecting workers from health and safety hazards on the job in California's workplaces.

Several organizational changes occurred during FY2014 that may impact the State Plan. Due to promotions and retirements within the DOSH, two critical vacancies need to be filled. Cal/OSHA also hired additional staff in FY 2014. Twelve of the new individuals were employed specifically as Compliance Safety and Health Officers (CSHOs) for the Process Safety Management (PSM) Unit, which handles the high hazard industries. The increase in staff is expected to result in additional workplace health and safety enforcement inspections. However, for the FY 2014 report, the decrease in the number of inspections over the past four fiscal years continues to be an issue as well as the low number of inspections in high hazard industries. The decreased number of inspections in high hazard industries was further highlighted by the results of the investigation of a Complaint About State Program Administration (CASPA) submitted by Public Employees for Environmental Responsibilities (PEER). Despite meeting the high hazard goal in the five year strategic plan, the number of inspections in high hazard industries remained low.

Four CASPAs were filed involving Cal/OSHA, the Occupational Safety and Health Standards Board (OSHSB), and the Occupational Safety and Health Appeals Board (OSHAB) during FY 2014. Deficiencies were identified in three of the four CASPAs and recommendations were made. In addition, OSHA continued discussions with Cal/OSHA and OSHSB regarding the effectiveness of the State Plan residential fall protection standard.

Progress was made on roughly half of the 26 findings and recommendations from the FY 2013 FAME report. Two findings were completed, four were closed, and seven have been addressed by the state, but are awaiting verification during the next comprehensive review. Cal/OSHA has 13 of 26 findings that remain open; 10 have been repeated over several years. There was also some positive progress noted in several of the State Plan's Annual Performance Goals. For example, "penalties assessed" continued to be the highest in the nation and exceeded the national three-year data in all categories.

B. State Plan Introduction

The Department of Industrial Relations (DIR) administers the California Occupational Safety and Health Plan. Within DIR, DOSH or rather Cal/OSHA is the principal administrator of the plan. The Department of Labor Standards Enforcement (DLSE), also under DIR, investigates discrimination complaints. The Director of DIR and the State Plan Designee is Christine Baker. 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 David Thomas and Marley Hart is the Executive Director of OSHSB. DIR has an independent Occupational Safety and Health Appeal Board (OSHAB) that adjudicates contested cases. The Chairperson of OSHAB is Art Carter. Debra Gold, Chief of Health and Engineering Services, and Ethera Clemons, Deputy Senior Labor Commissioner, both retired leaving two high level leadership vacancies that need to be filled.

The grant agreement established the final base award to fund the program at \$71,320,937 (\$26,425,400 federal and \$26,425,400 State Plan matching and \$18,470,137 in 100% State Plan funds). A one-time only increase of \$200,000 federal funds was added to the award in September 2014, for office, computer, and inspection equipment. The required \$200,000 matching State Plan funds were re-allocated from the 100% State Plan funding. The closeout financial report stated the final program costs were \$69,664,524 (\$26,625,400 federal and \$26,625,400 State Plan matching and \$16,413,724 100% of State Plan funds). No federal funds were lapsed. Historically the State Plan contributes additional funding, between \$16 and \$19 million, which comes from the Occupational Safety and Health Fund. This fund originates from a user fee levied upon insured and self-insured employers.

Several changes have occurred in FY 2014 for staffing and offices. As of January 2015, there were 184 CSHOs identified in the revised Cal/OSHA organizational chart. This total does not include field time spent by Safety Engineers that will be calculated into the 2016 grant application. Additional funding was requested from the state to increase staff. The Governor's proposed state budget for fiscal year 2016 provides an increase of 4.6 million dollars to the Agency's budget with 44 new positions that includes 42 for Cal/OSHA and two for the DIR administration.

The Concord and Santa Rosa District Offices closed in FY 2014 and consolidated into the American Canyon District Office. The closures resulted in 25 enforcement offices being separated into six regions. Each region is headed by a Regional Manager. Regions 1 to 4 are composed of District Offices that respond mostly to fatalities, complaints, accidents, and conducts follow-up inspections. Region 5 conducts mining and tunneling inspections throughout the state. Region 6 is composed of the High Hazard Unit (HHU), and the Labor Enforcement Task Force (LETF) Unit, both with offices located in Oakland and Santa Ana. The HHU is responsible for inspections in designated high hazard industries, including complaints, fatalities, and accidents that occur in those industries. The LETF Unit targets the underground economy in coordination with other State Plan agencies. The PSM Unit, located in Concord with a field office in Santa Ana, reports directly to the Director of DIR and the Chief of Cal/OSHA. The Crane Unit reports to the Principal Safety Engineer in charge of the Research and Standards Occupational Safety Unit. Crane Unit inspectors issue tower crane permits, audit companies that certify cranes, and assist CSHOs. The grant covers only assistance provided to CSHOs by the Crane Unit. Lastly, there is a Pressure Vessel Unit including two full-time equivalent employees who are funded under the grant to investigate accidents, fatalities, and complaints involving pressure vessels.

C. Data Methodology

Information and data referenced in this follow-up report were derived from the computerized State Activity Mandated Measures (SAMMs), OSHA Information Systems, California's FY 2014 State OSHA Annual Report, the Bureau of Labor Statistics data, the FY 2014 23(g) grant, CASPA investigations, OSHA's Integrated Management Information System (IMIS) reports, and Cal/OSHA's Policy and Procedure (P&P) Manual, Volume II. The review of the State Plan also included information from the four quarterly meetings with Cal/OSHA as well as meetings with DLSE, OSHSB, and the OSHAB. The Annual Performance Plan and Five-year Strategic Plan results were also referenced. OSHA conducted discrimination case file reviews of 10 randomly selected cases that were closed during FY 2014 to verify if the state has made progress towards meeting the 2013 Corrective Action Plan (CAP).

D. Findings and Recommendations

The FY 2014 Follow-Up FAME Report contains 20 findings and four observations. OSHA had no new findings and had one new observation. All 20 findings and three of the observations were carried over from the FY 2013 FAME. Six findings from the FY 2013 FAME were either completed or closed. Action has been taken on seven findings that remain open awaiting verification by OSHA during the FY 2015 FAME.

In FY 2014, an advisory committee meeting was held to hear stakeholders' concerns regarding Cal/OSHA's policy of not considering the employer's statewide enforcement history when determining repeat violations. Cal/OSHA is working with DIR and the Office of Administrative Law (OAL) to publish the proposed repeat regulation in the State Register. The State Plan also conducted training to address several findings in topics such as citation writing, classification of violations, case file management and the Occupational Information System (OIS) reports. In addition, meetings were held with OSHA to address and resolve grant application issues. Several of the issues identified were resolved in the submitted FY 2015 grant application.

DLSE continues to experience problems entering data correctly into Web IMIS which is the federal database that tracks all discrimination activity. While the state indicated in the CAP that DLSE would be updating their Retaliation Complaint Investigations Manual to be in alignment with the OSHA Whistleblower Investigations Manual (WIM) and would be adopting the Federal WIM, DLSE does not intend to make the updates. This makes their program "not as effective as" OSHA. In late 2014, inconsistencies with discrimination complaints associated with the reporting of injuries and illnesses were first identified and whistleblower complainants were not being properly investigated.

Details on the findings and observations are provided in Section III of this report. Appendix A describes new and continued findings and recommendations. Appendix B describes new observations and the observations subject to continued monitoring. Appendix C describes the status of each FY 2013 finding in detail.

II. Assessment of State Plan Performance

A. Major New Issues

Public Employees for Environmental Responsibility (PEER): A Complaint About State Program Administration (CASPA) was filed by PEER which alleged various performance problems in the Cal/OSHA program. The allegations included insufficient staffing and the inability to meet federal benchmarks that have been identified in previous FAMEs. PEER distributed this information to individuals, advocacy groups, and the media.

The results of the CASPA investigation were issued on June 26, 2015 with recommendations for improvement in four areas. Some recommendations sustain ongoing concerns that are also reflected in this FAME, while others are new and will become FAME findings in future years if not resolved. The recommendations were to increase the number of inspections conducted in dangerous workplaces (finding FY2014-15); establish an achievable follow-up inspection policy; improve citation lapse times (finding FY2014-04); and improve complaint response times.

Financial Special Study: Concerns over allocation of different components of grant funds between different funded activities within the state plan triggered a financial special study to ensure the financial rules outlined in the 23(g) grant application were being followed. Findings from this study have not yet been issued.

Discrimination: DLSE is referring certain discrimination and retaliation complaints that are related to the reporting of an injury or illness and do not allege a safety or health hazard filed under California Labor Codes 6310 and 6311 to the Division of Workers' Compensation (DWC) to investigate. OSHA is working with DIR to ensure that these discrimination complaint investigations are either handled by DIR in the future or at that the investigations completed by DWC are at least as effective as those conducted by OSHA.

Fall Protection: OSHA and the State Plan continue to discuss Cal/OSHA's fall protection regulation as it relates to residential construction. OSHA sent a letter on February 4, 2015 to OSHSB detailing the key issues. The main issues included the differences in trigger heights, exceptions to the general requirement for conventional fall protection, and the lack of a cohesive residential fall protection standard or compliance policy. An advisory committee meeting is being planned to solicit stakeholder input and further discuss these differences. Since the State Plan is taking the steps necessary to address OSHA's concerns, the situation will be monitored closely for resolution through Observation FY 2014-01.

Observation FY 2014-01: Cal/OSHA's regulations for residential construction fall protection are not as effective as federal OSHA's regulations as required by 1953.5(a).

Federal Monitoring Plan FY 2014-01: OSHA will participate in the advisory meeting in order to assess stakeholder input and continue working toward a resolution of differences in the regulations.

Inspections: The increase in staff is expected to result in additional workplace health and safety enforcement inspections, after current staff are promoted and new staff are hired and trained. Although Cal/OSHA exceeded the projected number of 7,100 inspections in FY 2014, the number of annual inspections has decreased by nearly 900 over the past four fiscal years, from 8,141 in FY 2011 to 7,286 in FY 2014.

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

This is the second year of the Five-year Strategic Plan (2013-2017). The FY 2014 Annual Performance Plan was developed and submitted as part of the State Plan's grant application for federal funds.

Five-year Strategic Goal 1: Secure safe and healthy workplaces, particularly in high-risk industries, and improve workplace safety and health through enforcement and consultative assistance.

Annual 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.

- Conduct 2,600 inspections.
- Sustain a higher number of serious violations as compared to the previous fiscal year.
- Achieve abatement of non-contested serious hazards in 95% of the cases for both construction and agriculture.
- Reduce fatalities by 2% as compared to the average over the previous three year period.
- Reduce the incidence rate for total recordable occupational injury and illness cases per 100 full-time workers by 0.2 as compared to the average over the previous three years.

Results:

- Results indicate that 3,153 inspections were conducted.
- 90% of serious violations in construction and 87% in agriculture were sustained as compared to 80% for both industries in FY 2013.
- 95% of non-contested serious hazards were abated in construction and 97% in agriculture.
- There were 58 fatalities in construction and 29 in agriculture this CY 2014 as compared to the average number of fatalities over the previous three years, which were 53 and 36, respectively. There were seven fewer fatalities in the agriculture industry, or a 19% decline. However there was an increase in construction industry, or a 9.4 % increase.
- The incidence rate for total recordable occupational injury and illness cases per 100 full-time workers for FY 2014 in construction was 4.0 and in agriculture 5.4 as compared to 3.8 and 5.1 over the past three years, respectively.

Assessment:

Inspection goals were surpassed and the percentage of serious violations in the construction and agriculture industries trended in a positive direction. However, fatalities in the construction industry increased by 9.4% and the incidence rate for total recordable occupational injury and illness cases per 100 full-time workers increased 5.3% for construction and 5.8% for agriculture

industries. Cal/OSHA should address the outcome part of this goal by re-evaluating in which sectors of construction fatalities and injuries and illnesses are occurring and target those sectors. A similar strategy should be used to address injuries and illnesses in agriculture.

Annual Performance Goal 1.2: 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.

- Conduct 300 inspections of high hazard industries from the highest priority NAICS codes.
- Conduct at least 3 inspections for Primary Metals in major group 33 under the SIC Manual under the National Emphasis Program (NEP) for Primary Metals
- Achieve abatement of non-contested serious violations in 97% of the cases.
- Percentage of programmed inspections with serious/willful/repeat violations will increase by 10%.

Results:

- 372 inspections were conducted.
- Four inspections were conducted under the NEP for Primary Metals.
- Verified 100% abatement of non-contested serious violations in selected high hazard industries.
- Percentage of programmed inspections in selected high hazard industries with serious/willful/repeat violations increased to 52.26% compared to 39.11% in the previous year.

Assessment:

The High Hazard Units met their projected goals.

Annual Performance Goal 1.3: Reduce fatalities and occupational injuries and illnesses in refineries and other industries which fall under the requirement of the PSM standard.

- Conduct 20 Program Quality Verification (PQV) inspections at facilities other than petroleum refineries.
- Participate in eight outreach/compliance assistance activities provided to industry/professional groups.
- Conduct four comprehensive inspections of petroleum refineries.
- Conduct follow-up inspections at establishments other than petroleum refineries for 10% of all inspection types.
- Abatement of non-contested serious hazards will be achieved in 98% of cases.
- Number of fatalities and serious injury/illnesses attributable to violations of the PSM standard will be maintained at the average level of 1.3 for the past three years.

Results:

- 23 PQV inspections were conducted.
- PSM Staff participated in eight outreach activities and/or compliance assistance.
- No comprehensive inspection on petroleum refineries was completed.
- No follow-up inspections were conducted.

- The PSM Unit did not have any non-contested inspections with unabated serious violations.
- One serious injury/illness was attributable to violation of the PSM standard.

Assessment:

The goal of conducting four comprehensive inspections on petroleum refineries and follow-up inspections was not met. This was due to an influx of new PSM inspectors and the need to train them before conducting complex PSM inspections. The OTI 3300 class for PSM has been scheduled for FY15.

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

Annual Performance Goal 2.1: Raise awareness of heat illness prevention among workers and employer groups in outdoor places of employment.

- Conduct 2,300 inspections of outdoor places of employment where heat hazards were evaluated.
- Conduct a minimum of 75 seminars emphasizing heat illness prevention.
- Distribute a minimum of 4,000 units of heat illness prevention outreach materials during inspections and outreach events.
- Abatement of non-contested heat hazards found in outdoor places of employment will be achieved in 90% of cases.
- The number of heat-related serious illnesses and fatalities occurring in outdoor places of employment, based on Cal/OSHA internal tracking, will be maintained at the average level for the past three years.

Results:

- 3,763 total inspections were coded with the S18 Heat code.
- More than 90 seminars on heat illness prevention were provided.
- The enforcement staff participated in 200 outreach events addressing and/or distributing publications on heat illness prevention.
- Over 4,000 units of heat illness prevention materials were distributed during inspections and outreach events.
- Heat violations were abated in 93% of non-contested inspections.
- There were four confirmed outdoor heat-related fatalities.

Assessment: The state exceeded most of the metrics related to this goal. However, the number of fatalities due to heat illness as compared to the average number of fatalities over the previous three years was not reduced. In FY 2014, there were four confirmed outdoor heat-related fatalities as compared to three fatalities averaged over 2011-2013.

Annual Performance Goal 2.2: Promote and interact with high-risk worker organizations about workplace safety and health.

- Distribute over 12,000 publications and flyers in English and other languages.
- Conduct 100 events with vulnerable workers.

- At least 750 event participants will come away with an increase in knowledge of workplace health and safety hazards, workers' rights under the law and how to exercise their rights and 15,000 workers will also gain information from the training.
- Re-title and revised the Farm Labor Contractor Safety and Health Guide and translate the publication into Spanish.

Results:

- Over 12,000 publications and flyers in English and other languages were distributed at outreach activities.
- Participated in 110 events for vulnerable workers where at least 1,380 participants were provided information of workers right and workplace safety and health.
- An additional 43,000 workers gained health and safety knowledge from the workshops. This knowledge was evaluated via a training evaluation, and a field training observation.
- The Farm Labor Contractor Safety and Health Guide was revised in English and is being further revised based on new requirements in the Heat Illness Prevention standard that will go into effect on May 1, 2015.

Assessment:

The State Plan met the metrics for distributing publications and flyers, and conducting events to reach vulnerable workers.

Annual Performance Goal 2.3: Promote voluntary compliance by offering employers a variety of partnerships including recognition and exemption programs.

- Both Cal/VPP and Cal/VPP Construction will hold one workshop to promote Cal/VPP and Cal/VPP Construction.
- Cal/VPP will bring in one new establishment and conduct 26 renewals.
- Cal/VPP Construction will bring in one new establishment and conduct four renewals.

Results:

- Cal/VPP held four workshops.
- Cal/VPP Construction held one workshop.
- Cal/VPP added six new and renewed 27 establishments.
- Cal/VPP Construction added two new and renewed one establishment. Currently, 12 additional establishments are being renewed.

Assessment:

The goals for Cal/VPP were exceeded, but the goals for Cal/VPP Construction were not met. Overall, good progress was made at achieving this performance goal.

Five-year Strategic Goal 3: Maximize Cal/OSHA's effectiveness and enhance public confidence.

Annual Performance Goal 3.1: Respond effectively to mandates so that workers are provided full protection under Cal/OSHA by timely issuance of citations so that hazards could be corrected timely.

- Run monthly open inspections with citation pending report and work with CSHOs to

expedite citation issuance.

- Monitor SAMMs and other management reports to track progress of citations lapse time.
- Decrease the average number of days for safety citation issuance by 5% and health citation issuance by 3%.
- Increase the percentage of serious violations abated during inspections by 5%.

Results:

- The open inspections with citations pending report is run on a monthly basis. Management met with the District Managers, Regional Managers, and Senior Safety Engineers providing tips on how to manage case files, and to issue the less complicated citations first.
- The State Activity Mandated Measures (SAMM) is also run on a monthly basis to track citation lapse time.
- Citation lapse time for safety inspections decreased from 72.50 days in FY 2013 to 70.47 days in FY 2014. Citation lapse time for health inspections increased from 75.96 days in FY 2013 to 76 days in FY 2014. Citation lapse time for safety inspections decreased by 2.88% in FY 2014. Citation lapse time for health inspections increased by 0.1% in FY 2014.
- 43% of S/W/R violations were abated on site in FY 2014 as compared to 38% in FY 2013.

Assessment:

The goal of increasing the percentage of S/W/R violations abated was met (43% in FY 2014 compared to 38% in FY 2013).

Annual 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.

- Use internal tracking to monitor, on a monthly basis, fatality investigation response time and correct data entry errors that occurred.
- Respond within one day to 99% of reported fatalities.

Results:

- Fatality reports to monitor response time were run regularly.
- 98% of the fatalities were responded to within one day.

Assessment:

Good progress was made toward achieving this goal. One suggestion is to direct District Managers to make the appropriate changes to the event date to reflect the date of the fatality. See SAMM 21 below for further explanation.

C. Highlights from the State Activity Mandated Measure (SAMM)

Response Time (SAMM 1)

The state negotiated separate response times for serious and non-serious complaints. In order to do this, the state has agreed to track this indicator manually and provide the data by the end of the fiscal year. The state was not able to provide this data in writing, but did share the results verbally. For serious complaints, the negotiated response time of three days was not met. For non-serious complaints, the negotiated response time of 14 days was met. The average response time for serious complaints was 3.8 work days, compared to 3.9 work days in FY 2013. The average response time for non-serious complaints was 12.6 days, compared to 15.3 days in FY 2013.

Percent of complaints and referrals responded to within 1 work day (imminent danger) (SAMM 4)

The five cases in the exception report that were not responded to within one day were reviewed and did not contain an imminent danger situation at the time of the review. These cases were apparently coded incorrectly and were fixed, but that change was not reflected on the SAMM. None of these five cases were imminent danger situations.

Fatality Response Time (SAMM 21)

OSHA data indicated that 90% of the fatalities were responded to within one day. An analysis of the exception report shows there were 14 cases that were not opened within one day. This proved to be a data entry error. In those instances when the initial report of a serious injury that later becomes a fatality, the date the serious injury occurred was used versus the date the fatality occurred. Making the appropriate corrections, the revised percentage of fatalities responded to within one day was 98.0% (150/153).

Citation Lapse Time (SAMM 23)

Cal/OSHA's average lapse time for a safety or health inspection was 70.4 days and 75.9 days, respectively. The national average was 43.4 days and 57.1 days for a safety or health inspection, respectively. This issue was identified in the FY 2012 and FY 2013 FAME reports and remains a finding.

Serious, Willful, Repeat Violations (SAMM 9)

The average number of serious, willful and repeat violations per inspection with a serious, willful, or repeat citation was 0.66 as compared to the national average of 1.9. The average number of other-than-serious violations per inspection with other-than-serious citations was 2.62 as compared to the national average of 1.22. Cal/OSHA consistently maintained an average number of serious, willful or repeat violations per inspection outside of the allowed +/- 20% of the national average. Beginning in FY 2016, crane permitting inspections and mining and tunneling pre-job conferences will no longer be recorded as compliance program activity and entered as enforcement inspections in OIS. This will reduce the denominator used to calculate the percentage of programmed inspections with SWR violations. In addition, CSHOs will be provided further training to recognize serious hazards and identify serious, willful, and repeat violations, through both classroom training and onsite mentoring by regional senior engineers.

Penalties (SAMM 18)

Penalties assessed continued to be the highest in the nation and exceeded the national three-year data in all categories. Table 2 shows the average current penalty per serious violation based on the number of employees that are controlled by the establishment with smaller employers receiving a higher discount than larger employers.

Table 2
Average Current Penalty per Serious Violation

Number of Employees	FY 2014	National 3-year data
Total 1-250+	\$5542.21	\$1297.60
1-25	\$3769.74	\$ 941.40
26-100	\$5682.56	\$1323.00
101-250	\$7883.03	\$1849.20
251+	\$9091.18	\$2481.20

III. Assessment of State Plan Corrective Actions

Finding FY 2013-01: Complaint inspections classified as non-serious were not initiated within the negotiated time of 14 calendar days in 53% of the case files reviewed.

Recommendations FY 2013-01: Initiate non-serious complaint investigations within the negotiated time frame.

Status: Completed.

Because the state has multiple response times, they have agreed to track this indicator manually. The results of manual tracking show that the average response time for non-serious complaints was 12.62 days, which is within the negotiated time of 14 days.

Finding FY 2013-02: Final letters notifying the next-of-kin of the results of fatality inspections were not sent in 44.4% of the case files reviewed.

Recommendation FY 2013-02: 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.

Status: Awaiting Verification.

District and Regional Managers, Senior Safety Engineers, and OIS Coordinators were trained on October 10 and October 17, 2014 to run fatality reports in OIS in order to monitor and reconcile the required fatality letters in case files.

Finding FY 2013-03: The percent of programmed inspections with serious, willful, or repeat violations was significantly lower than the national average, 26.7% vs. 57.0% for safety and 9.1% vs. 53.7% for health.

Recommendation FY 2013-03: 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.

Status: Awaiting Verification.

Crane permitting inspections and Mining and Tunneling pre-job conferences are no longer recorded as compliance program activity or entered as enforcement inspections in OIS.

Removing these activities (in which no citations were issued) as programmed inspections should increase the percentage of the number of serious, willful and repeat violations in programmed inspections.

Finding FY 2013-04: The percentage of health inspections that were in compliance was 43.5%, which was higher than the reference/standard of 34.1%.

Recommendation FY 2013-04: 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.

Status: Open.

The FY 2014 SAMM 21 indicates the in-compliance rate for health inspections is still higher than the reference/standard of 34.1%. One challenge is that heat and indoor air complaints are coded as health and often times there are no citations issued in response to these complaints. District Managers have been instructed to meet with the CSHO prior to the inspection to discuss potential health hazards of the industry that could lead to violations.

Finding FY 2013-05: 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.

Recommendation FY 2013-05: Work with district and regional managers to improve citation lapse time.

Status: Open.

Cal/OSHA provided a full day of training, providing tips on case management, to District and Regional Managers, Senior Safety Engineers, and CSHOs who could become Acting District Managers on case management.

Finding FY 2013-06: 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 FY 2013-06: Consider employer history statewide when citing repeat violations.

Status: Open.

The repeat regulation is under DIR review prior to publication and public notice in the State Register. On March 13, 2014, an advisory committee meeting was held with stakeholders for their input in crafting the new repeat regulation. The regulation was submitted to the Office of Administrative Law (OAL) to issue the public notice and a rulemaking schedule has not yet been established.

Finding FY 2013-07: Worker representatives were not involved in the opening conference nor were workers interviewed in five of 19 inspections reviewed.

Recommendation FY 2013-07: 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.

Status: Awaiting Verification.

This issue was discussed with the District Managers on October 10 and October 17, 2014 to ensure the worker representatives are included in the inspection process and workers are interviewed.

Finding FY 2013-08: State-initiated rulemaking promulgated standards were not at least as effective as OSHA standards, such as the Bakery Oven and Crane Load Testing.

Recommendation FY 2013-08: Ensure standards are at least as effective as OSHA standards and initiate actions to update deficient standards.

Status: Open.

Bakery Oven - OSHA and Cal/OSHA continue to be in disagreement with this issue and it remains unresolved.

Crane Load Testing – A proposed remedy for this issue was discussed at the Standards Board’s GISO/CSO Crane Combine advisory committee scheduled for September 9-10, 2014 in Sacramento to determine needs for Title 8 amendments.

Finding FY 2013-09: DLSE did not update its RCI Manual and/or Policies and Interpretations Manual to be in line with OSHA’s updated WIM.

Recommendation FY 2013-09: 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.

Status: Open.

DLSE has not initiated action on this finding.

Finding FY 2013-10: 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.

Recommendation FY 2013-10: DLSE should follow its own procedures and OSHA’s procedures to ensure that discrimination case information is accurately entered into IMIS.

Status: Open.

DLSE entered inaccurate information into IMIS in four of the 11 cases reviewed and failed to enter complete information in at least two of the 11 cases reviewed.

Finding FY 2013-11: 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 FY 2013-11: DLSE should follow its own procedures and OSHA’s procedures to ensure evidence of screening is included in the discrimination case file.

Status: Closed.

Based on the State Plan’s feedback, OSHA is closing this finding because OSHA’s Whistleblower Investigation Manual does not require evidence that screening occurred through use of a particular screening or intake form that is included in the discrimination case file.

Finding FY 2013-12: The RCI Manual 2.2 discouraged accepting orally filed, faxed, and e-mailed discrimination complaints, in violation of WIM 2.2.

Recommendation FY 2013-12: The RCI Manual should be changed to indicate that discrimination complaints will be accepted if orally filed, faxed, or e-mailed.

Status: Open.

The discrimination case files reviewed disclosed that DLSE requires a complainant to fill out a required form (RCI 1) before being eligible for investigation. This fact is backed up by the same requirement on the DLSE website. There was no indication in the case files reviewed or on the website that complaints were allowed to be filed orally; DSLE did not investigate a complaint unless the form was completed and returned. DLSE indicated that it accepts complaints filed orally and by referral, email, and mail, but acknowledged that its website and manual do not reflect this. DLSE's requirements that complainant submit a specific form to file a complaint, as reflected in DLSE's manual and website, is in conflict with the Whistleblower Investigation Manual which specifically states that "[a] complaint under any statute may be filed orally or in writing." DSLE has stated it will be amended in their new manual.

Finding FY 2013-13: There was no documentation in the discrimination case files 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 FY 2013-13: DLSE should follow its own 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.

Status: Completed.

All of the case files reviewed appeared to document relevant witness interviews and closing conferences as required by the WIM. Ten of the 11 case files reviewed included appropriate documentation of the complainant interview.

Finding FY 2013-14: 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 FY 2013-14: DLSE should follow its own procedures and OSHA's procedures to ensure that discrimination investigations are complete.

Status: Completed.

Ten of the 11 case files reviewed had a thorough investigation conducted.

Finding FY 2013-15: 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 FY 2013-15: DLSE should follow its own procedures and OSHA's procedures to ensure that there is documentation in the case file that closing letters were sent to the parties.

Status: Open.

Two of the two "Dismissed/Non-Merit" case files contained documentation that closing letters were sent to the parties; however, both letters failed to provide complainants with appeal rights as required by the RCI Manual 4.2 (A through K). The finding will be rephrased to "The closing letters for Dismissed/Non Merit cases did not inform complainants of their appeal rights" as required in the RCI Manual 4.2 (A through K).

Finding FY 2013-16: DLSE’s manual and training materials did not have procedures to ensure that punitive damages were available under §6310 and §6311.

Recommendation FY 2013-16: Create procedures in the manual and training materials that ensure punitive damages are available, where appropriate, when filing meritorious cases in civil court.

Status: Closed.

This finding has been withdrawn. OSHA discovered after the records review that punitive damages are not stated in the OSH Act of 1970 or the Whistleblower’s Manual.

Finding FY 2013-17: 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 FY 2013-17: DLSE should follow its own procedures and OSHA’s procedures to ensure that there is documentation in the case file that supports the conclusion.

Status: Open.

Two of 11 case files did not include sufficient evidence to support the conclusion, contrary to the RCI Manual 4.2(B)(1 and 2). Due to the absence of a documentation supporting the conclusions in these two case files, this finding remains open for further review.

Finding FY 2013-18: 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 four out of 19 cases reviewed.

Recommendation FY 2013-18: DLSE should follow its own 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.

Status: Open.

Four of 11 case files failed to include either a final report or an IMIS summary in lieu of a final report, contrary to the RCI Manual 4.2 (A through C).

Finding FY 2013-19: Inspections conducted to issue permits for underground tunneling and cranes were entered as enforcement inspections when there was no enforcement component.

Recommendation FY 2013-19: Do not enter non-enforcement inspections into IMIS.

Status: Awaiting Verification.

Cal/OSHA met multiple times with the Crane and Mining and Tunneling Units in June 2014 to ensure crane permitting inspections and pre-job conferences are not recorded as compliance program activity and entered as enforcement inspections in OIS.

Finding FY 2013-20: 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 was used.

Recommendation FY 2013-20: 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.

Status: Closed.

Labor Code 6307 provides Cal/OSHA with the power, jurisdiction, and supervision over every employment in the state thereby demonstrating that legal requirements have been met. The state does not have to prove legal sufficiency.

Finding FY 2013-21: The targeting program data were not evaluated for effectiveness in reducing injuries, illnesses, and deaths on a consistent basis.

Recommendation FY 2013-21: 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.

Status: Open.

Cal/OSHA is in the process of developing written procedures to track, monitor, and evaluate the effectiveness of their targeting program.

Finding FY 2013-22: Funded staffing positions remained vacant.

Recommendation FY 2013-22: Take action to fill vacant positions. Develop a staffing plan to ensure positions authorized and funded by OSHA in the annual grant are filled.

Status: Open.

Cal/OSHA has been hiring new employees throughout the year; however hiring has not been aggressive enough to keep up with new vacancies.

Finding FY 2013-23: Time spent by compliance staff conducting activities outside the scope of the 23(g) grant was being funded by the grant.

Recommendation FY 2013-23: Remove all non-covered activities and associated time from the grant, such as permitting inspections and pre-tunnel inspections.

Status: Awaiting Verification.

Crane permitting inspections and Mining and Tunneling pre-job conferences will no longer be recorded as compliance program activity, entered as enforcement inspections in OIS, and charged to the grant. DOSH will reverse the charges for this work performed in federal fiscal year 2014.

Finding FY 2013-24: Inspections conducted in exempt NAICS were not tracked separately as required by the grant instructions.

Recommendation FY 2013-24: Ensure there is a tracking mechanism in place that verifies all activities in exempt NAICS are paid from state overmatch funds.

Status: Awaiting Verification.

Cal/OSHA is identifying inspections using the NAICS codes. If an inspection is done on an establishment identified in the appropriation and exemption rider, the charges must be taken out of overmatch funds. As of October 1, 2014, these charges must be tracked on a quarterly basis.

Finding FY 2013-25: Time spent by Senior Engineers supporting and assisting CSHOs was allocated toward the safety and health compliance officer FTE benchmark.

Recommendation FY 2013-25: Monitor the time Senior Engineers spend assisting CSHOs with inspections versus the time they spend actually performing inspection work in the field.

Status: Awaiting Verification.

As of October 1, 2014, the Senior Safety Engineers have been completing a timesheet to document the time spent in the field either conducting inspections or assisting CSHOs. The Senior Safety Engineers only input a timesheet when field work is conducted.

Finding FY 2013-26: There was no Internal Evaluation Program as required by the Restrictions and Conditions of the grant.

Recommendation FY 2013-26: Develop and implement an effective internal self-audit program.

Status: Open.

Cal/OSHA is developing an Internal Evaluation Program.

Observation FY 2013-01: Complainants were not consistently notified of the results of the complaint inspections or inquiries.

Federal Monitoring Plan FY 2013-01: OSHA will continue to monitor to determine if these are isolated events or trends.

Status: Continued.

A case file review will be conducted in CY 2015 to verify if complainants are being notified of inspection or inquiry results.

Observation FY 2013-02: The new definition of serious violation was not incorporated into their P&P manual and applied.

Federal Monitoring Plan FY 2013-02: OSHA will continue to monitor the progress towards updating the manual as well as track whether the updated policy is being used presently.

Status: Continued.

The P&P manual has been updated to include the new definition of serious violation and is awaiting final approval by Cal/OSHA management. CSHOs and District Managers have been trained and are applying the new definition of serious violations during inspections. This manual update has not been shared with OSHA.

Observation FY 2013-03: 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 FY 2013-03: Monitor to ensure the electrical equipment in hazardous (classified) locations proposed standard is heard at the Standards Board meetings.

Status: Continued.

OSHSB proposed a standard change at the December 2014 meeting to update their regulations.

Appendix A – New and Continued Findings and Recommendations
 FY 2014 California State Plan Follow-up FAME Report

FY 2014-#	Finding	Recommendation	FY 20XX-# or FY 20XX-OB-#
FY 2014-01	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 and 170A. Corrective action complete, awaiting verification.	FY 2013-02
FY 2014-02	The percent of programmed inspections with serious, willful, or repeat violation was significantly lower than the national average, 26.7% 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. Corrective action complete, awaiting verification.	FY 2013-03
FY 2014-03	The percentage of health inspections that were in compliance was 41.9%, 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.	FY 2013-04
FY 2014-04	The citation lapse time was 70.4 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.	FY 2013-05
FY 2014-05	When determining repeat violations, Cal/OSHA did not consider the employer's enforcement history statewide. Instead, employer history is 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.	FY 2013-06
FY 2014-06	Worker representatives were not involved in the opening conference nor were workers interviewed	An opening conference shall be held with the union either jointly with the employer or separately and	FY 2013-07

Appendix A – New and Continued Findings and Recommendations

FY 2014 California State Plan Follow-up FAME Report

FY 2014-#	Finding	Recommendation	FY 20XX-# or FY 20XX-OB-#
	in five of the 19 inspections reviewed.	properly documented. Worker interviews shall be conducted and documented. Corrective action complete, awaiting verification.	
FY 2014-07	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.	FY 2013-08
FY 2014-08	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.	FY 2013-09
FY 2014-09	Information regarding discrimination cases was not accurately entered into WebIMIS, 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 WebIMIS.	FY 2013-10
FY 2014-10	The RCI Manual 2.2 discouraged accepting orally filed, faxed, and e-mailed 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 e-mailed.	FY 2013-12
FY 2014-11	The closing letters for Dismissed/Non Merit cases did not inform complainants of their appeal rights” as required in the 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.	FY 2013-15
FY 2014-12	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.	FY 2013-17
FY 2014-13	A final report, or IMIS report in lieu of a final	DLSE should follow their procedures and OSHA’s	FY 2013-18

Appendix A – New and Continued Findings and Recommendations

FY 2014 California State Plan Follow-up FAME Report

FY 2014-#	Finding	Recommendation	FY 20XX-# or FY 20XX-OB-#
	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.	procedures to ensure that a final report, or IMIS report in lieu of a final report, be included in the case file.	
FY 2014-14	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. Corrective action complete, awaiting verification.	FY 2013-19
FY 2014-15	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 non-compliance rate to determine the overall effectiveness of targeting programs.	FY 2013-21
FY 2014-16	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.	FY 2013-22
FY 2014-17	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. Corrective action complete, awaiting verification.	FY 2013-23
FY 2014-18	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. Corrective action completed, awaiting verification. Corrective action complete, awaiting verification.	FY 2013-24

Appendix A – New and Continued Findings and Recommendations

FY 2014 California State Plan Follow-up FAME Report

FY 2014-#	Finding	Recommendation	FY 20XX-# or FY 20XX-OB-#
FY 2014-19	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. Corrective action complete, awaiting verification.	FY 2013-25
FY 2014-20	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.	FY 2013-26

Appendix B – Observations Subject to New and Continued Monitoring
 FY 2014 California State Plan Follow-up FAME Report

Observation #	Observation # FY 2013	Observation	Federal Monitoring Plan	Current Status
FY 2014-OB-01		Cal/OSHA's regulations for residential construction fall protection are not as effective as federal OSHA's regulations as required by 1953.5(a).	OSHA will participate in the advisory meeting in order to assess stakeholder input and continue working toward a resolution of differences in the regulations.	New
FY 2014-OB-02	FY 2013-OB-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. A case file review will be conducted in CY 2015 to verify if complainants are being notified of inspection or inquiries.	Continued
FY 2014-OB-03	FY 2013-OB-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.	Continued
FY 2014-OB-04	FY 2013-OB-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 the electrical equipment in hazardous (classified) locations proposed standard is heard at the Standards Board meetings.	Continued

Appendix C – Status of FY 2013 Findings and Recommendations
FY 2014 California State Plan Follow-up FAME Report

FY 2013-#	Finding	Recommendation	State Plan Response/Corrective Active	Completion Date	Current Status and Date
FY2013-01	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 time frame.	Because the state has multiple response times, they have agreed to track this indicator manually. The results of manual tracking show that the average response time for non-serious complaints was 12.62 days, which is within the negotiated time of 14 days.	04/24/2015	Completed
FY2013-02	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.	District and Regional Managers, Senior Safety Engineers, and OIS Coordinators were trained on October 10 and October 17, 2014 to run fatality reports in OIS in order to monitor and reconcile the required fatality letters in case files.	Not Completed	Awaiting Verification (03/27/2015)
FY2013-03	The percent of programmed inspections with serious, willful or repeat violations 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.	Crane permitting inspections and Mining and Tunneling pre-job conferences are no longer recorded as compliance program activity or entered as enforcement inspections in OIS. Removing these activities (in which no citations were issued) as programmed inspections should increase the percentage of the number of serious, willful and repeat violations in programmed inspections.	Not Completed	Awaiting Verification (03/27/2015)

Appendix C – Status of FY 2013 Findings and Recommendations
FY 2014 California State Plan Follow-up FAME Report

FY 2013-#	Finding	Recommendation	State Plan Response/Corrective Active	Completion Date	Current Status and Date
FY2013-04	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.	The in-compliance rate for health inspections remains higher than the reference/standard of 34.1%. One challenge is that heat and indoor air complaints are coded as health and often times there are no citations issued in response to these complaints. District Managers have been instructed to meet with the CSHO prior to the inspection to discuss potential health hazards of the industry that could lead to violations.	Not Completed	Open (03/27/2015)
FY2013-05	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.	Cal/OSHA provided a full day of training, providing tips on case management, to District and Regional Managers, Senior Safety Engineers, and CSHOs who could become Acting District Managers on case management.	Not Completed	Open (03/27/2015)
FY2013-06	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.	The repeat regulation is under DIR review prior to publication and public notice in the State Register. On March 13, 2014, an advisory committee meeting was held with stakeholders for their input in crafting the new repeat regulation. The regulation was submitted to the Office of Administrative Law (OAL) to issue the public notice and a rulemaking schedule has not yet been established.	Not Completed	Open (03/27/2015)

Appendix C – Status of FY 2013 Findings and Recommendations
FY 2014 California State Plan Follow-up FAME Report

FY 2013-#	Finding	Recommendation	State Plan Response/Corrective Active	Completion Date	Current Status and Date
FY2013-07	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.	This issue was discussed with the District Managers on October 10 and October 17, 2014 to ensure the worker representatives are included in the inspection process and workers are interviewed.	Not Completed	Awaiting Verification (03/27/2015)
FY2013-08	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.	Bakery Oven - OSHA and Cal/OSHA continue to be in disagreement with this issue and it remains unresolved. Crane Load Testing – A proposed remedy for this issue was discussed at the Standards Board’s GISO/CSO Crane Combine advisory committee scheduled for September 9-10, 2014 in Sacramento to determine needs for Title 8 amendments.	Not Completed	Open (03/27/2015)
FY2013-09	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.	DLSE has not initiated action on this finding.	Not Completed	Open (03/07/2015)

Appendix C – Status of FY 2013 Findings and Recommendations
FY 2014 California State Plan Follow-up FAME Report

FY 2013-#	Finding	Recommendation	State Plan Response/Corrective Active	Completion Date	Current Status and Date
FY2013-10	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.	DLSE entered inaccurate information into IMIS in four of the 11 cases reviewed and failed to enter complete information in at least two of the 11 cases reviewed.	Not Completed	Open (03/07/2015)
FY2013-11	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 its own procedures and OSHA’s procedures to ensure evidence of screening is included in the discrimination case file.	Based on the State Plan’s feedback, OSHA is closing this finding because OSHA’s Whistleblower Investigation Manual does not require evidence that screening occurred through use of a particular screening or intake form that is included in the discrimination case file.	03/07/2015	Closed
FY2013-12	The RCI Manual 2.2 discouraged accepting orally filed, faxed, and e-mailed 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 e-mailed.	DSLE did not investigate a complaint unless a required form (RCI 1) was completed and returned. DLSE’s requirements that complainant submit a specific form to file a complaint, as reflected in DLSE’s manual and website, is in conflict with the Whistleblower Investigation Manual which specifically states that “[a] complaint under any statute may be filed orally or in writing.”	Not Completed	Open (03/07/2015)

Appendix C – Status of FY 2013 Findings and Recommendations
FY 2014 California State Plan Follow-up FAME Report

FY 2013-#	Finding	Recommendation	State Plan Response/Corrective Active	Completion Date	Current Status and Date
FY2013-13	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.	All of the case files reviewed appeared to document relevant witness interviews and closing conferences as required by the WIM. Ten of the 11 case files reviewed included appropriate documentation of the complainant interview.	03/07/2015	Completed
FY2013-14	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.	Ten of the 11 case files reviewed had a thorough investigation conducted.	03/07/2015	Completed
FY2013-15	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-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.	Two of the two “Dismissed/Non-Merit” case files contained documentation that closing letters were sent. Both letters failed to provide complainants with appeal rights as required by the RCI Manual 4.2 (A through K). The finding will be rephrased to “The closing letters for Dismissed/Non Merit cases did not inform complainants of their appeal rights”.	Not Completed	Open (03/07/2015)

Appendix C – Status of FY 2013 Findings and Recommendations
FY 2014 California State Plan Follow-up FAME Report

FY 2013-#	Finding	Recommendation	State Plan Response/Corrective Active	Completion Date	Current Status and Date
FY2013-16	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.	This finding has been withdrawn. OSHA discovered after the records review that punitive damages are not stated in the OSH Act of 1970 or the Whistleblower’s Manual.	03/07/2015	Closed
FY2013-17	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.	Two of 11 case files did not include sufficient evidence to support the conclusion, contrary to the RCI Manual 4.2(B)(1 and 2). Due to the absence of a documentation supporting the conclusions in these two case files, this finding remains open for further review.	Not Completed	Open (03/07/2015)
FY2013-18	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-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.	Four of 11 case files failed to include either a final report or an IMIS summary in lieu of a final report, contrary to the RCI Manual 4.2 (A through C).	Not Completed	Open (03/07/2015)

Appendix C – Status of FY 2013 Findings and Recommendations
FY 2014 California State Plan Follow-up FAME Report

FY 2013-#	Finding	Recommendation	State Plan Response/Corrective Active	Completion Date	Current Status and Date
FY2013-19	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.	Cal/OSHA met multiple times with the Crane and Mining and Tunneling Units in June 2014 to ensure crane permitting inspections and pre-job conferences are not recorded as compliance program activity and entered as enforcement inspections in OIS.	Not Completed	Awaiting Verification (03/27/2015)
FY2013-20	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 was 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.	Labor Code 6307 provides Cal/OSHA with the power, jurisdiction, and supervision over every employment in the state thereby demonstrating that legal requirements have been met. The state does not have to prove legal sufficiency.	04/24/2015	Closed
FY2013-21	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 and in-compliance rate to determine the overall effectiveness of targeting programs.	Cal/OSHA is in the process of developing written procedures to track, monitor, and evaluate the effectiveness of their targeting program.	Not Completed	Open (03/27/2015)

Appendix C – Status of FY 2013 Findings and Recommendations
FY 2014 California State Plan Follow-up FAME Report

FY 2013-#	Finding	Recommendation	State Plan Response/Corrective Active	Completion Date	Current Status and Date
FY2013-22	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.	Cal/OSHA has been hiring new employees throughout the year. Hiring has not been aggressive enough to keep up with new vacancies.	Not Completed	Open (03/27/2015)
FY2013-23	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.	Crane permitting inspections and Mining and Tunneling pre-job conferences will no longer be charged to the grant. DOSH will reverse the charges for this work performed in federal fiscal year 2014.	Not Completed	Awaiting Verification (03/27/2015)
FY2013-24	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.	Cal/OSHA is identifying inspections using the NAICS codes. If an inspection is done on an establishment identified in the appropriation and exemption rider, the charges must be taken out of overmatch funds. As of October 1, 2014, these charges must be tracked on a quarterly basis.	Not Completed	Awaiting Verification (03/15/2015)
FY2013-25	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.	As of October 1, 2014, the Senior Safety Engineers have been completing a timesheet to document the time spent in the field either conducting inspections or assisting CSHOs. The Senior Safety Engineers only input a timesheet when field work is conducted.	Not Completed	Awaiting Verification (03/31/2015)
FY2013-26	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.	Cal/OSHA is developing an Internal Evaluation Program.	Not Completed	Open (03/27/2015)

Appendix D - FY 2014 State Activity Mandated Measures (SAMM) Report

FY 2014 California State Plan Follow-up FAME Report

OSHA is in the process of moving operations from a legacy data system (NCR) to a modern data system (OIS). During FY 2014, federal OSHA case files were captured on OIS, while most State Plan case files continued to be processed through NCR. California opened 7,255 enforcement inspections in FY 2014. Of those, 7,164 inspections were captured in NCR, while 91 were captured in OIS. The SAMM Report, which is native to IMIS (a system that generates reports from the NCR), is not able to access data in OIS. Additionally, certain algorithms within the two systems are not identical. These challenges impact OSHA's ability to combine the data. For FY14 we will use a format very similar to the one used for FY 2013. Below is an explanation of which data OSHA was able to use when calculating each metric.

- a. Measures 1 & 2 will use State Plan data for FY14 as captured in NCR and compared to the State Plan's negotiated number. Any State Plan data from OIS will not be considered due to irregularities in the algorithm between OIS and NCR.
- b. Measures 20a-b, 23, and 24 will use State Plan data for FY14 as captured in NCR and compared to the historical FY2011 national average (FY09-11). Any State Plan data from OIS will not be considered due to irregularities in the algorithm between OIS and NCR.
- c. Measures 5, 9, 11, 17, 19, 21, and 25 will use State Plan data for FY14 as tabulated manually to include both OIS and NCR data and compared to the fixed/negotiated/national numbers associated with them.
- d. Measures 13, 14 and 16 will be extracted from NCR (OIS conversion should not impact). National data will be pulled from WebIMIS for FY12-14.
- e. Measures 18a-e will use State Plan data for FY14 as captured in NCR. Any data from OIS will not be considered due to irregularities in the algorithm between OIS and NCR. Much like FY13, no national data will be available for comparison.
- f. Measure 22 will be excluded from the report (other than as a placeholder to demonstrate that it is one of the agreed upon metrics, but not one we can currently generate).
- g. Measure 4 will use State Plan data for FY 14 as captured in NCR.

Appendix D - FY 2014 State Activity Mandated Measures (SAMM) Report
 FY 2014 California State Plan Follow-up FAME Report

U.S. Department of Labor				
Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)				
State Plan: California			FY 2014	
SAMM Number	SAMM Name	State Plan Data	Reference/Standard	Notes
1	Average number of work days to initiate complaint inspections	14.2 days	3 days	State Plan data taken directly from SAMM report generated through IMIS. The reference/standard is a negotiated number for each State Plan.
2	Average number of work days to initiate complaint investigations	9.1 days	1 day	State Plan data taken directly from SAMM report generated through IMIS. The reference/standard is a negotiated number for each State Plan.
4	Percent of complaints and referrals responded to within 1 work day (imminent danger)	97.6%	100%	State Plan data taken directly from SAMM report generated through IMIS.
5	Number of denials where entry not obtained	0	0	State Plan data taken directly from SAMM report generated through IMIS and Open Inspection OIS report.
9a	Average number of violations per inspection with violations by violation type	0.7	SWR: 1.9	State Plan data taken from SAMM report generated through IMIS and the Inspection summary report generated in OIS; national data was manually calculated from data pulled from both IMIS and OIS for Fiscal Years (FY) 2012-2014.
9b	Average number of violations per inspection with violations by violation type	2.6	Other: 1.2	

Appendix D - FY 2014 State Activity Mandated Measures (SAMM) Report
FY 2014 California State Plan Follow-up FAME Report

11	Percent of total inspections in the public sector	6.0%	4.8%	State Plan data taken from SAMM report generated through IMIS and the Inspection summary report generated in OIS. The reference/standard is derived from the FY 14 grant application.
13	Percent of 11c Investigations completed within 90 calendar days	21%	100%	State Plan data taken directly from SAMM report generated through IMIS; National data was pulled from webIMIS for FY 2012-2014.
14	Percent of 11c complaints that are meritorious	27.9%	24.8% meritorious	State Plan data taken directly from SAMM report generated through IMIS; National data was pulled from webIMIS for FY 2012-2014.
16	Average number of calendar days to complete an 11c investigation	362.7 days	90 days	State Plan data taken directly from SAMM report generated through IMIS; National data was pulled from webIMIS for FY 2012-2014.
17	Planned vs. actual inspections - safety/health	5608/1556	5800/1300	State Plan data taken from SAMM report generated through IMIS and the Inspection summary report generated in OIS; the reference standard number is taken from the FY 2014 grant application. The reference/standard is a negotiated number for each State Plan.
18a	Average current serious penalty - 1 -25 Employees	3769.74		State Plan data taken directly from SAMM report generated through IMIS.
18b	Average current serious penalty - 26-100 Employees	5682.56		
18c	Average current serious penalty - 101-250 Employees	7883.03		
18d	Average current serious penalty - 251+ Employees	9091.18		
18e	Average current serious penalty - Total 1 - 250+ Employees	5542.21		

Appendix D - FY 2014 State Activity Mandated Measures (SAMM) Report
FY 2014 California State Plan Follow-up FAME Report

19	Percent of enforcement presence	1.1%	National Average 1.51%	Data is pulled and manually calculated based on FY 2014 data currently available in IMIS and County Business Pattern data pulled from the US Census Bureau.
20a	20a) Percent In Compliance – Safety	27.5%	Safety - 29.1	State Plan data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2014 national average, which draws from the collective experience of State Plans and federal OSHA for FY 2009-2011.
20b	20b) Percent In Compliance – Health	41.9%	Health - 34.1	
21	Percent of fatalities responded to in 1 work day	90%	100%	State Plan data is manually pulled directly from IMIS for FY 2013.
22	Open, Non-Contested Cases with Abatement Incomplete > 60 Days	n/a		Data not available.
23a	Average Lapse Time - Safety	70.4 days	43.4 days	State Plan 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 federal OSHA for FY 2009-2011.
23b	Average Lapse Time - Health	76.0 days	57.1 days	
24	Percent penalty retained	81.3%	66%	State Plan 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 federal OSHA for FY 2009-2011.

Appendix D - FY 2014 State Activity Mandated Measures (SAMM) Report
FY 2014 California State Plan Follow-up FAME Report

25	Percent of initial inspections with employee walk around representation or employee interview	100%	100%	State Plan data taken from SAMM report generated through IMIS and the Inspection where Workers Involved report generated in OIS.
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